

ALASKA LEGISLATURE COMMITTEE FILES 1981-1982 8672

1264 SCRA SB 126 1269

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

The boards contend, using labor cases from the private sector, that the requirement of collective bargaining in good faith is a term of art in labor law. Unlike a simple "meet and confer" requirement, to negotiate in "good faith" entails a duty to make concessions. Thus, management does not have the final decisions on matters subject to good faith collective bargaining, since if management adheres to its determined policies, it violates the law.

The school boards contend that the submission of educational policies to a good faith collective bargaining requirement would remove the final decisions on such matters from the boards, contrary to the intent of the legislature expressed in AS 14.20.610. The boards contend that to require bargaining on questions of educational policy would also contravene the Alaska Constitution, art. VII, § 1, which makes education the exclusive domain of the legislature. ^{4/}

^{4/} Alaska Constitution, art. VII, § 1 states:

"The legislature shall by general law establish and maintain a system of public schools open to all children of

See Macauley v. Hildebrand, 491 P.2d 120 (Alaska 1971).

Delegation of part of the decision-making power on educational policy to labor unions is unconstitutional, they urge, because the union is a private organization, unaccountable to the public. The union can use the power for its own ends, and is under no duty to foster educational policies which are in the general public interest.

The unions argue that such delegation is perfectly proper, and that there is no delegation of decision-making power inherent in a labor negotiations requirement. They further argue that they represent professional employees, and that their participation in good faith collective bargaining labor negotiations is an attempt by the legislature to provide professional advice to school boards on the management of the schools. They assert that this is a legislative policy judgment, in no way inimical to the Alaska Constitution. Also relying on labor cases, they discount the importance of any "management prerogative" to determine educational policy under AS 14.20.610, and assert

*Question with
is a policy
argument*

4/ Cont'd.

the State, and may provide for other public educational institutions. Schools and institutions so established shall be free from sectarian control. No money shall be paid from public funds for the direct benefit of any religious or other private educational institution."

Should be dual
that labor's concerns with working conditions override any management prerogative as to basic policy.

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

II. Scope of the Duty to Bargain

If we were to look to the law concerning bargaining between labor unions and private employers, we would conclude that the scope of negotiable issues is broad. The law relating to the private sector has always contained, and still does contain, uncertainties. But the general trend has been to require that employers bargain in good faith on a wide range of items with respect to wages, hours, and other conditions of employment, without regard to whether the employers consider the items bargained for to be within

unions are permitted to bargain on matters of educational policy, it is conceivable that through successive contracts the autonomy of the school boards could be severely eroded, and the effective control of educational policy shifted from the school boards to the teachers' unions. Such a result could threaten the ability of elective government officials and appointive officers subject to their authority, in this case the school boards and administrators, to perform their functions in the broad public interest.^{7/}

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

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

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

is correspondently less concerned that high prices due to costly wage demands will decrease output and hence employment.

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

Finally, decisionmaking by a public employer is above all a political process. The officials who represent the public employer are ultimately responsible to the electorate, which for this purpose can be viewed as comprising three overlapping classes of voters -- taxpayers, users of particular government services, and government employees. Through exercise of their political influence as part of the electorate, the employees have the opportunity to affect the decisions of government representatives who sit on the other side of the bargaining table. Whether these representatives accede to a union's demands will depend upon a blend of political ingredients, including community sentiment about unionism generally and the involved union in particular, the degree of taxpayer resistance, and the views of voters as to the importance of the service involved and the relation between the demands and the quality of service."

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

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

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52 L.Ed.2d at 298.

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

See generally Rehmus, Constraints on Local Governments in Public Employee Bargaining, 67 Mich. L. Rev. 919 (1969); Shaw and Clark, The Practical Differences Between Public and Private Sector Collective Bargaining, 19 U.C.L.A. L. Rev.

The legislature was evidently cognizant of this concern when it enacted AS 14.20.550 and .610, stating two goals which apparently conflict. We must now proceed to interpret what we believe the legislature meant by these provisions.

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

While courts in an earlier era often held laws unconstitutional on the ground that they delegated legislative power to private persons or groups, e.g., Carter v. Carter Coal Co., 298 U.S. 238, 311 (1936), the trend has been to uphold such delegations, even when the power is delegated to a group with an economic interest in the decisions to be made. E.g., United States v. Rock Royal Cooperative, Inc., 307 U.S. 533, 577-78 (1939) (cooperati marketing program from agricultural products); Agricultural Prorate Comm'n v. Superior Court, 55 P.2d 495, 504-06 (Cal. 1936) (same); Potter v. New Jersey Supreme Court, 403 F.

8/ Cont'd.

867 (1972); Summers, Public Sector Bargaining: Problems of Government Decisionmaking, 44 U. Conn. L. Rev. 669 (1975); Summers, Public Employee Bargaining: A Political Perspective, 83 Yale L.J. 1156 (1974); Wellington & Winter, The Limits of Collective Bargaining in Public Employment, 78 Yale L.J. 1107 (1969); Project, Collective Bargaining and Politics in Public Employment, 19 U.C.L.A. L. Rev. 887, 1010-51 (1972).

Supp. 1036, 1039-40 (D.N.J. 1975), aff'd, 546 F.2d 418 (3d Cir. 1976) (requirement that attorneys have graduated from law schools accredited by the American Bar Association).
See generally, 1 K. Davis, Administrative Law Treatise § 2.14 (Supp. 1970) (collecting cases). See also 1 Id. § 2.15 (1958).

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

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

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

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

The court in Dunellen Bd. of Education v. Dunellen Ed. Ass'n, 311 A.2d 737 (N.J. 1973), dealt with a conflict between a requirement to bargain about "terms and conditions" of employment (without further definition) and the broad managerial power over schools entrusted to local school boards. The court noted that "terms and conditions" of employment without further definition does not furnish a dispositive guideline. It held that the decision whether to consolidate chairmanships of the social studies department

and English department was not a subject of mandatory bargaining. It was a matter predominately of educational policy and thereby fell within the exclusive prerogative of management.^{9/}

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

^{9/} The teachers' unions in the case at bar argue that Dunellen was overruled by later legislation. The statute in question dealt with only a limited aspect of bargaining; and Dunellen has been followed by the courts despite the statutory amendment. See, e.g., Galloway Tp. Bd. of Ed. v. Galloway Tp. Ed. Ass'n, 343 A.2d 133 (N.J. Super. 1975).

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

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

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

Put another way, a matter is more susceptible to bargaining the more it deals with the economic interests of employees and the less it concerns professional goals and methods. Bargaining over the latter topics presents particular

problems because there is less likely to be any politically organized interest group other than the union concerned with these issues. The salaries of public employees have a direct financial effect on the taxpayers; on the other hand, a question such as teacher evaluation of administrators is unlikely to have any impact sufficiently direct to be discernible by laymen. Furthermore, it is such an abstract and abstruse subject that it is unlikely that any appreciable portion of the public will either understand it or care greatly about it. In such circumstances, the risk that effective power over the governmental decision will come to rest with the union is significantly greater. Moreover, it is more likely that there will be disagreements among union members on questions of this nature than on "bread and butter" issues; the risk that minority viewpoints within the union will not be meaningfully represented in the bargaining is a real one. See Summers, supra, 83 Yale L.J. at 1181-82, 1194-95. But see Wollett, The Coming Revolution in Public School Management, 67 Mich. L. Rev. 1017 (1969) (argues that these subjects should be bargainable).

III. Specific Issues

We will now consider the Alaska situation in more detail. At the outset it appears to us that questions concerning salaries, the number of hours to be worked, and

amount of leave time are all so closely connected with the economic well-being of the individual teacher that they must be held negotiable under our statutes. The troubling question is what other items are bargainable.

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

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

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

Similarly, the question of class size affects directly the amount of work a teacher must perform. But the determination of optimum class size is quite basic to school policy and management, and potentially has a substantial impact on the school district's personnel expenditures. A number of courts have found this to be clearly non-negotiable. See National Ed. Ass'n. of Shawnee Mission, Inc. v. Board of Ed., 512 P.2d 426, 435 (Kan. 1973); West Irondequoit Teachers Ass'n v. Helsby, 315 N.E.2d 775, 777-78 (N.Y. App. 1974);

School Dist. of Seward Ed. Ass'n v. School Dist. of Seward,
199 N.W.2d 752, 759 (Neb. 1972); City of Biddeford v.
Biddeford Teachers Ass'n, 304 A.2d 307, 403 (Maine 1973).

An examination of the other specific items listed above yields equally indefinite answers. We are confronted, then, with a situation in which the legislature has not spoken with clarity and concerning which we possess no expertise. We can only conclude that salaries, fringe benefits, the number of hours worked, and the amount of leave time are negotiable. In view of the concerns expressed on pages 7-10 supra, we conclude that the other specific items listed on page 17 are, under the existing statutory language, non-negotiable.

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

10/ In the list of proposals submitted in the Kenai case, for example, it appears that some 38 of the 47 proposals would come within the category of items we have concluded are negotiable. These items are set forth in the appendix to this opinion.

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

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

AFFIRMED IN PART, REVERSED IN PART.

APPENDIX

LIST OF NEGOTIABLE AND NON-NEGOTIABLE ITEMS

Those items which are non-negotiable are as follows:

1. Relief from Non-Professional Chores ^{11/}
 2. Class Size and Teacher Load
 3. Ombudsman
 4. Evaluation of Administrators
 5. Teacher Aides
 6. Para-Professionals
 7. PTR Formula
 8. Specialists
 9. Calendar
-

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

"RELIEF FROM NON-PROFESSIONAL CHORES

The Board and Association acknowledge that a teacher's primary responsibility is to teach and that his energies should be utilized to this end, therefore, they agree as follows:

Teachers shall not be required to perform the following duties:

- A. Non-instructional assignments, including but not limited to, supervising of cafeterias, sidewalks, bus loading, or unloading, or playgrounds of more than fifteen (15) minutes daily.
- B. Collecting money from students.
- C. Cumulative record cards and other clerical and/or custodial functions."

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

Those items which are negotiable are:

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

THE PRECEDING PAGES WERE TREATED AS
A UNIT IN THE ORIGINAL FILE.



ASSOCIATION OF ALASKA SCHOOL BOARDS
SUITE 2, 204 NORTH FRANKLIN STREET
JUNEAU, ALASKA 99801

David

February 20, 1981

Dear Senator:

This is the Attorney
General's opinion we
discussed this morning.

Robert C. Greene

MEMORANDUM

State of Alaska

TO Marshall L. Lind
Commissioner
Department of Education

DATE: January 30, 1981

FILE NO: J-66-388-81

TELEPHONE NO: 465-3603

FROM WILSON L. CONDON
ATTORNEY GENERAL

SUBJECT: Dismissal of Teachers

By: ^{THR}
Thomas H. Robertson
Assistant Attorney General

You have asked whether a teacher may be dismissed on account of a decrease in school attendance.

In accordance with 4 AAC 18.010(9) employment contracts of public school teachers must contain a provision providing, in substance, that the contract may be "terminated without penalty to the employing board" if there is a decrease in school attendance. AS 14.20.170 provides, on the other hand, that a teacher may be dismissed only for certain reasons. A decrease in school attendance does not number among the reasons specified in AS 14.20.170. It is, however, a valid ground for teacher non-retention under AS 14.20.175.

In light of the foregoing, it appears that 4 AAC 18.010(9) is invalid to the extent it requires that employment contracts of public school teachers sanction dismissals which are prohibited under AS 14.20.170. We suggest that it be amended or repealed.

THR/jf

REMARKS OF ROBERT D. HELSBY,
DIRECTOR, PUBLIC EMPLOYMENT RELATIONS SERVICES

at

AAA/FMCS INTEREST ARBITRATION SEMINARS
Mayflower Hotel, Washington, DC

January 15, 1980

In the decade of the sixties when states began experimenting with collective bargaining in public employment, a primary concern was whether some form of the right to strike should be permitted. Entire conferences, heated debates and a flood of papers and articles were devoted to the subject. Many practitioners and students were concerned, as a result of private sector collective bargaining experience that without the so-called strike "equalizer" there could not be real collective bargaining. Without the right to strike, at least in some limited form, they contended there could only be substitute collective negotiations such as meet and confer, honest discussion or some similar process where the government employer would still make the final unilateral decisions.

Now with almost two decades of experimentation and varied experience behind us, most would agree that this argument has been largely dissipated. Although differences of opinion still persist, experience has shown that collective bargaining is not a singular or single-track system composed of negotiations, mediation and strikes or lockouts as the ultimate pressure devices. Instead, one of the major strengths of collective bargaining has proven to be its versatility and flexibility to adapt to the wide varieties of public employment.

The strike issue has now been largely supplanted by an almost equally heated discussion concerning interest arbitration - that is mandatory binding arbitration of contract terms where all other efforts to achieve agreement have failed and where the strike is banned.

First a look at the available mechanisms:

The Options

There is one overriding principle in dispute resolution on which almost universal agreement exists - and I hasten to add that such agreements are few and far between: the best agreement is one which the parties fashion themselves and only when every conceivable effort to reach agreement has been exhausted should final decisions be made by so-called "outsiders" who do not have to live with the results of those decisions.

Where parties are unable to reach agreement in their contract negotiations, the following systems are generally those used in various jurisdictions in an attempt to achieve finality:

1. Mediation with right of final decision-making left in the hands of the government's legislative body;
2. Mediation and factfinding with no finality indicated in case factfinder's recommendations are rejected. In some cases additional procedures such as various types of public hearings are added. After these procedures are exhausted, there is
 - a) continued negotiations until agreement is reached, or
 - b) the opportunity for the legislative body to make a final decision, or
 - c) continual bitterness and acrimony with various types of job actions.
3. Public referendum.
4. Some form of a limited right to strike, lockout, slowdown, work to rule or other types of job actions.
5. Some type of interest arbitration.

Some quick comments concerning the first four of these systems before dealing with the main thrust of this paper - interest arbitration. The procedures outlined above should always be considered as procedures, tools or aids to assist the parties to reach agreement - in short, an extension of the collective bargaining process. Even where other systems of finality are possible, there should be a continued effort to realize the optimum - an agreement.

1. Mediation.

Mediation is the "old faithful" of the dispute resolution aids. In the early days of public sector bargaining, many felt that mediation should be kept separate and distinct from factfinding, arbitration or other resolution tools. This has now turned around almost completely, to the point where med-factfinding, med-arb, med-hearing are accepted ways of life. Dispute resolution does not follow nice, neat compartmental lines. It cannot and should not.

Experiments with tri-partite mediation are being utilized and as neutrals become more competent and sophisticated they couple their skills with many other procedures and mix them in ways which would have caused practitioners to shudder ten years ago.

2. Factfinding.

Many jurisdictions continue to find factfinding useful. When parties reach impasse, some practitioners utilize factfinding first, then mediate on the basis of a formal or information factfinding report. Single factfinders or factfinding boards are employed. Tri-partite factfinding is also being utilized as a statutory procedure in the new law for higher education in California. Kansas even utilizes "last offer factfinding". If either party rejects the recommendations of the factfinder or factfinding board, some jurisdictions utilize public hearings of various kinds, continue to negotiate until agreement is reached, permit finality by the legislative body, or permit some type of job action.

3. The Strike Slowdown, Work to Rule and Other Types of Job Actions.

This is an area where the past fifteen years have witnessed dramatic change. Where unions and employees called for the right to strike in the early days, many public employers and employer organizations now favor the right to strike -- at least as the preferred alternative to interest arbitration. Where governments previously went into panic and shock at the threat of a strike, they have now learned to substitute services, manage the strike and in many cases win strikes.

The more than seven-week recent St. Louis school teacher strike will now require a school year lasting well into July. If the newspaper accounts of the New Orleans police strike are accurate, the city went a long way toward breaking the union.

Unions and union leaders are now beginning to question whether the strike provides the necessary pressure for a reasonable degree of equity. Increasingly, when all else fails, some kind of required arbitration is being sought as a substitute for the right to strike. In New York State the CSEA-AFSCME union representing about 125,000 state employees and the New York State Office of Employee Relations agreed to utilize LOBA (last offer binding arbitration) in the event a settlement could not be reached and then proceeded to reach agreement on a precedent-setting three-year agreement.

Employees have also become increasingly innovative in the use of various job actions aside from the traditional strike or slowdown. Work to rule, blue flu, specialized enforcements of various kinds and a host of other devices are being used to bring pressure on the employer for settlement.

Regardless of the dispute resolution system or systems employed, or what preventive measures are taken, when blood becomes bad enough between the parties, some strikes are likely to occur unless a reasonable substitute is employed. When the public feels that they cannot tolerate or are unwilling to tolerate a disruption in various kinds of public services - particularly in the essential services such as police, firefighters, prison guards, hospital services - they seem increasingly willing to tolerate a delegation to some kind of interest arbitration.

4. Public referendum.

A few practitioners, particularly management representatives, have advocated the use of a public referendum to make the final decision when all else fails. While this device has been utilized in a few disputes, it has been used very little. It is slow, cumbersome and in the event of a strike or job action, makes the question of who represents management most uncertain. Frankly, I see little future in the use of this system in public sector collective bargaining.

5. Interest arbitration.

The increasing use of interest arbitration and the controversy which surrounds it, is the major thrust of this presentation.

First, there is the philosophical dilemma. Opponents claim that required interest arbitration distorts and chills the collective bargaining process. Many management representatives and government officials feel that it is an improper delegation of governmental authority and gives to so-called "outsiders" the right to make fiscal and even policy decisions. They have also claimed, on occasion, that it violates the one man, one vote concept.

Those favoring the process insist that just the opposite is true. The fact that, when the parties fail to resolve their own problems, an outside arbitrator or arbitration panel will be called on to make a final decision, serves as a pressure on the parties, much like the possibility of a job action, and thus enhances the bargaining process.

Standards and Criteria

In the beginning experiments with interest arbitration, some states had difficulty with insufficient standards and criteria to guide their arbitration. Recent laws are not usually relatively specific in what must be considered in the awards. A quick look at a few of the lists of state criteria will show the similarity which exists:

STATE	CRITERIA
IOWA	Past collective bargaining agreements. Comparison to other public employees. doing comparable work, with consideration to factors peculiar to the area or job. Interest & welfare of public. Employer's ability to pay. Effect of award on service. Employer's power to levy taxes or appropriate funds to finance award.
MAINE	Interest & welfare of public. Ability to pay. Comparison with public and private employees performing similar work. Overall compensation. Cost of living. Need for qualified employees. Conditions of employment for similar positions outside of state government. Relationships between groups of employees. Need for fair and reasonable conditions in relation to job qualifications and responsibilities. Similar to state employees.
MASSACHUSETTS	Ability to pay. Public interest and welfare. Hazards of employment and skills involved. Comparison with other employees in public and private sectors doing similar work. Factfinder's recommendations, if any. Cost of living. Overall compensation. Changes in circumstances during arbitration. Other factors normally considered. Stipulation of parties. May not consider inherent managerial policy such as appointment, promotion, assignment and transfer of employees, and minimum manning of shift coverage.

STATE

CRITERIA

MICHIGAN

Lawful authority of employer.
 Stipulation of parties.
 Interest & welfare of public.
 Ability to pay.
 Comparison with public and private sector workers doing similar work.
 Cost of living.
 Overall compensation.
 Changes in circumstances during arbitration.
 Other factors normally considered.

NEW JERSEY

Public interest & welfare.
 Comparison with other public employees in similar jurisdictions and with comparable private employment and public and private employment in general.
 Overall compensation.
 Stipulations of parties.
 Lawful authority of employer.
 Financial impact on residents and taxpayers.
 Cost of living.
 Continuity and stability of employment.

NEW YORK

Comparison with other public and private sector employees doing similar work in comparable communities.
 Public interest & welfare.
 Ability to pay.
 Comparison of skills, hazards and qualifications to other trades or professions.
 Other factors normally considered.
 Comparison with other public and private sector employees.
 Overall compensation.
 Cost of living.
 Other factors normally considered.
 Public interest and welfare.

The major problem with these criteria remains - what do they mean and how are they used by arbitrators? For example, what does "ability to pay" mean? What documentation is needed to prove ability or inability to pay? Which of these criteria is most important? What are the relative weights to each?

Constitutionality.

In virtually every state and jurisdiction where some kind of interest arbitration statute or ordinance has been enacted, litigation has been initiated to challenge its constitutionality. Where proper standards and criteria have been established, the highest courts have generally held that such laws are constitutional - Michigan, New York, Pennsylvania, Massachusetts, Washington, Wyoming, Rhode Island and Nebraska. In South Dakota, Colorado and Utah, laws have been struck down, but in all three of these states there was no state law in question - rather one in a local government. Generally speaking, the laws were struck down on the ground that they violated the home-rule guarantees of the constitution.

Recently in Connecticut the appellate court declared the state law unconstitutional and introduced a new ground of challenge, namely that the arbitrator or arbitration panel is not responsible to the duly elected legislative body. This has been appealed to Connecticut's top court and the outcome will be of major interest.

A rather typical wording of such decisions appears in the New York Court of Appeals decision upholding the constitutionality of New York's police and fire interest arbitration statute. The Court said:

[I]here is no constitutional prohibition against the legislative delegation of power, with reasonable safeguards and standards, to an agency or commission established to administer an enactment.... Here, the Legislature has delegated to PERB, and through PERB to ad hoc arbitration panels, its constitutional authority to regulate the hours of work, compensation, and so on, for policemen and firemen in the limited situation where an impasse occurs. It has also established specific standards which must be followed by such a panel We conclude that the delegation here is both proper and reasonable.²

2. 37 N.Y. 2d at 27, 89 L.R.M. at 2872.

in a comprehensive concurring opinion, Judge Jacob E. Fuchsberg

said:

I do not find the arbitrators' power to decide disputed labor demands constitutes a delegation of power to impose taxes, whether by way of invasion of local governments' authority to do so or otherwise. The panels' decisions no doubt may affect the cost of police and firefighters' services to their local governments, but the cities or towns for whom they work remain free to make their own decisions as to how they will meet such cost, whether by taxation, cutbacks in spending or other means.³

Professor June Weisberger of the University of Wisconsin in a speech before the Labor Law Section of the American Bar Association considered the various theories affecting the constitutionality of arbitration statutes. After a thorough discussion, she concludes:

[T]he constitutional outcome [of future challenges to compulsory arbitration statutes] will probably be heavily influenced by the practicality and effectiveness of legislated dispute resolution techniques.⁴

This would introduce a note of caution since critics often point to arbitration experiences in New Zealand and Australia where its use has failed to prevent strikes. Likewise, they cite the Montreal Police strike of a few years ago where police struck after an arbitration award which they did not like.

The U.S. experience to date has shown that where interest arbitration was available, there have been almost no strikes after arbitration awards. If this changes and strikes occur after awards the employees do not like, public, legislative and court attitudes may very well change.

3. 37 N.Y. 2d at 41, 89 LRRM at 2879.

4. June Weisberger, "Constitutionality of Compulsory Public Sector Interest Arbitration Legislation: A 1976 Perspective," Labor Relations Law in the Public Sector (Chicago: American Bar Association), 1976, p. 35.

Recent Developments.

Regardless of the philosophical merits, states continue to expand their adoption of interest arbitration statutes.

Twenty-one states have now adopted required and binding arbitration for some of their employees - usually firefighters and police officers with some extending it to prison guards, health and hospital service employees and in one state (Iowa) all public employees. The latest addition has occurred in Hawaii where firefighters now have access to the process. It is interesting to note that only firefighters are covered and not police and that Hawaiian public employees previously had the right to strike.

It was but a few years ago that arbitration was a singular system. If two parties had a grievance and could not resolve it themselves, a respected, impartial arbitrator was called in and after hearing the arguments, made a decision or award. The public sector has changed all of that. There are at least a score or more different systems now under experimentation -- last offer arbitration; last offer issue by issue; last offer on a total package; 3-choice arbitration (last offer of the parties or the factfinder's recommendations); tri-partite arbitration; panel arbitration by three neutrals -- all of these and various combinations of them are now in use. If there is one single method which seems to be more popular than the others it is probably last offer on an issue by issue basis using a tri-partite panel.

The issues which are arbitrable-or put another way, what is or should be the scope of arbitrability- is a key question which remains unanswered.

Recent Unique Experiments.

A few of the more unique experiments underway in the various states include the following:

1. Iowa utilizes 3-choice arbitration on an issue-by-issue basis for all public employees. It has been in use for four years.

2. Wisconsin is utilizing a three-year experiment with a med-arb system where if mediation is unsuccessful, last-offer arbitration is employed. If both sides withdraw their final offers and decline to go to arbitration, the employees may strike. Last offers are on a total package basis and the system applies to all municipal employees and teachers. The law went into effect about two years ago. To date, the law has developed into a med-arb law which has largely met the expectation of providing an alternate to the strike.

3. New Jersey adopted an arbitration law for its firefighters and police effective two years ago, which approves six different types of arbitration:

1. conventional
2. last best offer on a package basis
3. last best offer on an issue-by-issue basis
4. three-choice arbitration on a package basis
5. three-choice arbitration on an issue-by-issue basis and
6. last offer with economic issues as a package and non-economic issues on an issue-by-issue basis.

Additionally, the parties may design any other system of their choosing as long as they agree to it. These systems may utilize a single arbitrator, a tripartite panel or a panel, the size and composition of which they agree to.

4. Massachusetts has adopted a screening mechanism which utilizes a 13-member labor-management committee - 6 municipal employer representatives, 6 public safety representatives and one neutral who is the chairperson. It applies to their police and firefighters. If the parties cannot agree, the dispute is referred to the labor-management committee and they may refer it to arbitration, remand it to the parties for further bargaining, mediation, factfinding or other actions which they consider appropriate and helpful.

5. Nebraska utilizes a Commission of Industrial Relations composed of 5 ad hoc judges who do interest arbitration in cases involving any public employees in Nebraska who cannot reach agreement and who appeal to the Court.

6. Canada has utilized a two-track system for the federal employees for more than ten years. In this system the employees must decide at the outset of negotiations whether they will use the strike track or the arbitration track. They cannot change tracks during the course of negotiations.

Still another system currently being considered but not as yet adopted, is one in which the employee organization may request arbitration and if the employer refuses to participate, the employees would then be free to strike.

The Report Card

Generally speaking, in most interest arbitration experiences to date, research has indicated that:

1. The availability of the process has not markedly chilled the bargaining process.
2. The process tends to be used more in the first years of a law, then tapers off and is not overused.
3. Almost no strikes occur where interest arbitration is available.
4. There appears to be very little difference in the levels of negotiated settlements as compared to the arbitration awards.

A few of the more recent studies seem to bear out these findings including

From Michigan. Dr. Charles M. Rehmus, Chairman of the Michigan Employment Relations Commission reports:

Experience to date with this legislation discloses no 'chilling' on the bargaining process. Statistics reveal that approximately two cases are settled for every petition for arbitration filed. Two-thirds of the petitioned-for arbitration proceedings are settled before or during the course of the arbitration proceeding without a written award. Hence, awards represent the culminating step in arbitration for only about ten percent of all municipal police and fire bargaining relationships. It is too early to discern what, if any, 'addictive effect' the statute might be having, though it is probably present in some large cities.

The statute has been almost completely effective in preventing strikes. While the Michigan Municipal League and the Labor Management Relations Service report that there have been approximately ten strikes since enactment of PFAA, only one incident in Marquette can be considered a full-blown work stoppage, and that occurred because of the city's refusal to comply with an award. Most of the disputes reported by the League and LMRS seem to have amounted to slowdowns or non-collective bargaining disputes.

From New York: Professor Thomas Kochan of Cornell University made an exhaustive study of the first three years of the police/fire arbitration experience and concluded:

1. Bargaining was no more 'chilled' under arbitration than under the prior procedure.
2. There was no significant increase in wages due to the existence of the arbitration statute.
3. There was no significant increase or decrease in wages due to going to arbitration as opposed to settling prior to the arbitration award. The average arbitration award closely approximated the average non-arbitrated settlement.
4. Since no strike occurred during the last round of negotiations prior to arbitration and none occurred during the period of study under arbitration, no conclusion could be drawn regarding the relative effectiveness of arbitration as a strike deterrent.
5. There was no deviation between factfinding recommendations and arbitration awards in 70 percent of the cases studied.
6. Sixty percent of the arbitration awards were unanimous.
7. The statutory criteria were not applied by the arbitration panels in any uniform or consistent manner.

The major recommendations of the Kochan study were:

1. Factfinding should be eliminated as a mandatory step in the impasse procedure prior to arbitration.
2. There should be increased flexibility in the administration of the preliminary steps in the impasse procedures by PERB, such as the ability to determine that a dispute be referred back to the parties for a limited period of time.
3. The parties should have the option of sending the dispute to any variety of final offer arbitration they wish to choose.
4. The parties should share equally the cost of the neutral arbitrator.
5. The scope of judicial review should be specified in the statute.
6. The training of mediators and arbitrators should be given greater emphasis.

6. Thomas A. Kochan, Ronald G. Ehrenberg, Jean Bederschneider, Todd Jick, Mordechai Mironi, An Evaluation of Impasse Procedures for Police and Firefighters in New York State (Ithaca, NY: New York State School of Industrial and Labor Relations, Cornell University, January 1977).

by Professors Doherty and Gallo of Cornell University
 In a follow-up study just released, findings of the subsequent two
 years' experience in New York are summarized as follows:

1. A decline in the percentage of police and fire fighter negotiations going to impasse-- 71.1% police, 60.5% fire fighters in 1975; 42 and 32% respectively in 1978;
2. A decline in the percentage of postpetition settlements - in 1975, 23.7 for police and 18.4 for fire fighters; 13.9 and 14.3 for 1978;
3. Relatively constant awards issued as a percentage of impasse--33 for police, 31 for fire fighters in 1975; 32 and 28.6 in 1978;
4. 42% of awards were from jurisdictions which had previously gone to arbitration, four for the third time;
5. No substantial difference in percentage of unanimous awards and dissenting opinions and between arbitrated salary awards and negotiated salary awards;
6. Imposition of costs on parties did not deter parties from taking disputes to arbitration;
7. Elimination of the fact-finding step did not cause an increase in the number of issues brought to arbitration but probably contributed to a decline in number of days between declaration of impasse and filing of petition and an increase in days between appointment of the arbitration panel and issuance of an award;
8. Where criteria were specified, comparability was most frequently cited;
9. Only one arbitration award was appealed to the court for review on the grounds that the panel did not specify the basis for its finding.

While the study indicates that with two or three exceptions the process seems not to have unduly advantaged locals of uniformed services nor did it do substantial mischief to the fiscal arrangements of the affected municipalities, it offered the following suggestions if the Legislature decided to continue the arbitration provision of the Law:

- o Elimination of mini-PERBs from administration of the police/fire fighter amendments and centralization of all administration in the New York State Public Employment Relations Board;
 - o Consideration of a variety of options including
 - a) The current arrangement -- tripartite conventional arbitration.
 - b) Conventional arbitration with a single arbitrator.
 - c) Conventional arbitration with fact-finding - the parties asked to show cause before a single arbitrator why the fact-finding report ought not to be adopted.
 - d) Final offer arbitration -- single arbitrator to select between union or management proposals or fact-finder's recommendation.
 - e) Final offer without fact-finding by package.
 - f) Final offer without fact-finding by issue."⁷
7. Robert E. Doherty, Mary E. Gallo, Compulsory Interest Arbitration in New York State -- Experience under the 1977 Amendments (Ithaca, NY: New York State School of Industrial and Labor Relations, Cornell University, February 1979).

In a study recently concluded by Professor Ernst Benjamin of Wayne State University in Detroit, he summarizes the Michigan experience as follows:

"Michigan has developed an unusually flexible final-offer arbitration procedure to provide impasse resolution in public safety negotiations. While the Michigan Employment Relations Commission (MERC) provides mediation and encourages serious bargaining prior to arbitration, there is no preliminary fact-finding, the statute permits arbitrators to consider any factors 'normally or traditionally' employed in collective bargaining and arbitrators have broad procedural discretion. Arbitrators may defer final-offer submission to the final stages of the procedure, they may attempt mediation, they may designate an issue as non-economic and thereby not subject to the final-offer procedure, and they may fashion an economic compromise through issue-by-issue selection.

This flexibility has not 'chilled' bargaining. Reliance on arbitration declined substantially following the adoption of final-offer procedures in 1973 and arbitrated settlements composed only 10-15% of all settlements during the years 1973-7....

Since the Michigan procedure has not encouraged excessive reliance on arbitration and has resulted in awards reasonably consistent with negotiated settlements, the variation among arbitrators does not suggest the need for fundamental changes in final-offer procedure."⁸

Finally, in a paper presented to the Colorado Bar Association last November, Arvid Anderson stated his findings most succinctly when he said:

"The record shows that interest arbitration is a realistic alternative to the strike as a means of impasse resolution which neither impairs the effectiveness of collective bargaining, nor distorts the democratic process."⁹

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8. Ernst Benjamin, Final-Offer Arbitration Awards in Michigan, 1973-77, Institute of Labor and Industrial Relations, the University of Michigan-Wayne State University, 1978.
 9. Arvid Anderson, Arbitration and the Law: A Better Way, remarks to Colorado Bar Association, Labor Law Section and Rocky Mountain Region, of the National Academy of Arbitrators, Denver, Colorado, November 14, 1978.

Expanding Use of Arbitration

The use of arbitration is being expanded to many other types of disputes. One of the major reasons for this is because of the heavy caseload in the courts and the long delays encountered by the backlog.

Arbitration is proving to be a viable substitute in many fields of controversy - one which results in reasonably prompt resolution. One of the most recent areas of use is in environmental disputes. Community disputes of various kinds, disputes in prisons, consumer affairs, marital relations, insurance, medical and dental malpractice, are burgeoning areas of use.

Remaining Problems

No one has yet claimed that interest arbitration constitutes a panacea or an entrance to the promised land. Neither is it without its problems. A quick look at a laundry list of just a few of the questions and problems will illustrate the point. They include:

1. Lack of acceptance and expertise by many of the parties.
2. The selection of arbitrators creates all kinds of acceptability problems. Parties are keeping book on arbitrators as never before.
3. What constitutes an "issue" in issue-by-issue arbitration?
4. Interest arbitration emphasizes scope of bargaining problems - particularly the possibility of arbitrating the policy issues of government.
5. How do various arbitrators use and comparatively weigh the various statutory criteria?
6. Can an incompetent arbitrator do violence to government?
7. Where economic issues are treated one way and non-economic another -- what's the separation line?
8. What is the appropriate role of the legislative body in funding an award?
9. How should new arbitrators be properly developed and continually updated and trained in order to achieve a high level of competence?
10. What do the statutory criteria really mean? For example, how is a government's "ability to pay" properly assessed?

11. What kinds of "court reivew" of arbitration awards are appropriate?

Current indications are that Courts are slowly expanding their review of interest arbitration awards - some involving the substance of the awards.

These are but a few of the problems which the various interest arbitration systems have created. Considerably more experience will have to be developed and analyzed before good answers to these problems and questions are in hand.

In spite of these faults and problems, the track record would indicate that more and more state and local governments are willing to utilize some form of the process as a substitute for the trauma often occasioned when some such form of dispute resolution is not available.

MECHANISMS FOR RESOLVING COLLECTIVE BARGAINING IMPASSES IN PUBLIC EDUCATION*

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ABSTRACT

The author reviews the various forms of resolving collective bargaining impasses in education. He describes mediation, fact finding, and arbitration, concluding that none has prevented teacher strikes. Binding arbitration is called for as a legislative remedy.

The Impasse

"There is no point to any further talk. This is an impasse. We're leaving". The speaker was the chief negotiator for the teachers' association. He and his associates picked up their papers and walked away from the bargaining table. The next day, the press carried a statement by the association negotiators accusing the board of education of not bargaining in good faith.

It was indeed an impasse. When either or both parties announce that it is impossible to reach agreement at the bargaining table *and refuse to continue bargaining*, an impasse exists.

An impasse is a crisis. It amounts to an announcement that the process of collective bargaining is not an effective means to reach agreement on whatever the issues are.

In theory, an impasse may be triggered by either party. In practice, the impasse is a tactic of the employee organization. The employer has nothing to

* Presented at the American Association of School Administrators Convention, Atlantic City, February 21, 1976.

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gain from the breakdown of the collective bargaining process. The employer can afford to talk on and on. On the other hand, the employee organization wants and needs an agreement as soon as possible. If it requires an additional month or an additional year to reach agreement, it is likely to mean that wage increases and benefits will be lost for an additional month or an additional year.

An impasse may be the inevitable consequence of endless hours of bargaining without reaching agreement. Day after day, the negotiators began bargaining as the sun was setting and continued through the night until the sun was high in the heavens. But agreement could not be reached on issues believed to be vital. The time arrived when the spokesman for the employee organization announced, "There is no point to any further talk. This is an impasse".

On the other hand, the impasse may be a matter of strategy. The employee negotiators may believe that they have gotten as much as they can through the process of collective bargaining, but that what they got is not enough. They may believe that by creating an impasse, pressure can be applied that will produce additional concessions.

No generalization can be made as to whether an impasse is an unavoidable breakdown in the bargaining process or whether the impasse is a matter of strategy. The fact is that it may be either. A judgement on this matter can be made only by careful analysis on a case-by-case basis.

One has only to review the hundreds of impasses that have occurred in bargaining in the field of education to realize that an impasse can occur whether or not mechanisms are provided for resolving an impasse and reaching a settlement. The impasse is a fact of collective bargaining life. The inevitable conclusion is that if a due process for settling the impasse has not been provided, both legal and illegal actions will take place in the attempt to force a more favorable settlement.

In education, the impasses that have occurred in collective bargaining for a contract have been resolved sooner or later—in one way or another. Illegal methods, including the job action and the strike, have usually, though not always, been effective in winning concessions that had been refused at the bargaining table.

Mechanisms for resolving impasses necessarily utilize the services of third parties. Mediation, fact finding, and arbitration are the major mechanisms. There is no panacea, but there is convincing evidence that third parties can be effective in reaching agreements. Let us analyze the third-party mechanisms most frequently advocated or utilized.

Mediation

Mediation is the mechanism where a third party tries to negotiate an agreement between the two principal parties. The mediator meets in Kissinger style

with each party separately. The mediator's object is to move the two parties closer together, to close the gap between the positions taken at the time that the impasse occurred. The mediator goes back and forth between the two parties. If there is more than one mediator, they may separate and work with both parties simultaneously.

The mediator tries to reason with each party and tries to be persuasive and convincing. He tries to show how the available conditions of agreement are advantageous to whichever party he is working with. If he succeeds in bringing the parties close together, he will have a joint meeting with both parties. At that meeting, if an agreement can be hammered out, the mediation has been successful.

The mediator is trying to find a formula for settlement that both sides will accept. The mediator is not seeking primarily to determine what settlement would be right and fair. The mediator must be pragmatic. Mediation succeeds only when and if both parties are willing to agree. One mediator said, "If both parties will agree that the moon is made of green cheese, that is O.K. with me".

Mediation is usually provided as a conciliation service by a state agency in accordance with state law. In Massachusetts, mediation service is provided by the State Board of Mediation and Arbitration. There is usually little or no choice as to the persons who will mediate or whether there is one mediator or more than one.

Mediators have no authority. They do their best to negotiate a settlement. Mediation succeeds if both parties believe that the available settlement is as good as they can get.

Fact Finding

Fact finding is a widely used third-party mechanism. Fact finding is also often a service provided by a state agency in accordance with state law.

While mediation tries to negotiate a settlement that each party believes is to its advantage, fact finding tries to appeal to both parties to be reasonable and to be mindful of the welfare of the children and the public interest.

The fact finder will request that all pertinent information be submitted. He will make such investigation as he sees fit. A hearing is held at which both parties and also other persons can present the facts as they see them. The fact finder deliberates and evaluates all of the facts that have been obtained. A fact-finding report is issued. This report includes recommendations for settling the dispute or impasse.

The fact-finding report is public information, but is not binding on the parties. If fact finding succeeds in getting the parties to agree on a settlement, it is because both parties have been convinced that the fact finder's recommendations offer as favorable a settlement as they are likely to get and that the consequences of prolonging the impasse will be unfavorable. If public

opinion has been crystallized in support of the fact finder's recommendations, the prospects of a settlement are enhanced.

As can be expected fact finding does not always succeed in bringing about a settlement. For example, the Colorado Springs teachers overwhelmingly rejected a fact finder's recommendations to settle a dispute on the provisions of the new contract. Two days later, on December 4, 1975, the teachers voted to strike for the first time in the city's hundred-year history. The strike that began on December 4 lasted for twelve days.

Arbitration

Arbitration is potentially the most valuable third-party mechanism for settling disputes. Arbitration is essentially a judicial proceeding. The arbitrator or arbitrators hold hearings at which each party to the dispute or impasse submits evidence. The arbitrators render a decision that is called an award. This decision is similar to the verdict of the court in a civil lawsuit. The award spells out what action is to be taken with regard to each of the issues in the dispute.

There are two kinds of arbitration: binding arbitration and nonbinding arbitration. Compliance with the award is compulsory in binding arbitration. In nonbinding arbitration, compliance is optional. Each party considers the award and makes a decision as to whether or not to accept it.

In the public school sector, school boards and state legislatures have been wrestling with the problem of what to do about arbitration since the famous Norwalk, Connecticut case in 1951.¹ This case arose as part of the aftermath of the 1946 Norwalk teacher strike, which was one of the first teacher strikes in the United States. Along with the animosity engendered by the strike, the board of education and teachers' association quarreled bitterly about their respective rights and their correct relationships. The teachers' association claimed both the right to negotiate a group contract and to employ arbitration to settle disputes. Legal counsel for the teachers' association encouraged the lawsuit in the belief that the court would mandate binding arbitration as the mechanism to use in settling disputes. In the Norwalk case, the Connecticut Supreme Court of Errors rendered a declaratory judgment that was intended to provide guidelines for the relationships and rights of both the teachers' association and the board of education.

With regard to arbitration, the declaratory judgment of the Connecticut Supreme Court of Errors in the Norwalk case limited the use of arbitration "to certain, specific, arbitrable disputes". The Court declared:

... If it is borne in mind that arbitration is the result of mutual agreement, there is no reason to deny the power of the defendant (the

board of education) to enter voluntarily into a contract to arbitrate a specific dispute. On a proposal for a submission, the defendant would have the opportunity of deciding whether it would arbitrate as to any question within its power. Its power to submit to arbitration would not extend to questions of policy but might extend to questions of liability. Arbitration as a method of settling disputes is growing in importance and, in a proper case, "deserves the enthusiastic support of the courts". . . . Agreements to submit all disputes to arbitration, commonly found in ordinary union contracts, are in a different category. If the defendant entered into a general agreement of that kind, it might find itself committed to surrender the broad discretion and responsibility reposed in it by law. . . .

The best answer we can give . . . is, "Yes, arbitration may be a permissible method as to certain specific, arbitrable disputes".

Twenty-five years later, this decision still prevails with regard to binding arbitration.

Available Mechanisms are Ineffective

In grievance procedures, it has become common practice to have some type of third-party procedure as the final step. Some grievance procedures even provide for binding arbitration.

We must keep in mind that grievances usually deal with issues of liability. An individual or a group claim that under the contract or established policies they are entitled to some benefit or privilege such as more pay or more time off. The issues are certainly important to the individuals concerned, but in a relative sense, the stakes are small to the board of education.

On the other hand, in negotiating a collective bargaining agreement, the stakes are high. It makes a big difference what new fringe benefits and salary schedules are established. These and other policy decisions can commit very large amounts of money. In the Norwalk case, the Connecticut Supreme Court of Errors declared that under existing Connecticut law, it would not be legal to delegate policy decisions to a third party.

In the twenty-five years since the Norwalk case, the Connecticut legislature has enacted several laws that establish and regulate collective bargaining in public education. There has not been legislation, however, to require or empower Connecticut school boards to use the mechanism of binding arbitration to settle collective bargaining impasses. The situation is similar in most of the other states. Only a few states provide for some form of binding arbitration. Wisconsin, for example, permits binding arbitration, but only if both parties enter into it voluntarily.

What conclusions can be drawn as to the effectiveness of available mechanisms for settling collective bargaining impasses? In most situations, if

¹ The author was Superintendent of Schools in Norwalk, 1953-1970.

binding arbitration is available at all, it is available only for grievance actions. The mechanisms available in collective bargaining impasses are just not effective.

Teacher strikes have become more and more common. In the 1969-70 school year, there were 181 teacher strikes. By 1970, an NEA survey reported that three out of four teachers believed that at least in some circumstances, teachers should strike. In the fall of 1975, 170 teacher strikes kept an estimated 2,000,000 children from attending classes. Teacher strikes are occurring in all parts of the country and in school districts of all sizes.

Impasses and Strikes are Costly for All Concerned

Many teacher associations are ready to accept binding arbitration, but school boards and legislatures are not. Why is this so? Judging from the statements made by those who are opposed to teacher strikes, it is a carry-over from the past when school boards could dictate salaries and working conditions and it was not necessary to reach a bilateral agreement.

A retired teacher who opposes teacher strikes said,

. . . No one should be permitted to shut down a government operation for which taxes have been levied.

. . . public employees are a part of government, and strikes by government are intolerable and undemocratic too.

Strikes by government employees are a step on the road to chaos and anarchy, as well as a defiance of the voters and elected officials [1].

Another educator who opposes teacher strikes declared:

. . . Teachers who violate the law should be dealt with severely. They should know better. Law-breaking teachers cannot possibly instill in their students a respect for the law. In states with no-strike laws, contracts should include the stipulation that any teacher who violates the law is automatically fired [2].

Some who are opposed to legislation to provide binding arbitration believe that binding arbitration would give teachers greater benefits than they could otherwise obtain. These people prefer a weaker mechanism such as nonbinding arbitration. Nonbinding arbitration can be accepted or rejected by the board of education.

Of course, this is true. What these people overlook is that nonbinding arbitration can also be accepted or rejected by the teacher association. Under present conditions, it is actually possible for the teacher association to reject the nonbinding arbitration award, go on strike, and obtain a settlement that is greater than the arbitration award.

This is just what happened in Norwalk, Connecticut in 1969. Contract negotiations were stalemated and an impasse was declared. After mediation

efforts failed, the dispute was submitted to nonbinding arbitration. At issue were wage and fringe benefits with an estimated cost of approximately \$400,000.

The arbitrators' award provided wage and fringe benefits with an estimated cost of \$100,000. The Board of Education voted to accept the arbitrators' award, but the Teachers' Association rejected the nonbinding award and voted to strike. An injunction forbidding the strike was ineffective. After a four-day strike, the board of education and the teachers' association reached a settlement with wage and fringe benefits having an estimated cost of \$300,000. This settlement was duly ratified by the Norwalk Common Council.

Had there been binding arbitration, the settlement would have been in accordance with the arbitrators' award. The cost to the city would have been approximately \$200,000 less. Even more important, everyone would have been spared the turmoil, disruption, and animosity engendered by a strike.

Tom James, Associate Director of Communication, Education Commission of the States, reached the conclusion that "the record of state action promises that teacher power has little chance of becoming the ogre that many people expect" [3]. The alarmists are unrealistic because it is contrary to the "public will".

Teachers Are No Longer Docile

Times have changed. Increasingly, teachers are unwilling to accept wages and conditions that they believe to be unsatisfactory. Terrel H. Bell, U.S. Commissioner of Education, recalled how it used to be:

. . . Each year, we simply drew up a new salary schedule and presented it to the teachers as a gift from the benevolent father. And the teachers, hat in hand, said, "Thank you" [4].

As Paul Friggens wrote, this is no longer true [4]. Ronald Corwin said that what seems to be new about teaching "is the scope and intensity of teacher militancy" [5].

Public school teachers are determined to have an active role in the decision-making process. To achieve this they are well organized. When they believe it is necessary, teachers will violate antistrike laws.

The dissatisfaction and disillusionment of many teachers with present collective bargaining legislation is expressed by one teacher in the following:

. . . The collective bargaining law does not work as it is now written. School committees still hold all the cards and can sit back and say No, No and No.

This year we have exhausted what is available to us in bargaining in Massachusetts law. . . .

What other alternative is left for the teachers to receive an equitable settlement—a strike, which is illegal.

Until the "collective bargaining" law is changed and teachers are given the right to strike, I am afraid there will be more and more teacher unrest, slowdown, sickouts and strikes. . . . [6].

The thousands of teachers who are willing to strike are not ordinary criminals. Many of them strike reluctantly and with the conviction that there is no alternative. As one teacher expressed it:

. . . As a teacher and current member of a negotiating team, I fully support the right of public employees, including teachers, to strike. The decision, however, is an extremely painful and personal one for the individual involved. Often this decision takes place in agonizing circumstances because there is no other way out. . . .

Teachers who have exhausted the legal remedies available (labor boards, mediation, fact finding, etc.) and are still faced with no possibility of settlement after long, weary months of attempting to be reasonable may be left with only two choices: strike or crawl back on their knees. In such a case, there is really only one choice to make. If legislators, school boards, et al. deplore strikes, then it behooves them to provide strong alternatives through which public employees may seek redress for unresolved disputes. . . . [7].

Here is a teacher who prefers binding arbitration. Under present legislation, however, the strike is the only available action that is effective. This is how he expressed his views:

. . . Strikes are disruptive, costly, and technically illegal; they are also effective when all else fails. Without them we are reduced to humbly petitioning the elected school officials for whatever they are disposed to offer us—take it or leave it.

A system of binding arbitration would be a major improvement and an acceptable substitute, but until a fair, workable plan is offered, we're stuck with the strike. . . .

The strike is unwieldy and it hurts to use it, but it works and it's all we've got. The fact of its being illegal is unfair but has to be disregarded until a viable alternative presents itself. We may not yet have the right to strike, but we certainly have a moral and a professional obligation to be willing to strike when no other recourse is available [8].

More and more people believe that under existing circumstances, teacher strikes are justifiable. The widespread sympathy for striking teachers is illustrated in the New Haven teacher strike in the fall of 1975. The judge jailed ninety teachers for violation of a no-strike injunction. A thousand non-teaching school employees staged a sympathy walkout over the jailing of the teachers. Labor leaders, angry over the judge's refusal to release the ninety jailed striking teachers, called a one-day citywide walkout by 30,000 union workers. The walkout was approved by all 146 leaders of the ninety-two unions comprising the Greater New Haven Central Labor Council. The

President of the Greater New Haven Central Labor Council called the jailings "a miscarriage of justice. These people are not criminals. They are not law-breakers, no matter what the Judge says" [9].

Court Imposed Penalties Are Ineffective

Penalties imposed by the courts are not effective deterrents to teacher strikes. When teacher strikers are sent to jail, they receive admiration, sympathy, and increased support.

In the New Bedford, Massachusetts strike, twenty-seven teachers were jailed and the teacher association had to pay a fine of more than \$337,000 by June 1, 1976. As a result, teachers associations throughout Massachusetts have launched a campaign to support the New Bedford Teachers by contributions to pay the fine. As has been noted, in the New Haven strike, jailing ninety teachers only produced a sympathy walkout by 30,000 union workers.

Fining and jailing teacher strikers have been counterproductive. Such judicial sanctions have increased the bitterness and determination of the strikers.

No Reprisal Provisions

Striking teachers have learned to insist on so-called "no reprisal" or "amnesty" clauses in a settlement. The purpose of these clauses is to prevent the board of education and administration from punishing or discriminating against the strikers.

Colorado Springs suffered a twelve-day strike in December, 1975. The teachers rejected a settlement solely because it contained insufficient amnesty provisions for the 1,200 strikers. When the amnesty provisions were improved, the Colorado Springs Teachers Association (CSTA) accepted the settlement. The amnesty provisions obtained by the Colorado Springs strikers include:

1. striking teachers return to the same positions they occupied prior to the strike;
2. there will be no board retaliation against members of the CSTA negotiations unit, nor any teacher who participated in the walkout;
3. there will be no retaliation against CSTA members for picket activities;
4. there will be no strike-related entries made in teachers' personnel files;
5. teachers close to retirement who participated in the strike retain full-service credit [10].

Teacher Strikes Have Been Legalized in Three States

In three states, Hawaii, Oregon, and Pennsylvania, teacher strikes are permitted under these conditions:

The strike is being called by the exclusive bargaining agent;
 All impasse procedures have been exhausted;
 A specified number of days has elapsed since the fact-finding board made its recommendations public;
 The exclusive bargaining agent has given notice of its intent to strike;
 The employer has had an opportunity to petition the public employee relations board or a court of law in the event of danger to the public's health and safety [11].

What Legislation is Needed?

There is no doubt that legislation is needed, but there is confusion as to what that legislation should provide. What is needed is legislation that will provide an effective mechanism for resolving collective bargaining impasses in an equitable manner. Binding arbitration as the final step for resolving impasses is an effective mechanism. Possibly, it is not the only effective mechanism.

Legalizing strikes in public education, however, does not provide an effective due process for settling impasses. The strike is an extreme form of protest. Legal or not, there have been hundreds of strikes in public education every year. Unless an effective mechanism is provided, there are likely to be hundreds of teacher strikes in the years ahead. Legalizing teacher strikes does not solve the problem. For all concerned—teachers, children, taxpayers—the strike is a disruptive, disturbing, wasteful, and expensive action. Moreover, strike action does not necessarily lead to the equitable settlement of an impasse. The solution that is forged in the heat of a strike may be based on pressure and emotion. Moreover, the animosity that thrives in a strike and the recrimination that follows it, provide a poor climate for harmony and cooperation in the day-to-day administration of whatever settlement is made.

What is needed is a wise legislative solution rather than the legislative endorsement of an extreme form of protest. After twenty-five years and more than a thousand teacher strikes, there should be no doubt that there is urgent need for an effective mechanism. In the spirit of Thomas Edison, "There is a better way and we have found it". Legislation should be enacted to provide binding arbitration as the final step in settling collective bargaining impasses. It is time for the responsible, sensible people in all communities to call for constructive, effective legislation.

REFERENCES

1. H. Nixon, of Melrose, Massachusetts, in letter printed in *NEA Reporter*, 15, p. 3, February, 1976.
2. B. McMahon, Reading Consultant in Ridgefield, Connecticut Public Schools, in letter printed in *The Common*, 4, p. 4, February, 1976.

3. T. James, *The States Struggle to Define Scope of Teacher Bargaining*, *Phi Delta Kappan*, 57, p. 97, October, 1975.
4. Quoted in P. Friggens, *Teachers on the March*, *Reader's Digest*, p. 112, February, 1976.
5. R. G. Corwin, *The New Teaching Profession*, *Teacher Education*, 74th yearbook of the National Society for the Study of Education, Chap. IX, p. 231, 1975.
6. F. Knox, Vice President, Medford, Massachusetts Teacher Association, in letter printed in *The Common*, 4, p. 4, December, 1975.
7. K. Trudell of Burlington, Vermont, in letter printed in *The Common*, 4, p. 4, February, 1975.
8. C. J. Barton, Quinsigamond Community College, Worcester, Massachusetts, in letter printed in *The Common*, 4, p. 4, December, 1975.
9. Quoted in *Boston Sunday Globe*, November 23, 1975.
10. *NEA Reporter*, 15, p. 13, February, 1976.
11. K. H. Ostrander, *Collective Bargaining Laws in Education*, *National Association of Secondary School Principals Bulletin*, 59, p. 21, September, 1975.

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State**Summary of Provision****Alaska**

Permitted for "semi-essential" employees (utilities, schools, snow removal, sanitation) but may be enjoined if threat to public health, safety or welfare. Permitted for "non-essential" employees if approved by majority of unit in secret ballot election. Prohibited for "essential" employees.

Hawaii

Permitted if no threat to public health or safety. Circuit court may enjoin strike if health and safety endangered. Strikes prohibited for 60 days after factfinding report, 10 day notice required.

Michigan

Case Law: Injunction will not be issued against strike unless a clear and present danger to public health, safety and welfare has been shown. *Holland School District v. Holland Education Association*, 380 Mich 311, 157 N.W. 2d 206 (1968)
Strikes prohibited by statute.

Minnesota

Public employees, other than essential employees, are granted the right to a limited defense against the penalties associated with violations of PELRA's ban against strikes. Valid defenses under this section include an employer's refusal to comply with the provisions of a valid arbitration decision, and an employer's refusal to request binding arbitration when requested by the exclusive representative under Sec 179.64(3) or (5).

Montana

Permitted to engage in concerted activity.
Case Law: Right to strike is recognized as concerted activity. *Montana v. Public Employees Craft Council of Montana*, 88 LRRM 2012, Mont Sup Ct, November 18, 1974.

Oregon

Permitted for public employees included in an appropriate bargaining unit certified by PERB for which final and binding arbitration is not provided. Mediation and factfinding procedures and other statutory procedures must have been exhausted. If strike presents clear danger to public health, safety and welfare, injunctive relief may be granted.

Pennsylvania

Permitted after exhaustion of impasse procedures unless strike creates clear and present danger to public's health, safety or welfare.

Rhode Island

Case Law: Prohibited with qualification that courts may not enjoin strike unless it causes irreparable injury; failure to begin school year on scheduled day cannot be classified as irreparable injury. *School Committee of the Town of Westerly v. Westerly Teachers Association*, S. Ct. 1973, 299 A. 2d 441.

Vermont

Permitted unless act is ruled a clear and present danger to a sound program of school education by court of competent jurisdiction.

SUMMARY OF STATE STRIKE POLICY FOR PUBLIC EMPLOYEES

May 1979 (1)

	Strike Policy			Employees permitted to strike by statute	Employees barred from strike by statute	Penalties or Sanction Against Strikers	
	Barred by statute	Barred by decision	Permitted by statute			Individual	Organization
Alabama	X	X			Fire	Loss of employment	
Alaska	X		X	"Non-essential," "Semi-essential"	Police, fire, hospital, and correctional empl.		
Arizona	No provision						
Arkansas		X					
California	X				Education, state, fire		
Colorado	No provision						
Connecticut ...	X				Local; Teachers		
Delaware	X				Local; Teachers		Teacher law: Loss of Recognition-- 2 years; Loss of dues deduction-- 1 year
Dist. of Col. .	X				Local		
Florida	X				Public	No wage increase for 1 year Fines, loss of employment, 6 months probation	Fines up to \$20,000 each day, loss of dues deduction & certification and liable for damages
Georgia .	X				State, fire	State: Loss of civil ser- vice status. Discharge; ban on re-employment-3 years	
Hawaii	X		X	Employee not endan- gering health & safety	Endanger health & safety		
Idaho	X						
Illinois		X					
Indiana	X	X			Teachers	Ban on make-up days	Loss of dues deduction --1 year
Iowa	X				Public	Fines, imprisonment, loss of employment--1 year	Fines, loss of certification & dues deduction--1 year
Kansas	X				Public; Teachers		
Kentucky	X	X			Police, fire		
Louisiana	No provision						
Maine	X				Public		
Maryland	X				Teachers		Loss of certification--2 years & dues deduction--1 year
Massachusetts .	X				Public	Ban on make-up days discharge or discipline	
Michigan	X		a	a) Court established "clean hands doctrine"	Local	Discharge or discipline	

mini pending

SUMMARY OF STATE STRIKE POLICY FOR PUBLIC EMPLOYEES

May 1979

(2)

	Strike Policy			Employees permitted to strike by statute	Employees barred from strike by statute	Penalties or Sanction Against Strikers	
	Barred by statute	Barred by decision	Permitted by statute			Individual	Organization
Minnesota	X		X	Employer must refuse to arbitrate	Essential	Discharge, 2-year probation if re-employed	Loss of certification & dues deduction--2 years
Mississippi ...	No provision						
Missouri	X	X			Public		
Montana			X	Nurses (court recognized public employee right to strike)			
Nebraska	X				Public	Fines & imprisonment; teaching certificate suspended	
Nevada					Public	Dismissal, discipline, fines, imprisonment, withhold accrued salary	
New Hampshire..	X				Public		
New Jersey		X					
New Mexico		X			State regulations	Disciplinary action	Revoke dues deduction & decertification
New York	X				Public	Loss of salary at 2 times daily rate while on strike, probation for 1 year	No strike pledge required Loss of dues deduction
North Carolina.	No provision						
North Dakota ..	X				Teachers		
Ohio	X				Public	Probation 2 years, discharge, salary freeze--1 year	
Oklahoma	X				Fire/Police	Fire/Police: discharge, fines	Teachers: loss of recognition
Oregon	X		X	If initiated as per the law	Police, fire & guards	Fines	Fines
Pennsylvania..	X		X	No danger to health, safety & welfare and follow impasse procedure	Guards & court employees		
Rhode Island...	X				Public (no provision in teacher law)		
So. Carolina...	No provision						
So. Dakota	X				Public	Fines up to \$1,000, imprisonment of 1 year, dismissal, loss of tenure; probation for 3 years	Fines up to \$50,000
Tennessee	X	X			Teachers		
Texas	X				Public, police & fire	Police & fire: probation 2 yrs, wage freeze-1 yr. Pub: loss of rights benefits and privileges of civil service	Loss of dues deduction-- Fines

SUMMARY OF STATE STRIKE POLICY FOR PUBLIC EMPLOYEES:

May 1979 (3)

	Strike Policy			Employees permitted to strike by statute	Employees barred from strike by statute	Penalties or Sanction Against Strikers	
	Barred by statute	Barred by decision	Permitted by statute			Individual	Organization
Utah		X			AGO, public State		
Vermont	X		X	No danger to health, safety or welfare and follow impasse procedure			
Virginia	X				Public.	Discharge, re-employment after 1 year	
Washington	X				State, local, police, fire		Police and fire: Fines
W. Virginia ...		X					
Wisconsin	X		X	Local: Follow impasse process	State.	State: Fine, discharge, suspension Local: Fines	State: Fine, liable for damages
Wyoming	No provision						

Source: U.S. Department of Labor, Summary of State Policy Regulations for Public Sector Labor Relations, 1975

EMPLOYEE RELATIONS GUIDE

Bob Berry
This is for
30126

Section 1

IOWA PUBLIC EMPLOYMENT RELATIONS ACT

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CHAPTER 20

PUBLIC EMPLOYMENT RELATIONS (COLLECTIVE BARGAINING)

As Amended by SF499 Enacted by the 68th General Assembly, 1979

This chapter shall become effective on July 1, 1974, but the provisions of this chapter relative to the duty to bargain shall not become effective until July 1, 1975. However, public employees of the state, its boards, commissions, departments, and agencies may not bargain collectively until June 1, 1976.

- 20.1 Public policy.
- 20.2 Title.
- 20.3 Definitions.
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- 20.5 Public employment relations board.
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- 20.8 Public employee rights.
- 20.9 Scope of negotiations.
- 20.10 Prohibited practices.
- 20.11 Prohibited practice violations.
- 20.12 Strikes prohibited.
- 20.13 Bargaining unit determination.

20.1 Public policy. The general assembly declares that it is the public policy of the state to promote harmonious and co-operative relationships between government and its employees by permitting public employees to organize and bargain collectively; to protect the citizens of this state by assuring effective and orderly operations of government in providing for their health, safety, and welfare; to prohibit and prevent all strikes by public employees; and to protect the rights of public employees to join or refuse to join, and to participate in or refuse to participate in, employee organizations.

20.2 Title. This chapter shall be known as the "Public Employment Relations Act."

20.3 Definitions. When used in this chapter, unless the context otherwise requires:

1. "Public employer" means the state of Iowa, its boards, commissions, agencies, departments, and its political subdivisions including school districts and other special purpose districts.

2. "Governing body" means the board, council, or commission, whether elected or appointed, of a political subdivision of this state, including school districts and other special purpose districts, which determines the policies for the operation of the political subdivision.

3. "Public employee" means any individual employed by a public employer, except individuals exempted under the provisions of section 20.4.

4. "Employee organization" means an organization of any kind in which public employees participate and which exists for the primary purpose of representing public employees in their employment relations.

- 20.14 Bargaining representatives determination.
- 20.15 Elections.
- 20.16 Duty to bargain.
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- 20.25 Internal conduct of employee organizations.
- 20.26 Employee organizations — political contributions.
- 20.27 Conflict with federal aid.
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5. "Board" means the public employment relations board established under section 20.5.

6. "Strike" means a public employee's refusal, in concerted action with others, to report to duty, or his willful absence from his position, or his stoppage of work, or his abstinence in whole or in part from the full, faithful, and proper performance of the duties of employment, for the purpose of inducing, influencing or coercing a change in the conditions, compensation, rights, privileges or obligations of public employment.

7. "Confidential employee" means any public employee who works in the personnel office of a public employer or who has access to information subject to use by the public employer in negotiating or who works in a close continuing working relationship with public officers or representatives associated with negotiating on behalf of the public employer.

"Confidential employee" also includes the personal secretary of any of the following: Any elected official or person appointed to fill a vacancy in an elective office, member of any board or commission, the administrative officer, director, or chief executive officer of a public employer or major division thereof, or the deputy or first assistant of any of the foregoing.

8. "Mediation" means assistance by an impartial third party to reconcile an impasse between the public employer and the employee organization through interpretation, suggestion, and advice.

9. "Arbitration" means the procedure whereby the parties involved in an impasse submit their differences to a third party for a final and binding decision or as provided in this chapter.

10. "Impasse" means the failure of a public employer and the employee organization to reach agreement in the course of negotiations.

11. "Professional employee" means any one of the following:

a. Any employee engaged in work:

(1) Predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical or physical work;

(2) Involving the consistent exercise of discretion and judgment in its performance;

(3) Of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; and

(4) Requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes.

b. Any employee who:

(1) Has completed the courses of specialized intellectual instruction and study described in paragraph "a", subparagraph 4, of this subsection, and

(2) Is performing related work under the supervision of a professional person to qualify himself or herself to become a professional employee as defined in paragraph "a" of this subsection.

12. "Fact-finding" means the procedure by which a qualified person shall make written findings of fact and recommendations for resolution of an impasse.

20.4 Exclusions. The following public employees shall be excluded from the provisions of this chapter:

1. Elected officials and persons appointed to fill vacancies in elective offices, and members of any board or commission.

2. Representatives of public employer, including the administrative officer, director or chief executive officer of a public employer or major division thereof as well as his deputy, first assistant, and any supervisory employees.

Supervisory employee means any individual having authority in the interest of the public employer to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other public employees, or the responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment. All school superintendents, assistant superintendents, principals and assistant principals shall be deemed to be supervisory employees.

3. Confidential employees.

4. Students working as part-time public employees twenty hours per week or less except graduate or other postgraduate students in preparation for a profession who are engaged in academically related employment as a teaching, research, or service assistant.

5. Temporary public employees employed for a period of four months or less.

6. Commissioned and enlisted personnel of the Iowa national guard.

7. Judges of the supreme court, district judges, district associate judges and judicial magistrates, and the employees of such judges and courts.

8. Patients and inmates employed, sentenced or committed to any state or local institution.

9. Persons employed by the state department of justice.

10. Persons employed by the commission for the blind.

Referred to in sec. 20.3(3)

20.5 Public employment relations board.

1. There is established a board to be known as the "Public Employment Relations Board." The board shall consist of three members appointed by the governor, with approval of two-thirds of the senate. No more than two members shall be of the same political affiliation and no member shall engage in any political activity while holding office and the members shall devote full time to their duties.

Each member shall be appointed for a term of four years, except that of the members first appointed, two members shall be appointed for a term of two years commencing July 1, 1974 and ending June 30, 1976, and one member shall be appointed for a term of four years commencing July 1, 1974 and ending June 30, 1978.

The member first appointed for a term of four years shall serve as chairman and each of his successors shall also serve as chairman.

2. Any vacancy on the commission which may occur when the general assembly is not in session shall be filled by appointment by the governor, which appointment shall expire at the end of thirty days following the convening of the next session of the general assembly. Prior to the expiration of the thirty-day period, the governor shall transmit to the senate for its approval the name of the appointee for the unexpired portion of the regular term. Any vacancy occurring when the general assembly is in session shall be filled in the same manner as regular appointments are made, and before the end of such session, and for the unexpired portion of the regular term.

3. In selecting the members of the board, consideration shall be given to their knowledge, ability, and experience in the field of labor-management relations. The chairperson and the remaining two members shall each receive an annual salary as determined by the general assembly.

4. The board may employ such persons as are necessary for the performance of its functions.

Personnel of the board shall be employed pursuant to the provisions of chapter 19A.

5. Members of the board and other employees of the board shall be allowed their actual and necessary expenses incurred in the performance of their duties. All expenses and salaries shall be paid from appropriations for such purposes and the board shall be subject to the budget requirements of chapter 8.

Referred to in sec. 20.3(5)

20.5 General powers and duties of the board.

The board shall:

1. Administer the provisions of this chapter.

2. Collect, for public employers other than the state and its boards, commissions, departments, and agencies, data and conduct studies relating to wages, hours, benefits and other terms and conditions of public employment and make the same available to any interested person or organization.

3. Maintain, after consulting with employee organizations and public employers, a list of qualified persons representative of the public to be available to serve as mediators and arbitrators and establish their compensation rates.

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

5. Adopt rules in accordance with the provisions of chapter 17A as it may deem necessary to carry out the purposes of this chapter.

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

1. Direct the work of its public employees.

2. Hire, promote, demote, transfer, assign and retain public employees in positions within the public agency.

3. Suspend or discharge public employees for proper cause.

4. Maintain the efficiency of governmental operations.

5. Relieve public employees from duties because of lack of work or for other legitimate reasons.

6. Determine and implement methods, means, assignments and personnel by which the public employer's operations are to be conducted.

7. Take such actions as may be necessary to carry out the mission of the public employer.

8. Initiate, prepare, certify and administer its budget.

9. Exercise all powers and duties granted to the public employer by law.

20.8 Public employee rights. Public employees shall have the right to:

1. Organize, or form, join, or assist any employee organization.

2. Negotiate collectively through representatives of their own choosing.

3. Engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection insofar as any such activity is not prohibited by this chapter or any other law of the state.

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

Referred to in sec. 20.10

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

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

All retirement systems shall be excluded from the scope of negotiations.

Referred to in sec. 20.10, 20.17

20.10 Prohibited practices.

1. It shall be a prohibited practice for any public employer, public employee or employee organization to willfully refuse to negotiate in good faith with respect to the scope of negotiations as defined in section 20.9.

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

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

b. Dominate or interfere in the administration of any employee organization.

c. Encourage or discourage membership in any employee organization, committee or association by discrimination in hiring, tenure, or other terms or conditions of employment.

d. Discharge or discriminate against a public employee because he has filed an affidavit, petition or complaint or given any information or testimony under this chapter, or because he has formed, joined or chosen to be represented by any employee organization.

e. Refuse to negotiate collectively with representatives of certified employee organizations as required in this chapter.

f. Deny the rights accompanying certification or exclusive recognition granted in this chapter.

g. Refuse to participate in good faith in any agreed upon impasse procedures or those set forth in this chapter.

h. Engage in a lockout.

i. Picket for any unlawful purposes.

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

a. Interfere with, restrain, coerce or harass any public employee with respect to any of his rights under this chapter or in order to prevent or discourage his exercise of any such right, including, without limitation, all rights under section 20.8.

b. Interfere, restrain, or coerce a public employer with respect to rights granted in this chapter or with respect to selecting a representative for the purposes of negotiating collectively on the adjustment of grievances.

c. Refuse to bargain collectively with a public employer as required in this chapter.

d. Refuse to participate in good faith in any agreed upon impasse procedures or those set forth in this chapter.

e. Violate section 20.12.

f. Violate the provisions of sections 736B.1 to 736B.3, which are hereby made applicable to public employers, public employees and public employee organizations.

g. Picket in a manner which interferes with ingress and egress to the facilities of the public employer.

h. Engage in, initiate, sponsor or support any picketing that is performed in support of a strike, work stoppage, boycott or slowdown against a public employer.

4. The expressing of any views, argument or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of any unfair labor practice under any of the provisions of this chapter, if such expression contains no threat of reprisal or force or promise of benefit.

Referred to in sec. 20.11

20.11 Prohibited practice violations.

1. Proceedings against a party alleging a violation of section 20.10, shall be commenced by filing a complaint with the board within ninety days of the alleged violation causing a copy of the complaint to be served upon the accused party in the manner of an original notice as provided in this chapter. The accused party shall have ten days within which to file a written answer to the complaint. However, the board may conduct a preliminary investigation of the alleged violation, and if the board determines that the complaint has no basis in fact, the board may discuss the complaint. The board shall promptly thereafter set a time and place for hearing in the county where the alleged violation occurred. The parties shall be permitted to be represented by counsel, summon witnesses, and request the board to subpoena witnesses on the requestor's behalf. Compliance with the technical rules of pleading and evidence shall not be required.

2. The board may designate a hearing officer to conduct the hearing. The hearing officer shall have such powers as may be exercised by the board for conducting the hearing and shall follow the procedures adopted by the board for conducting the hearing. The decision of the hearing officer may be appealed to the board and the board may hear the case de novo or upon the record as submitted before the hearing officer, utilizing procedures governing appeals to the district court in this section so far as applicable.

3. The board shall appoint a certified shorthand reporter to report the proceedings and the board shall fix the reasonable amount of compensation for such service, which amount shall be taxed as other costs.

4. The board shall file its findings of fact and conclusions of law. If the board finds that the party accused has committed a prohibited practice, the board may, within thirty days of its decision, enter into a consent order with the party to discontinue the practice, or petition the district court for injunctive relief pursuant to rules of civil procedure 320 to 330.

5. Any party aggrieved by any decision or order of the board may within ten days from the date such decision or order is filed, appeal therefrom to the district court of the county in which the hearing was held, by filing with the board a written notice of appeal setting forth in general terms the decision appealed from and the grounds of the appeal. The board shall forthwith give notice to the other parties in interest.

6. Within thirty days after a notice of appeal is filed with the board, it shall make, certify, and file in the office of the clerk of court to which the appeal is taken, a full and complete transcript of all documents in the case, including any depositions and a transcript or certificate of the evidence together with the notice of appeal.

7. The appeal shall be triable at any time after the expiration of twenty days from the date of filing the transcript by the board and after twenty days' notice in writing by either party and the board upon the other.

8. The transcript as certified and filed by the board shall be the record on which the appeal shall be heard, and no additional evidence shall be heard. In the absence of fraud, the findings of fact made by the board shall be conclusive if supported by a substantial evidence on the record considered as a whole.

9. Any order or decision of the board may be modified, reversed, or set aside on one or more of the following grounds and on no other:

a. If the board acts without or in excess of its powers.

b. If the order was procured by fraud or is contrary to law.

c. If the facts found by the board do not support the order.

d. If the order is not supported by a preponderance of the competent evidence on the record considered as a whole.

10. When the district court, on appeal, reverses or sets aside an order or decision of the board, it may remand the case to the board for further proceedings in harmony with the holdings of the court, or it may enter the proper judgment, as the case may be. Such judgment or decree shall have the same force and effect as if action had been originally brought and tried in said court. The assessment of costs in such appeals shall be in the discretion of the court.

11. An appeal may be taken to the supreme court from any final order, judgment, or decree of the district court.

Referred to in sec. 20.13, 20.14.

20.12 Strikes prohibited.

1. It shall be unlawful for any public employee or any employee organization, directly or indirectly, to induce, instigate, encourage, authorize, ratify or participate in a strike against any public employer.

2. It shall be unlawful for any public employer to authorize, consent to, or condone a strike; or to pay or agree to pay any public employee for any day in which the employee participates in a strike; or to pay or agree to pay any increase in compensation or benefits to any public employee in response to or as a result of any strike or any act which violates subsection 1. It shall be unlawful for any official, director, or representative of any public employer to authorize, ratify or participate in any violation of this subsection. Nothing in this subsection shall prevent new or renewed bargaining and agreement within the scope of negotiations as defined by this chapter, at any time after such violation of subsection 1 has ceased; but it shall be unlawful for any public employer or employee organization to bargain at any time regarding suspension or modification of any penalty provided in this section or regarding any request by the public employer to a court for such suspension or modification.

3. In the event of any violation or imminently threatened violation of subsection 1 or 2, any citizen domiciled within the jurisdictional boundaries of the public employer may petition the district court for the county in which the violation occurs or the district court for Polk county for an

injunction restraining such violation or imminently threatened violation. Rules of civil procedure 320 to 330 regarding injunctions shall apply. However, the court shall grant a temporary injunction if it appears to the court that a violation has occurred or is imminently threatened; the plaintiff need not show that the violation or threatened violation would greatly or irreparably injure him; and no bond shall be required of the plaintiff unless the court determines that a bond is necessary in the public interest. Failure to comply with any temporary or permanent injunction granted pursuant to this section shall constitute a contempt punishable pursuant to chapter 665. The punishment shall not exceed five hundred dollars for an individual, or ten thousand dollars for an employee organization or public employer, for each day during which the failure to comply continues, or imprisonment in a county jail not exceeding six months, or both such fine and imprisonment. An individual or an employee organization which makes an active good faith effort to comply fully with the injunction shall not be deemed to be in contempt.

4. If a public employee is held to be in contempt of court for failure to comply with an injunction pursuant to this section, or is convicted of violating this section, he shall be ineligible for any employment by the same public employer for a period of twelve months. His public employer shall immediately discharge him, but upon his request the court shall stay his discharge to permit further judicial proceedings.

5. If an employee organization or any of its officers is held to be in contempt of court for failure to comply with an injunction pursuant to this section, or is convicted of violating this section, the employee organization shall be immediately decertified, shall cease to represent the bargaining unit, shall cease to receive any dues by checkoff, and may again be certified only after twelve months have elapsed from the effective date of decertification and only after a new compliance with section 20.14. The penalties provided in this section may be suspended or modified by the court, but only upon request of the public employer and only if the court determines the suspension or modification is in the public interest.

6. Each of the remedies and penalties provided by this section is separate and several, and is in addition to any other legal or equitable remedy or penalty.

Referred to in sec. 20.10.

20.13 Bargaining unit determination.

1. Board determination of an appropriate bargaining unit shall be upon petition filed by a public employer, public employee, or employee organization.

2. Within thirty days of receipt of a petition or notice to all interested parties if on its own initiative, the board shall conduct a public hearing, receive written or oral testimony, and promptly thereafter file an order defining the appropriate bargaining unit. In defining the unit, the board shall take into consideration, along with

other relevant factors, the principles of efficient administration of government, the existence of a community of interest among public employees, the history and extent of a public employee organization, geographical location, and the recommendations of the parties involved.

3. Appeals from such order shall be governed by appeal provisions provided in section 20.11.

4. Professional and nonprofessional employees shall not be included in the same bargaining unit unless a majority of both agree.

Referred to in sec. 20.14.

20.14 Bargaining representative determination.

1. Board certification of an employee organization as the exclusive bargaining representative of a bargaining unit shall be upon a petition filed with the board by a public employer, public employee, or an employee organization and an election conducted pursuant to section 20.15.

2. The petition of an employee organization shall allege that:

a. The employee organization has submitted a request to a public employer to bargain collectively with a designated group of public employees.

b. The petition is accompanied by written evidence that thirty percent of such public employees are members of the employee organization or have authorized it to represent them for the purposes of collective bargaining.

3. The petition of a public employee shall allege that an employee organization which has been certified as the bargaining representative does not represent a majority of such public employees and that the petitioners do not want to be represented by an employee organization or seek certification of an employee organization.

4. The petition of a public employer shall allege that it has received a request to bargain from an employee organization which has not been certified as the bargaining representative of the public employees in an appropriate bargaining unit.

5. The board shall investigate the allegation of any petition and shall give reasonable notice of the receipt of such a petition to all public employees, employee organizations and public employers named or described in such petitions or interested in the representation questioned. The board shall thereafter call an election under section 20.15, unless:

a. It finds that less than thirty percent of the public employees in the unit appropriate for collective bargaining support the petition for decertification or for certification.

b. The appropriate bargaining unit has not been determined pursuant to section 20.13.

6. The hearing and appeal procedures shall be the same as provided in section 20.11.

Referred to in secs. 20.12, 20.15.

20.15 Elections.

1. Upon the filing of a petition for certification of an employee organization, the board shall submit a question to the public employees at an election in an appropriate bargaining unit. The question

on the ballot shall permit the public employees to vote for no bargaining representation or for any employee organization which has petitioned for certification or which has presented proof satisfactory to the board of support of ten percent or more of the public employees in the appropriate unit.

2. If a majority of votes cast on the question are for no bargaining representation, the public employees shall not be represented by an employee organization. If a majority of the votes cast on the question is for a listed employee organization, then the employee organization shall represent the public employees in an appropriate bargaining unit.

3. If none of the choices on the ballot receive the vote of a majority of the public employees voting, the board shall conduct a runoff election among the two choices receiving the greatest number of votes.

4. Upon written objections filed by any party to the election within ten days after notice of the results of the election, if the board finds that misconduct or other circumstances prevented the public employees eligible to vote from freely expressing their preferences, the board may invalidate the election and hold a second election for the public employees.

5. Upon completion of a valid election in which the majority choice of the employees voting is determined, the board shall certify the results of the election and shall give reasonable notice of the order to all employee organizations listed on the ballot, the public employers, and the public employees in the appropriate bargaining unit.

6. A petition for certification as an exclusive bargaining representative shall not be considered by the board for a period of one year from the date of the certification or noncertification of an exclusive bargaining representative or during the duration of a collective bargaining agreement which shall not exceed two years. A collective bargaining agreement with the state, its boards, commissions, departments, and agencies shall be for two years and the provisions of a collective bargaining agreement except agreements agreed to or tentatively agreed to prior to July 1, 1977, or arbitrators' award affecting state employees shall not provide for renegotiations which would require the refinancing of salary and fringe benefits for the second year of the term of the agreement, except as provided in section twenty point seventeen (20.17), subsection six (6) of the Code and the effective date of any such agreement shall be July first of odd-numbered years, provided that if an exclusive bargaining representative is certified on a date which will prevent the negotiation of a collective bargaining agreement prior to July first of odd-numbered years for a period of two years, the certified collective bargaining representative may negotiate a one-year contract with a public employer which shall be effective from July first of the even-numbered year to July first of the succeeding odd-numbered year when new contracts shall become effective. However, if a petition for decertification is filed during the duration of a

collective bargaining agreement, the board shall award an election under this section not more than one hundred eighty days nor less than one hundred fifty days prior to the expiration of the collective bargaining agreement. If an employee organization is decertified, the board may receive petitions under section 20.14, provided that no such petition and no election conducted pursuant to such petition within one year from decertification shall include as a party the decertified employee organization.

20.16 Duty to bargain. Upon the receipt by a public employer of a request from an employee organization to bargain on behalf of public employees, the duty to engage in collective bargaining shall arise if the employee organization has been certified by the board as the exclusive bargaining representative for the public employees in that bargaining unit.

20.17 Procedures.

1. The employee organization certified as the bargaining representative shall be the exclusive representative of all public employees in the bargaining unit and shall represent all public employees fairly. However, any public employee may meet and adjust individual complaints with a public employer.

2. The employee organization and the public employer may designate any individual as its representative to engage in collective bargaining negotiations.

3. Negotiating sessions, including strategy meetings of public employers, or employee organizations, mediation and the deliberative process of arbitrators shall be exempt from the provisions of chapter 28A. However, the employee organization shall present its initial bargaining position to the public employer at the first bargaining session. The public employer shall present its initial bargaining position to the employee organization at the second bargaining session, which shall be held no later than two weeks following the first bargaining session. Both sessions shall be open to the public and subject to the provisions of chapter 28A. Hearings conducted by arbitrators shall be open to the public.

4. The terms of a proposed collective bargaining agreement shall be made public and reasonable notice shall be given to the public employees prior to a ratification election. The collective bargaining agreement shall become effective only if ratified by a majority of those voting by secret ballot.

5. Terms of any collective bargaining agreement may be enforced by a civil action in the district court of the county in which the agreement was made upon the initiative of either party.

6. No collective bargaining agreement or arbitrators' decision shall be valid or enforceable if its implementation would be inconsistent with any statutory limitation on the public employer's funds, spending or budget or would substantially impair or limit the performance of any statutory duty by the public employer. A collective

bargaining agreement or arbitrators' award may provide benefits conditional upon specified funds to be obtained by the public employer, but the agreement shall provide either for automatic reduction of such conditional benefits or for additional bargaining if the funds are not obtained or if a lesser amount is obtained.

7. If agreed to by the parties nothing in this chapter shall be construed to prohibit supplementary bargaining in behalf of public employees in a part of the bargaining unit concerning matters uniquely affecting those public employees in a part of the bargaining unit concerning matters uniquely affecting those public employees or co-operation and coordination of bargaining between two or more units.

8. The salaries of all public employees of the state under a merit system and all other fringe benefits which are granted to all public employees of the state shall be negotiated with the governor or his designee on a state-wide basis, except those benefits which are not subject to negotiations pursuant to the provisions of section 20.9.

9. A public employee or any employee organization shall not negotiate or attempt to negotiate directly with a member of the governing board of a public employer if the public employer has appointed or authorized a bargaining representative for the purpose of bargaining with the public employees or their representative, unless the member of the governing board is the designated bargaining representative for the public employer.

10. The negotiation of a proposed collective bargaining agreement by representatives of a state public employer and a state employee organization shall be complete not later than March fifteenth of the year when the agreement is to become effective. The board shall provide, by rule, a date on which any impasse item must be submitted to binding arbitration and for such other procedures as deemed necessary to provide for the completion of negotiations of proposed state collective bargaining agreements not later than March fifteenth. The date selected for the mandatory submission of impasse items to binding arbitration shall be sufficiently in advance of March fifteenth to insure that the arbitrators' decision can be reasonably made before March fifteenth.

Referred to in sec. 20.22.

20.18 Grievance procedures. An agreement with an employee organization which is the exclusive representative of public employees in an appropriate unit may provide procedures for the consideration of public employee grievances and of disputes over the interpretation and application of agreements. Negotiated procedures may provide for binding arbitration of public employee grievances and of disputes over the interpretation and application of existing agreements. An arbitrator's decision on a grievance may not change or amend the terms, conditions or applications of the collective

bargaining agreement. Such procedure shall provide for the invoking of arbitration only with the approval of the employee organization, and in the case of an employee grievance, only with the approval of the public employee. The costs of arbitration shall be shared equally by the parties.

Public employees of the state shall follow either the grievance procedures provided in a collective bargaining agreement, or in the event that no such procedures are so provided, shall follow grievance procedures established pursuant to chapter 19A.

20.19 Impasse procedures — agreement of parties. As the first step in the performance of their duty to bargain, the public employer and the employee organization shall endeavor to agree upon impasse procedures. Such agreement shall provide for implementation of these impasse procedures not later than one hundred twenty days prior to the certified budget submission date of the public employer. If the parties fail to agree upon impasse procedures under the provisions of this section, the impasse procedures provided in sections 20.20 to 20.22 shall apply.

20.20 Mediation. In the absence of an impasse agreement between the parties or the failure of either party to utilize its procedures, one hundred twenty days prior to the certified budget submission date, the board shall, upon the request of either party, appoint an impartial and disinterested person to act as mediator. It shall be the function of the mediator to bring the parties together to effectuate a settlement of the dispute, but the mediator may not compel the parties to agree.

Referred to in sec. 20.19.

20.21 Fact-finding. If the impasse persists ten days after the mediator has been appointed, the board shall appoint a fact-finder representative of the public, from a list of qualified persons maintained by the board. The fact-finder shall conduct a hearing, may administer oaths, and may request the board to issue subpoenas. The fact-finder shall make written findings of facts and recommendations for resolution of the dispute and, not later than fifteen days from the day of appointment, shall serve such findings on the public employer and the certified employee organization.

The public employer and the certified employee organization shall immediately accept the fact-finder's recommendation or shall within five days submit the fact-finder's recommendations to the governing body and members of the certified employee organization for acceptance or rejection. If the dispute continues ten days after the report is submitted, the report shall be made public by the board.

Referred to in sec. 20.19

20.22 Binding arbitration.

1. If an impasse persists after the findings of fact and recommendations are made public by the fact-finder, the parties may continue to negotiate or, the board shall have the power, upon

request of either party, to arrange for arbitration, which shall be binding. The request for arbitration shall be in writing and a copy of the request shall be served upon the other party.

2. Each party shall submit to the board within four days of request a final offer on the impasse items with proof of service of a copy upon the other party. Each party shall also submit a copy of a draft of the proposed collective bargaining agreement to the extent to which agreement has been reached and the name of its selected arbitrator. The parties may continue to negotiate all offers until an agreement is reached or a decision rendered by the panel of arbitrators.

As an alternative procedure, the two parties may agree to submit the dispute to a single arbitrator. If the parties cannot agree on the arbitrator within four days, the selection shall be made pursuant to subsection 5. The full costs of arbitration under this provision shall be shared equally by the parties to the dispute.

3. The submission of the impasse items to the arbitrators shall be limited to those issues that had been considered by the fact-finder and upon which the parties have not reached agreement. With respect to each such item, the arbitration board award shall be restricted to the final offers on each impasse item submitted by the parties to the arbitration board or to the recommendation of the fact-finder on each impasse item.

4. The panel of arbitrators shall consist of three members appointed in the following manner:

a. One member shall be appointed by the public employer.

b. One member shall be appointed by the employee organization.

c. One member shall be appointed mutually by the members appointed by the public employer and the employee organization. The last member appointed shall be the chairman of the panel of arbitrators. No member appointed shall be an employee of the parties.

d. The public employer and employee organization shall each pay the fees and expenses incurred by the arbitrator each selected. The fee and expenses of the chairman of the panel and all other costs of arbitration shall be shared equally.

5. If the third member has not been selected within four days of notification as provided in subsection 2, a list of three arbitrators shall be submitted to the parties by the board. The two arbitrators selected by the public employer and the employee organization shall determine by lot which arbitrator shall remove the first name from the list submitted by the board. The arbitrator having the right to remove the first name shall do so within two days and the second arbitrator shall have one additional day to remove one of the two remaining names. The person whose name remains shall become the chairman of the panel of arbitrators and shall call a meeting within ten days at a location designated by him.

6. If a vacancy should occur on the panel of arbitrators, the selection for replacement of such member shall be in the same manner and within the same time limits as the original member was chosen. No final selection under subsection 9

shall be made by the board until the vacancy has been filled.

7. The panel of arbitrators shall at no time engage in an effort to mediate or otherwise settle the dispute in any manner other than prescribed in this section.

8. From the time of appointment until such time as the panel of arbitrators makes its final determination, there shall be no discussion concerning recommendations for settlement of the dispute by the members of the panel of arbitrators with parties other than those who are direct parties to the dispute. The panel of arbitrators may conduct formal or informal hearings to discuss offers submitted by both parties.

9. The panel of arbitrators shall consider, in addition to any other relevant factors, the following factors:

a. Past collective bargaining contracts between the parties including the bargaining that led up to such contracts.

b. Comparison of wages, hours and conditions of employment of the involved public employees with those of other public employees doing comparable work, giving consideration to factors peculiar to the area and the classifications involved.

c. The interests and welfare of the public, the ability of the public employer to finance economic adjustments and the effect of such adjustments on the normal standard of services.

d. The power of the public employer to levy taxes and appropriate funds for the conduct of its operations.

10. The chairman of the panel of arbitrators may hold hearings and administer oaths, examine witnesses and documents, take testimony and receive evidence, issue subpoenas to compel the attendance of witnesses and the production of records, and delegate such powers to other members of the panel of arbitrators. The chairman of the panel of arbitrators may petition the district court at the seat of government or of the county in which any hearing is held to enforce the order of the chairman compelling the attendance of witnesses and the production of records.

11. A majority of the panel of arbitrators shall select within fifteen days after its first meeting the most reasonable offer, in its judgment, of the final offers on each impasse item submitted by the parties, or the recommendations of the fact-finder on each impasse item.

12. The selections by the panel of arbitrators and items agreed upon by the public employer and the employee organization, shall be deemed to be the collective bargaining agreement between the parties.

13. The determination of the panel of arbitrators shall be by majority vote and shall be final and binding subject to the provisions of section 20.17, subsection 6. The panel of arbitrators shall give written explanation for its selection and inform the parties of its decision.

Referred to in sec. 20.19.

20.23 Legal actions. Any employee organization and public employer may sue or be sued as

an entity under the provisions of this chapter. Service upon the public employer shall be in accordance with law or the rules of civil procedure. Nothing in this chapter shall be construed to make any individual or his assets liable for any judgment against a public employer or an employee organization.

20.24 Notice and service. Any notice required under the provisions of this chapter shall be in writing, but service thereof shall be sufficient if mailed by restricted certified mail, return receipt requested addressed to the last known address of the parties, unless otherwise provided in this chapter. Refusal of restricted certified mail by any party shall be considered service. Prescribed time periods shall commence from the date of the receipt of the notice. Any party may at any time execute and deliver an acceptance of service in lieu of mailed notice.

20.25 Internal conduct of employee organizations.

1. Every employee organization which is certified as a representative of public employees under the provisions of this chapter shall file with the board a registration report, signed by its president or other appropriate officer. The report shall be in a form prescribed by the board and shall be accompanied by two copies of the employee organization's constitution and bylaws. A filing by a national or international employee organization of its constitution and bylaws shall be accepted in lieu of a filing of such documents by each subordinate organization. All changes or amendments to such constitutions and bylaws shall be promptly reported to the board.

2. Every employee organization shall file with the board an annual report and an amended report whenever changes are made. The reports shall be in a form prescribed by the board, and shall provide the following information:

a. The names and addresses of the organization, any parent organization or organizations with which it is affiliated, the principal officers, and all representatives.

b. The name and address of its local agent for service of process.

c. A general description of the public employees the organization represents or seeks to represent.

d. The amounts of the initiation fee and monthly dues members must pay.

e. A pledge, in a form prescribed by the board, that the organization will comply with the laws of the state and that it will accept members without regard to age, race, sex, religion, national origin or physical disability as provided by law.

f. A financial report and audit.

3. The constitution or bylaws of every employee organization shall provide that:

a. Accurate accounts of all income and expenses shall be kept, and annual financial report and audit shall be prepared, such accounts shall be open for inspection by any member of the organization, and loans to officers and agents shall be made only on terms and conditions available to all members.

b. Business or financial interests of its officers and agents, their spouses, minor children, parents or otherwise, that conflict with the fiduciary obligation of such persons to the organization shall be prohibited.

c. Every official or employee of an employee organization who handles funds or other property of the organization, or trust in which an organization is interested, or a subsidiary organization, shall be bonded. The amount, scope, and form of the bond shall be determined by the board.

4. The governing rules of every employee organization shall provide for periodic elections by secret ballot subject to recognized safeguards concerning the equal right of all members to nominate, seek office, and vote in such elections, the right of individual members to participate in the affairs of the organization, and fair and equitable procedures in disciplinary actions.

5. The board shall prescribe rules necessary to govern the establishment and reporting of trusteeships over employee organizations. Establishment of such trusteeships shall be permitted only if the constitution or bylaws of the organization set forth reasonable procedures.

6. An employee organization that has not registered or filed an annual report, or that has failed to comply with other provisions of this chapter, shall not be certified. Certified employee organizations failing to comply with this chapter may have such certification revoked by the board. Prohibitions may be enforced by injunction upon the petition of the board to the district court of the county in which the violation occurs. Complaints of violation of this section shall be filed with the board.

7. Upon the written request of any member of a certified employee organization, the auditor of state may audit the financial records of the certified employee organization.

20.26 Employee organizations — political contributions. Any employee organization shall not make any direct or indirect contribution out of the funds of the employee organization to any political party or organization or in support of any candidate for elective public office.

Any employee organization which violates the provisions of this section or fails to file any required report or affidavit or files a false report or

affidavit shall, upon conviction, be subject to a fine of not more than two thousand dollars.

Any person who willfully violates this section, or who makes a false statement knowing it to be false, or who knowingly fails to disclose a material fact shall, upon conviction, be subject to a fine of not more than one thousand dollars or imprisoned for not more than thirty days or shall be subject to both such fine and imprisonment. Each individual required to sign affidavits or reports under this section shall be personally responsible for filing such report or affidavit and for any statement contained therein he knows to be false.

Nothing in this section shall be construed to prohibit voluntary contributions by individuals to political parties or candidates.

Nothing in this section shall be construed to limit or deny any civil remedy which may exist as a result of action which may violate this section.

20.27 Conflict with federal aid. If any provision of this chapter jeopardizes the receipt by the state or any of its political subdivisions of any federal grant-in-aid funds or other federal allotment of money, the provisions of this chapter shall, insofar as the fund is jeopardized, be deemed to be inoperative.

20.28 Inconsistent statutes — effect. . . . provision of the Code which is inconsistent with any term or condition of a collective bargaining agreement which is made final under this chapter shall supersede the term or condition of the collective bargaining agreement unless otherwise provided by the general assembly. A provision of a proposed collective bargaining agreement negotiated according to this chapter which conflicts with the Code shall not become a provision of the final collective bargaining agreement until the general assembly has amended the Code to remove the conflict.

20.29 Filing agreement — public access. Copies of collective bargaining agreements entered into between the state and state employees' bargaining representatives and made final under this chapter shall be filed with the secretary of state and be made available to the public at cost.

*Bob
Keep in file
for 126*

Senate H.E.S.S. Meeting, February 18

Considering SB 126 - Binding Arbitration

Committee Members Present:

Parr, Stimson, Fischer, Colletta, Kelly

Testimony: Bob Green) as stated
Bob Manners) (Brief)
Steve Hole, Dept. Ed. - Stated: No position

The Committee as a whole obviously favored the bill. This meeting had only brief testimony followed by approximately 45 mins. discussion in specific provisions. Atmosphere very informal, directed at working out differences to pass out as soon as possible.

Two main issues discussed:

- (1) HESS intention to include new Sec. 5: No right to strike; No lock out provision.
- (2) HESS change of 14.20.57 Sec. 2b of current bill. Existing provision allows only for choice of U.S. Fed. Mediations & Conciliation Service (USFMC) to mediate dispute or choose arbitor.

The inserted provision would include 3 options:

- (1) Mediator or arbitor chosen by employee agency and school board locally or selected by agreed-upon local choices
- (2) USFMC -
- (3) American Arbitration Assoc. (AAA) who have provision to select a mediator or arbitor if their entities cannot agree.

The intention re above inclusion is to provide for local solution which HESS, NEA, Sch. Bd. Assoc. feels would be the best solution. Also, Rocky found information saying USFMC may not be the best choice, as they have their hands full with U.S. National Labor Relations Act and can't or don't want to cover all teacher, Sch. Bd. mediation problems.

Background

S. Fischer: Q. Could we discuss legislative background of Binding Arbitration?

S. Colletta: A. Question of right to strike/B. Arb. has been issue long time. First remember from Fr. Conf. Committee around 72-73. Then feeling strongly against right to strike also very negative about collective bargaining. Sentiments have changed much both in Leg. and Public Sector. Public not so negative in Col. Bargaining, but don't want teachers to have rt. to strike. Now teachers ^{don't} want to give ^{up} rt./Strike, Advisory Bds., Sch. Bds. ^{don't} want to give up B. Arb.

S. Kelly: My impression that teachers want either B.Arb. or rt./strike. They would give up rt./strike for good B.Arb. proposal. Asks Bob Manners.

Manners: Yes, would give up rt./strike, but would insist on NO LOCK OUT if did.

S. Stimson: I'd rather not address Q. of rt./strike. I see this bill as bottom line on B.Arb. Can live with as is now, but if other committee cuts out or pencils in I might not buy the package. Hate to put in No. strike clause and see bill watered down re B.Arb. later. If we put in No Strike I'd like to attach letter of intent to next committee and floor saying want strong B. Arb. fair both sides.

Kelly: Q. Isn't it that you want to go on record as objecting to inclusion of no rt./strike?

Stimson: A. Yes, but I would like HESS and Senate on record same.

Colletta: It's best to send bill on its way with a No Strike clause. I hate to see it torn apart or changed at first step.

Stimson: I prefer not to address the no strike position.

Colletta: I'd like to sign a do pass but if there isn't a no strike provision, I'll have to go No Pass. Before and during my last election, I got 1285 responses on questions to this issue. 87% favored Binding Arb. but were against strike by teachers.

Kelly: Better to put in no strike and send it on its way. It'll relieve pressure the bill will meet.

Stimson to Colletta: You'll support bill if no strike included?

Colletta: Yes.

Stimson: How about letter of intent----(Then Questions Parr about recalling bill to HESS if later Committee drastically changes bill.)

Parr: "Yes, could do..." (Stimson concedes.)

Discuss on providing 3 options (as outlined previously) for choosing mediator/arbitor. Colletta, Parr, Stimson, Manners, Green general agreement on 3 choices. All desire procedure which will result in final agreement of choice in mediator.

Discuss Sec. 14.20 582 Arbitration Award. Provisions for court vacating award which ^{would} cause municipality to raise local tax rate.

Satisfied as written.

Parr leaves. Stimson takes chair. Adjourns.

January
1980

Can Compulsory Arbitration Work in Education Collective Bargaining? A Second Look

The Teacher Organization Perspective

CHARLES N. LENT*

Impasse arbitration is a creature peculiar to public sector negotiations. The *quid pro quo* for the private sector's right of strike and lockout, impasse arbitration presumably is a procedure for motivating good faith bargaining behavior and for insuring at least minimum equity and fairness when the parties become mired in impasse.

How well does arbitration work as a device to motivate good faith bargaining? How well has it performed in determining the equities of matters at impasse? Obviously, the answers would depend on the employer or employee perspective of the person responding to the questions. But more significantly, the answers would reflect the experience resulting from the particular impasse arbitration system or model in effect: advisory arbitration (fact-finding), conditional arbitration, final offer arbitration (issue by issue), final offer arbitration (total package). The spectrum of these models can be further broadened by the inclusion or exclusion of non-economic employment terms from the coverage of arbitration.

The differences among the models are substantive. Their respective impact on the negotiations process can be negligible, as in the case of advisory arbitration where the decision of the arbitrator has the status of a non-binding recommendation, or profound, as in the case of final offer arbitration by total package, which limits the arbitrator to a binding selection of one party's position *in toto*. The higher the risk to the parties, the greater is the model's influence on bargaining.

The contiguous states of Iowa, Minnesota, and Wisconsin offer an interesting profile of several arbitration models operating under distinctly different statutory frameworks for public sector bargaining. An analysis of how these models appear to influence the negotiations process may provide an indication of the best direction of the public policy for public sector employment relations. The analysis attempted in this paper is limited to the focus of teacher-school board negotiations and the experiences and perspective of the teacher organizations in Iowa, Minnesota, and Wisconsin. Though the analysis and resulting conclu-

* Mr. Lentz, a former public school teacher, is the Assistant Executive Director for Negotiations for the Minnesota Education Association.

sions are admittedly derived from the union/employee view, they are nonetheless intended to suggest how to best accomplish the harmony and public benefit avowed in the policy statements of the collective bargaining statutes.

The Minnesota Public Employment Labor Relations Act (PELRA), passed in 1971, is the oldest of the three statutes. It provides for a conventional arbitration model, which allows an arbitrator full freedom to determine the outcome of issues certified by the director of the Bureau of Mediation Services to be at impasse. The arbitrator can adopt either party's position on a disputed issue, or could fashion a position between those of the parties, or even go beyond the parameters of difference between the positions and award above the union's demand or below the employer's offer. In the first contract period (1972-74), the arbitration was binding on the union, but advisory to the employer. Consequently, there were only three arbitrations among all public employee units, one of which was a teacher unit. In 1973, the PELRA was amended to make arbitration binding on both parties. However, under the amendment, the employer is provided with the option of refusing to submit to arbitration if requested by the union, in which case employees have the right to strike.

Iowa's Public Employment Relations Act was passed in 1974. Unlike the Minnesota PELRA, the Iowa statute does not provide for strike in the event the employer refuses to arbitrate. Instead, it compels the parties to arbitrate on a final offer, issue by issue basis. The negotiations proceed to conclusion through mediation, fact-finding, and, if necessary, arbitration. While the fact-finder's recommendations are only advisory to the parties, they do have the status of a position in arbitration. The arbitrator selects either the position of the fact-finder, the union, or the employer on each issue in dispute.

Though the Wisconsin statute covering local government employees, including teachers, has been in effect since 1959, it was substantially amended in 1978 to provide for a sophisticated and complex system of final offer arbitration on a total package basis.¹ Bargaining proceeds through the normal bilateral discussions and, if necessary, into the resolution phases of mediation and arbitration. The arbitrator selected is empowered to continue the mediation function. Armed with the "final" positions of both parties and authorized to ultimately adopt one or the other's total package, the arbitrator is able to effectively suggest changes in the final positions which may result in a mediated agreement. However, both parties must agree to any change in the submitted final positions. Further, both parties can agree to withdraw their respective final positions, in which case the right to strike matures.

The Minnesota Experience

The union view of arbitration under the Minnesota PELRA has been stated in considerable detail in an earlier article² printed in this journal. The article emphasized that, while developing case law was favorable to the unions' positions on scope of negotiations and arbitrability, the procedures of the PELRA advantaged the employer by permitting untimely delays in bringing

¹ Wisconsin's state employees and police and firemen are covered under separate legislation.

² CHARLES N. LENTZ, *Arbitration of Public Employment Contract Disputes: The Minnesota Experience, 1972-78: A Union Perspective*, *Journal of Law and Education*, Vol. 4, Number 4, October, 1975.

negotiations to conclusion. In the case of teachers, the majority of the 439 contracts have not been settled until approximately six months after contract expiration and a dozen or more continue unsettled for almost a year. Further, the disposition of arbitrators under the conventional model has had a disturbingly consistent adherence to the status quo, if not to the employer's position entirely. Though some arbitration decisions have strongly favored the union's position, the opinion of the involved parties has been that, in most instances, such was the result of arbitrator confusion rather than knowledgeable deliberation.

PELRA case law has continued to move toward the union position as the PELRA unfolds slowly into a meaningful process. However, the problems previously articulated in the earlier article have only been exacerbated by a general failure to provide reasonable remedies. The 1979 legislature failed to adopt the recommendations of the Minnesota Education Association (MEA) which would have made timely settlements more likely. But much more importantly, the performance of the arbitration process has been all but universally dismal from the union view.

The effectiveness of the arbitration process is key to the bargaining behavior of the parties and ultimately to a reasoned determination on the questions of equity. MEA is a member of an alliance³ of nineteen public employee unions which represent approximately five thousand professional employees of the State. The almost universal opinion of the union leaders participating in the alliance is that conventional arbitration under the PELRA is certainly weighted in favor of the employer and consequently should be avoided if at all possible. However, avoiding arbitration can be a futile effort: employers can petition for arbitration and, unlike the employer, the employee organization has no option but to submit.

The attitude of MEA toward arbitration appears to be typical of Minnesota's public employee unions. The MEA has consistently encouraged its affiliated local associations to engage in vigorous bilateral negotiations with their respective school boards, at all times seeking areas of agreement and avoiding impasse if possible. Further, the MEA has flatly warned against reliance on arbitration as either a threat to school boards or a forum for equity.

The 1979-81 contract bargaining shows a dramatic shift away from arbitration by teachers and toward arbitration by school boards.

	1977-79 Contract	1979-81 Contract*
Arbitration requests:		
Petition by teachers' Assoc.	46	3
Petition by Boards	3	8
Actual Usage:		
Hearing held; award issued	16	2
Settled prior to hearing	26	2
Striken	6	—

³ The Minnesota Alliance of United Labor is a confederation of independent public employee unions whose membership are professional state employees: pharmacists, dentists, nurses, state university faculty, community college faculty, state institutions teaching staff, state patrol officers, hearing examiners, and forensic scientists. Currently, the president of MEA is the president of the Alliance, the vice-president is a Teamsters local business agent.

* This data is as of 10/15/79. Over two hundred school districts have yet to settle for the 1979-81 contract period. In all likelihood there will be additional requests for arbitration, but the trend

The Iowa Experience

The issue by issue final offer arbitration model utilized under Iowa's Public Employment Relations Act provides a reportedly much better bargaining experience than Minnesota's conventional arbitration approach. In the opinion of staff of the Iowa State Education Association, the Iowa system has been very successful.³ Fewer than 5% of the contracts have been submitted to arbitration. And more importantly, the final offer model has a "warming" effect on the bargaining behavior of the parties, causing them to move their positions closer to each other, thereby creating a healthier environment in which to reach eventual agreement.

The 1979 contract data support the ISEA opinion. Of approximately 370 school districts:

- 300 utilized mediation
- 53 utilized fact-finding
- 14 utilized final offer arbitration

The fact that thirty-nine of fifty-three districts settled by adopting the fact-finder's recommendations is indicative of the deference that the parties must practically give to those recommendations because the equal status they will have with the positions of the parties before an arbitrator. In the majority of fourteen arbitrations, the arbitrator selected the position of the fact-finder on a disputed item.

The Wisconsin Experience

Wisconsin's final offer by total package model is farther along the spectrum of alternative arbitration systems than either the Minnesota or Iowa models. Of the three, it imposes the greater level of risk on the parties, and consequently it has the greater degree of influence on the bargaining positions and behavior of the parties during the negotiations process.

In addition to the risk inherent in the final offer, total package approach is the influence of the mediation-arbitration activity on the parties. Following conventional mediation, either party may move the negotiations into the mediation-arbitration phase in which the arbitrator empowered with the decision of choice between total packages, may mediate the differences between the parties, which can result in a consent agreement modifying the final positions of the parties.

The Wisconsin Education Association Council (WEAC) reports that mediation-arbitration has worked well from the organization's perspective.⁴ Since the law was amended in 1978, the WEAC has had 66 teacher contracts submitted to arbitration. Of that number, twenty-one awarded the WEAC

of increased school board usage is expected to increase. Of the eleven disputes certified to arbitration, only two have been heard and decided as of 10/15/79.

³ The information on the Iowa teacher-school board experiences under final offer, issue by issue arbitration was gathered by the author in an interview with Mr. Roy Shaw, director of negotiations for the Iowa State Education Association. The statements reflect the opinions of the ISEA negotiations staff.

⁴ The information on the opinions of the Wisconsin Education Association Council is taken from the author's interview with Mr. Robert Taylor of the WEAC negotiations staff.

position, sixteen awarded the school board position, and twenty-four resulted in a consent agreement through the mediation efforts of the arbitrator. Assuming that the consent agreement is, in part, a credit or advantage to each party because it precludes the possibility of the other party's final package from being adopted, the mediation-arbitration experience is equally favorable to teachers and school boards. The WEAC was successful in avoiding the employer's position forty-five of sixty-one times (twenty-one position awards plus twenty-four consent agreements) and the school districts succeeded in avoiding the WEAC position forty of sixty-one times.

This pattern of an essentially even split between employer and employee positions is borne out by the general statistics on all public employee bargaining under the statute since 1978 through June 30, 1979.⁷

	Union	Employer
Won	30	25
Lost	25	29
Consent Agreement	19	19
	74	74

While it is notable that the results of mediation-arbitration under Wisconsin's final offer by total package model have, in practical effect, been evenly split between union and employer positions, it is important to bear in mind that arbitration is the exception to the normal bargaining condition, and the great majority of agreements are reached without use of impasse resolution procedures. The evenness of the arbitration decisions may well be a reflection of the balance of bargaining power accruing to the employer and union from the final offer arbitration model. Its influence is felt at the commencement of negotiations and continually builds pressure upon the parties to move toward each other during negotiations so that the risks of losing a total package of positions can be avoided.

Conclusions

In the opinion of Minnesota's public employee unions, and particularly the Minnesota Education Association, conventional arbitration of impasse disputes fails to adequately motivate good faith bargaining and, when utilized to resolve impasse, fails to provide a consistently fair result.

There are several observations which have led the unions to these conclusions. First, and most obvious, is the element of potential arbitrator ineptness. Simply put, some arbitrators can perform better than others. Those who pay careful attention, who seek clarification on complex issues, who comprehend ramifications and consequences and who separate rhetoric from fact are more apt to render a decision which responds to the issues in a reasoned and fair manner than those who are inattentive, easily confused, and lacking in necessary courage. Though the concern for arbitrator quality applies to all arbitration models, the conventional arbitration model, which allows the arbitrator

⁷ *Interim Report to the Legislative Council Special Committee, prepared by the Wisconsin Center for Public Policy, October 12, 1979.*

the highest degree of freedom in decision-making, depends most heavily on the arbitrator's ability.

Secondly, there is the matter of political pressure generated by the parties and the arbitrator's personal view of the public good. Few arbitrators in Minnesota depend upon arbitration service for a living, but many view the work as a substantial supplemental income which they understandably wish to protect. Consequently, 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. In addition, arbitrators seem to view the public employer as a universal entity rather than as an individual county, municipality, or school district. Consequently, the arbitrator is inclined, perhaps subconsciously, to grant deference to the employer.

Of course such conclusions may be spawned from suspicions which cannot be borne out by observable or measurable data. Nonetheless, they do help to explain, at least to the unions, why the conventional arbitration process fails to provide unions with an adequate forum for equity.

But a more reliable explanation can be found by analyzing the dilemma inherent in the conventional arbitration process. Arbitrator ability, integrity, and objectivity must necessarily be assumed when analyzing and comparing alternative models, and the value of the models must be measured by how adequately the arbitration system flows from, and relates to, the negotiations process. Conventional arbitration has only minimal relevancy to the bargaining which has preceded. It does not influence bargaining behavior to any significant degree, compelling the parties to move the positions closer together toward agreement; nor, when used, does it pick up where the parties left off.

When an arbitrator operating under the conventional model convenes the hearing, he/she will be confronted by positions vastly different from those held by the parties when they were closest to agreement. Instead, the parties will revert to their respective original positions, or something close to them, and the arbitrator will be deprived of the wisdom of compromise the parties had bilaterally developed in their negotiations.

The advantages of months of bargaining is voided, and the arbitrator is placed in a vacuum and charged with determining equity from positions the parties have themselves not seriously held while they were attempting to reach agreement. The arbitrator will be confronted with data, evidence, and rationale which the parties have not necessarily shared between themselves. In a matter of one or two hearing days, an arbitrator is expected to mentally ingest a mass of facts generated over the full bargaining period and come to some rational conclusion that determines equity on issues of significant importance to the parties. In such circumstances, the arbitrator is as much a victim as the parties of the flaws inherent in the process.

Final offer arbitration, item by item or total package, while not without some disadvantages, is a better system for serving as a substitute for the strike/lockout condition prevalent in private sector collective bargaining. Its influence on the parties during bargaining is directly measurable, and the evidence

January 1980

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indicates that the parties seek bilateral agreement in order to avoid the risk of final offer arbitration.

In an assessment of the Wisconsin model, Craig Olson concluded in an IRRA position paper that final offer arbitration does not "chill" bargaining as does conventional arbitration:

If there is a significant chilling effect, we would expect that a large number of issues have been decided by arbitrators during the five year period. Through the 1976 negotiations, 32 percent of the final offer awards involve only one issue, and 76 percent of the total number of arbitrations involved three or fewer issues. Evidence supporting the absence of the chilling effect was also found in reading each of the awards. In over half a dozen instances, the case was resolved at the arbitration hearing.⁶

In the event arbitration becomes necessary, the parties extend to the arbitrator their very best thinking, which is embodied in their respective final offers, and from that point the arbitrator reviews relevant evidence and argument and determines the most equitable choice. In all likelihood the positions of the parties are a direct consequence of their full, good faith bargaining efforts, and therefore the selected offer in some degrees contains compromise which responds to the other party's position.

Many public employee unions maintain the belief that the best bargaining can only be carried out under the right to strike/lockout tenet of the private sector. A major debate on that issue will continue for some time; but until public policy is modified, the only rational substitute for the right of strike/lockout is arbitration on a final offer basis.

⁶ Craig A. Olson, *Does 'final offer' allow the Bargaining that Conventional Arbitration Chills?* MONTHLY LABOR REVIEW, May, 1979, page 38. Mr. Olson reviews the Wisconsin statute covering other than municipal employees such as teachers. The final offer arbitration model was first used with these units before it was later extended to municipal employees in 1978.



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18 Feb

Dave

Here is some info and stuff re SR 126 (arbitration)

Let me know if you want more
"Alaska" data.

Thanks for your interest —

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SB 126

SUBJECT: Arbitration as the final step in the impasse procedure in teacher negotiations.

FROM: NEA-Alaska

MEMORANDUM OF SUPPORT

This memorandum is presented by NEA-Alaska as a general overview of some of the basic reasons relative to the need to change and improve the teacher negotiations law: AS 14.20.550 - 14.20.610. It is intended to provide the reader with some of the basic data, rationale, and arguments for said change. NEA-Alaska welcomes the opportunity to provide additional supportive information, especially as it may pertain to the various problems attendant to teacher negotiations throughout the State.

1. General Reasons to Change the Statute:

The bargaining process has lengthened significantly in recent years. This is due primarily to the fact that the bargaining law as it is presently written does not provide for finality of the process and is ambiguous at best relative to impasse procedures. The result has been significantly increased frustration on both sides of the bargaining table which creates high potential for conflict and confrontation. There is no incentive for early resolution of negotiations. Where there is legislation providing public employees and teachers with the right to negotiate their terms and conditions of employment, it is essential that this legislation define a process which enhances the potential for agreement between the parties.

2. Positive Effect of the Proposed Changes:

In any negotiations process the best agreement is the one which is reached between the parties. The presence of a mediation/arbitration provision within the impasse procedures increases the potential for a voluntary bilateral agreement between the parties. It provides an orderly process with appropriate time frames which lead to clear finality; an Agreement. When final and binding arbitration is the last step in impasse procedures,

both parties are forced to constantly re-examine the reasonableness of their positions on the issues. With the mediator also having statutory authority to function as an arbitrator, thus making final determinations if necessary, the mediator can cause the parties to constantly examine their positions on the issues and more effectively make recommendations which would lead to their resolution short of imposing an arbitration award. Use of the "last best offer" technique on an item by item basis is of significant value to the mediation/arbitration process in that it forces the parties to constantly examine the reasonableness and validity of their positions against the possibility that they may have to stand the tests and scrutiny of objective third party analysis. Additionally, last best offer on an item by item basis clearly restricts the latitude of the mediator/arbitrator and insures that any award will be within the parameters set by the parties themselves.

3. Arbitration in the Teacher Bargaining Law Benefits the Public:

The mere presence of arbitration as the final step in the impasse procedures in the teacher bargaining law significantly diminishes, if not eliminating entirely, the conflict potential which exists in the negotiations process. It is a fair, equitable, and objective mechanism for dispute resolution and clearly increases the potential for a bilateral agreement reached short of implementation of the arbitration process. By so doing, the continuity of the instructional program is assured. Negotiations settlements reached by the end of a given school year also favorably insure the stability of the teaching staff and provide the employer more reliable information to use in the recruitment process. The statutory changes which have been proposed provide the parties with access to the mediation/arbitration process at any time on a voluntary basis while assuring statutory access to either party after March 1. This insures a final agreement by the end of the school year. It further protects the public interest by restricting the arbitrator to an award which does not require a tax rate increase or additional funding from any source. Finally, the changes provide an equity which has been missing. Since 1972, certain categories of public employees in essential services in Alaska, negotiating under the Public Employment Relations Act, have had access to final and binding arbitration. If we are to suggest that teaching and education is so important that disruption of the program is to be minimized, arbitration as the final step in the bargaining process is essential.

4. Criticisms from Opponents:

Some suggest that arbitration may usurp the local control of a school board. This attitude represents a conflict in thinking in that school boards have a statutory obligation to also negotiate with certificated employees on matters pertaining to their employment and fulfillment of their professional duties and enter into Agreements regarding the same. Further, it suggests a possible admission by some that the positions taken on some of the bargaining issues are not reasonable or defensible. Third party intervention as a dispute settlement procedure has long been established as effective in Alaska, around the country and in the private sector for many years. The statutory procedures, which provide for binding arbitration, have been in place and working for a number of years and have been accepted as a means of dispute resolution. The reality of this process shows us that the parties reach agreement on their differences in the vast majority of cases

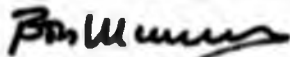
without the need for arbitration. Another argument put forward is that of resisting 'outside' intervention in the dispute. However, as was previously stated, "outsiders" acting as arbitrators are the very people who are effective in the grievance dispute settlement process. Further, school boards are increasingly hiring "outsiders" to represent them in negotiations and to act on their behalf in the process. In agreeing that the current teacher bargaining law is in need of improvement, opponents must recognize that the bargaining process is compatible with the statutory responsibility to make decisions attendant to educational policies. Collective negotiations is a process by which the parties may reach agreement on matters which are of mutual concern.

5. Other Supportive Data and Information:

Two major studies recently conducted within the State of Alaska have concluded that Arbitration is a viable means for the definition of finality to the teacher negotiations process. The Governor's Blue Ribbon Commission on the Teacher Bargaining Law and the Task Force on Labor Relations established by the Anchorage School Board of Education essentially came to the same conclusions in support of arbitration. Recent surveys by various Legislators found significant public support for arbitration, one of them at a level in excess of 75%. States around the nation are moving toward arbitration as the effective, fair, and equitable means of resolution of negotiations disputes as demonstrated by the data which is attached. In speaking before the Blue Ribbon Commission the representative of the Federal Mediation and Conciliation Service advocated consideration of the mediation/arbitration option. Data from around the nation shows an increasing frequency of arbitration being provided for in bargaining laws. This same data reveals no noticeable change in the substance in arbitrated settlements and, where the law has been in place for a number of years, fewer situations where the parties have the need to avail themselves of the arbitration process. In other words, they are successfully reaching bilateral agreements short of intervention by the arbitrator. Further, it should be noted that the use of arbitration is increasing in private sector bargaining and in the judicial arena in civil disputes.

With an increasing number of teacher bargaining disputes going into the impasse process and not coming to resolution until after the school year commences, it is essential that we provide for final and binding arbitration now.

Respectfully submitted;



Robert Manners
Executive Secretary

INTEREST ARBITRATION—VOLUNTARY AND MANDATORY—IN PUBLIC SECTOR LABOR RELATIONS⁵

STATE	EMPLOYEES COVERED	INTEREST ARBITRATION PROCEDURES	PANEL SELECTION	CRITERIA	TYPE OF AWARD
ALASKA	Police, fire, jail, prison and other correctional employees and hospital employees	These employees may not strike; must resort to arbitration Required after injunction against limited strikes; optional in other cases.			
CALIFORNIA	Los Angeles County employees San Francisco City and County employees	Permitted only by written request of the parties. Parties may submit to arbitration. Arbitration required for vital public services (health, hospitals, courts, detention personnel, sanitation).	Costs shared equally by parties. Parties to select arbitrator with at least 100 cases in previous five years; if unable to agree, State Conciliation Service supplies 10 names; costs shared equally. Decision within 20 days after proceedings commence.		Subject to limitations set forth in written request. Only issues presented.
CONNECTICUT	State employees Municipal employees <u>Teachers</u>	Permitted If no agreement 90 days after expiration of current agreement, State Board of Mediation & Arbitration imposes arbitration by registered or certified mail to parties. Hearing to be concluded in 20 days. Four days following mediation session or on 90th day prior to budget submission date. Secretary of State Education Department notified of situation. Hearing in 10 days of appointment of panel; award in 20 days. Award advisory only.	Each party selects 1 member, they select neutral chairman. If parties fail to select member or the two members fail to select a chairman, State Board of Mediation & Arbitration appoints members needed to complete panel. Third member must not be the factfinder. Each party pays own members and shares cost of chairman. Parties select single arbitrator or own member of panel. They select third member. Secretary shall designate from permanent arbitration panel individual members or chairman if parties fail to do so. Each pays own member, share cost of chairman.	Prevailing labor market wages, salaries, fringe benefits and working conditions. Ability to pay. Interest and welfare of the employees.	Final offer arbitration on issue-by-issue basis <i>Bidding</i>
DELAWARE	All public employees except education	Any matter except wages and salaries may be submitted to arbitration.			
DISTRICT OF COLUMBIA	All public employees Police, firefighters	Board of Labor Relations has authority to take whatever action it finds appropriate including arbitration if factfinding fails. On request of either party, Director of Federal Mediation and Conciliation Service, who also selects mediator, shall appoint impartial Board of Arbitration. Award to be issued within 20 days after appointment of Board.			
HAWAII	All public employees	Parties may agree to arbitration 30 days after impasse begins. If dispute unresolved 50 days after impasse, panel findings are binding. If parties do not mutually agree to arbitration, panel has to take whatever lawful action it deems necessary to end dispute.	Each party selects one member; they select neutral chairman. Hawaii PERB appoints individual members or chairman if parties fail to do so. Costs shared equally.		
INDIANA	Public employees except teachers, police, firefighters, professional engineers, university faculty, congressional employees and municipal or county health care institution employees.	Parties may agree to arbitration if no agreement after factfinding. Arbitrators may not mediate.	Parties select 3 member panel. If unable to agree, Indiana EERB submits 11 names. Compensation fixed by EERB, subject to state budget agency.	Past agreements Comparison with other employees doing similar work Comparison with private sector Effect of technological change Public interest Ability to pay Other factors normally considered	Final offer of either party

STATE	EMPLOYEES COVERED	INTEREST ARBITRATION PROCEDURES	PANEL SELECTION	CRITERIA	TYPE OF AWARD
4) IOWA	All public employees	Either party may request PERB for arbitration after its initial report is made public. Award within 15 days of first meeting.	May be tripartite or single arbitrator. Each party selects own member; they select chairman; Iowa PERB submits list if they fail to agree. Costs shared equally by parties. Arbitrator may not mediate.	Past collective bargaining agreements. Comparison to other public employees doing comparable work, with consideration to factors peculiar to the area or job. Interest & welfare of public. Employer's ability to pay. Effect of award on service. Employer's power to levy taxes or appropriate funds to finance award.	Arbitrator may select final offer of either party on issue-by-issue basis or the factfinder's recommendation on each item.
MAINE	State employees	Either party may request if impasse not resolved in 45 days. Award 30 days from end of hearing.	May be tripartite or single arbitrator. Each party selects one member, they select neutral chairman. Maine Labor Relations Board submits list. Parties pay own member. Share cost of chairman.	Interest & welfare of public. Ability to pay. Comparison with public and private employees performing similar work. Overall compensation. Cost of living. Need for qualified employees. Conditions of employment for similar positions outside of state government. Relationships between groups of employees. Need for fair and reasonable conditions in relation to job qualifications and responsibilities.	Award advisory for economic matters; binding for non-economic matters.
	University of Maine employees	At any time after mediation and factfinding, either party may request arbitration. Award in 60 days after selection of neutral arbitrator.	Same as state employees.	Similar to state employees.	Same as state employees.
	Municipal	Either party may request if impasse not resolved in 45 days. Award in 30 days after selection of neutral arbitrator.	Each party selects own member. They select neutral chairman. American Arbitration Association supplies list if no agreement on third member. Parties pay own member; share cost of neutral.		Same as state employees.
5) MARYLAND	Prince George's County	By agreement of parties. Costs shared equally. Arbitrator may mediate.			
6) MASSACHUSETTS	All public employees	Parties may voluntarily resort to arbitration.			
	Police and Firefighters	Parties may petition for arbitration if no agreement reached 30 days after factfinders report, or if they mutually waive factfinding. Hearing 10 days after appointment of chairman. Written award within 40 days after hearing starts. Effective 1/1/78 until 6/30/79, 13-member Joint Labor-Management Committee oversees collective bargaining and arbitration. Three each nominated by police/fire unions, 6 by local government advisory committee; chairman nominated by L.M. Committee. Committee may direct parties to negotiate further on issues not specified for arbitration.	May be tripartite or single arbitrator. If panel, each party selects own member; they select chairman. If parties fail to select member or the chairman, the Board of Conciliation and Arbitration appoints members needed to complete panel. Committee provides panel of arbitrators from which parties select, if parties can not agree within time specified by Committee. Committee appoints.	Ability to pay. Public interest and welfare. Hazards of employment and skills involved. Comparison with other employees in public and private sectors doing similar work. Factfinder's recommendations, if any. Cost of living. Overall compensation. Changes in circumstances during arbitration. Other factors normally considered. Stipulation of parties. May not consider inherent managerial policy such as appointment, promotion, assignment and transfer of employees, and minimum manning of shift coverage.	Arbitrator may select either party's final offer or factfinder's recommendation, if report issued. Committee specifies issues. Also determines form of arbitration—issue-by-issue, last best offer, or such other form the Committee deems appropriate.

MICHIGAN

Police and firefighters and emergency medical service personnel

Either party may petition MERC if dispute not resolved within 30 days of submission to mediation and factfinding or within additional periods to which parties agree. Award 30 days after conclusion of hearing, or such additional time agreed to by parties. Hearings must be concluded within 30 days unless parties otherwise agree.

Each party selects one member; they select neutral chairman. Commission submits list. Parties share costs equally. Permanent panel maintained by Commission.

Lawful authority of employer. Stipulation of parties. Interest & welfare of public. Ability to pay. Comparison with public and private sector workers doing similar work. Cost of living. Overall compensation. Changes in circumstances during arbitration. Other factors normally considered.

Each party submits final offer on economic issues. Panel selects a final offer by issue.

MINNESOTA

All public employees except charitable hospital employees

Either party may request arbitration. Award 10 days after conclusion of hearing, or by last date employer is required to submit its tax levy or budget or certify its taxes, or by Nov 1, whichever date is earlier.

May be tripartite or single arbitrator. PERB submits list of 7 names. Parties share costs.

Conventional arbitration used

MONTANA NEBRASKA

All public employees

All public employees, including public utilities.

Parties may voluntarily use arbitration.

Court of Industrial Relations holds hearing to determine wages, hours and conditions of employment.

Parties select impartial factfinder. If unable to agree, American Arbitration Association submits list. Parties share costs equally.

Comparison with employees having similar skills and working conditions. Overall compensation.

Arbitrator selects final offer of one of parties.

NEVADA

Local government employees, teachers and state nurses.

Firefighters

Parties may agree in advance to be bound by all or part of factfinding report. Governor has emergency power to order report final and binding at request of either party prior to May 1, based on public interest, fiscal impact and public safety.

If parties do not agree to binding factfinding 10 days after report, dispute is submitted to arbitrator. Hearing held within 10 days; parties may have additional 30 days for negotiations prior to submitting final offer. Effective 7/1/77 exp. 7/1/81.

If parties unable to agree on arbitrator, American Arbitration Association submits list. Costs shared equally.

Ability to pay must be established first; then normal standards used in interest disputes applied.

NEW HAMPSHIRE NEW JERSEY

All public employees Police and firefighters

Voluntary arbitration on non-cost items.

If parties fail to agree on terminal procedure for impasse 50 days prior to budget submission date, arbitration is imposed. Arbitration limited to required scope of collective negotiations except parties may agree to submit one or more permissive subjects. Prior to start of proceeding, parties submit final offer in two separate parts: single package on all economic issues; and individual issues not included in economic package set forth separately by issue.

May be tripartite or single arbitrator selected from special panel of arbitrators maintained by Commission. Parties share costs.

Public interest & welfare. Comparison with other public employees in similar jurisdictions and with comparable private employment and public and private employment in general. Overall compensation. Stipulations of parties. Lawful authority of employer. Financial impact on residents and taxpayers. Cost of living. Continuity and stability of employment.

Last offer of either party on economic issues as single package. Last offer of either party on non-economic items on issue-by-issue basis.

NEW MEXICO

State employees

Prohibited except by direction of State Personnel Board. Costs shared equally by parties.

Parties select one member; if unable to select neutral chairman, PERB submits list. Parties pay own member and share cost of neutral member.

Comparison with other public and private sector employees doing similar work in comparable communities. Public interest & welfare. Ability to pay. Comparison of skills, hazards and qualifications to other trades or professions. Other factors normally considered. Comparison with other public and private sector employees. Overall compensation. Cost of living. Other factors normally considered. Public interest and welfare.

Panel uses conventional arbitration, majority vote.

NEW YORK

All public employees except New York City

Police and firefighters (Provisions expire July 1, 1979)

New York City employees

Voluntary arbitration may be used by anyone.

If mediator does not settle dispute within 15 days after appointment, either party may seek arbitration.

Board of Collective Bargaining may appoint impasse panel to do factfinding. Either party may reject any part of report and appeal to BCB for review. BCB holds hearings and may affirm or modify report. Board's decision is binding on parties. Board may not alter basic salary and increment structure. Parties may agree to use arbitration rather than Board.

STATE	EMPLOYEES COVERED	PROCEDURES	PANEL SELECTION	CRITERIA	TYPE OF AWARD
OKLAHOMA	Police, firefighters	Parties may request arbitration within 30 days after impasse begins. Hearings must be concluded within 20 days. Award within 10 days. Employer may, but not required, to adopt panel's findings in which case they are binding.	Each party selects one member, these two select neutral chairman. Federal Mediation & Conciliation Service supplies list of neutrals if necessary. Parties pay own representative and share costs of chairman.	Comparison with other employees doing similar work in labor market. Interest and welfare of public. Ability to pay. Comparison of hazards, skills and qualifications to other trades.	
12. OREGON	All public employees except those listed below. Police, firefighters and institutional guards or when a strike of other employees is enjoined.	<u>Voluntary.</u> Parties may request arbitration if mediation and factfinding fail or PERB may initiate if deemed appropriate and in public interest. Ordered when strike enjoined by court. Award due within 30 days of end of hearings.	Parties may choose arbitrator or PERB will supply list of names from which parties may select one arbitrator or panel of 3. Costs shared equally by parties.	Lawful authority of employer. Stipulations of parties. Public interest & welfare. Ability to pay. Comparison with employees doing similar work, employees in general, public and private employment in comparable communities. Cost of living. Overall compensation. Change in circumstances during bargaining. Factors normally considered.	Arbitrator selects final offer of one party.
13. PENNSYLVANIA	All public employees except police and fire Police and firefighters	Parties may voluntarily submit to arbitration except for employees denied right to strike (guards at prisons and mental hospitals and court employees) for whom it is mandated. Either party may request arbitration if impasse declared if no agreement is reached after 30 days of bargaining or if legislative body has not approved agreement in 1 month after settlement (local government) or 6 months (state). Award within 30 days of appointment of panel chairman.	Each party selects one member, these two select neutral chairman. Labor Relations Board may submit lists. Parties pay own member, PLRB pays chairman. Each party selects one member, these two select neutral chairman. American Arbitration Association may submit lists. Employee organization pays own member, other costs including stenographic and other costs of panel, paid by political subdivision or by Commonwealth.		Any provisions of award requiring affirmative action advisory only.
14. RHODE ISLAND	State employees Police and firefighters Municipal employees Teachers	Unresolved issues submitted to arbitrator selected from American Arbitration Association list. Hearings concluded in 20 days, report 10 days later. If no agreement within 30 days of start of bargaining unresolved issues go to arbitration. Hearings must be concluded within 20 days, award in 10 days. If mediation fails, either party may request arbitration. Hearings must be concluded in 20 days, award within 10 days. <u>If mediation fails, either party may request arbitration. Hearings must be concluded in 20 days, award 10 days later.</u>	Parties share costs equally except transcript which is paid by state. Each party selects member, these two select neutral chairman. If unable to agree on chairman, chief justice of supreme court selects. Costs shared equally by parties. Each party selects member, these two select neutral chairman. If unable to agree, third member selected under American Arbitration Association rules, by the state director of labor or an agreed upon method. Each party selects member, these two select chairman; if no selection, chairman selected by AAA rules, by the state board of education or other agreed upon method.	Comparison with public and private sector employees doing similar work in region. Public interest & welfare. Peculiarities of employment such as hazards, qualifications, job training and skills. Comparison with building trades, other employees in similar work in local area, and fire and police departments in cities of comparable size. Public interest & welfare. Peculiar skills or hazards of job.	Award advisory as to wages; binding on other issues. Award binding on all non-monetary items.

SOUTH DAKOTA	<p>Certified administrators in City of Providence public schools</p> <p>Police and firefighters</p>	<p>If mediation fails in 30 days, must go to arbitration. Hearings must be concluded in 20 days; award within 10 days.</p> <p>Employees or union may petition city governing body or state commissioner of labor and management relations for fair hearing board of arbitration. Hearing concluded in 20 days from appointment of board; award in 5 days.</p>	<p>Parties name arbitrator or select from list supplied by American Arbitration Association.</p> <p>Each party selects member. They select third member. If no agreement, state labor commissioner appoints chairman. Each party pays own member; shares cost of chairman.</p>	<p>Hazards of employment. Physical, educational and mental qualifications. Job training. Skills.</p>	<p>Binding on all matters except salary and wages. Advisory only on those issues.</p>
TEXAS	<p>Police and firefighters (only where referendum held and law adopted by majority vote)</p>	<p>Arbitration voluntary within 5 days after expiration of 60-day pre-impasse period. Hearings must be concluded in 20 days; award within 10 days. Party requiring transcript must pay for it.</p>	<p>Each party names member; these two select chairman; American Arbitration Association may submit lists. Chairman may not be mediator unless parties agree. Each pays for own member and shares other costs.</p>	<p>Criteria same as for factfinding: Lawful authority of employer. Stipulations of parties. Public interest and welfare. Ability to pay. Comparison with public and private employees doing similar work in comparable communities. Overall compensation.</p>	<p>Authority of employer. Stipulations of parties. Comparison with uniformed personnel in comparable cities on the west coast. Cost of living change during pendency of proceedings. Factors normally considered. Factfinder's report.</p>
UTAH	<p>Firefighters</p>	<p>Unresolved issues submitted to arbitration if no agreement in 30 days after negotiations.</p>	<p>Each party names member; these two select third member from list supplied by Federal Mediation and Conciliation Service. Parties pay one-half of expenses.</p>	<p>Employer's lawful authority. Parties stipulations. Public interest and welfare. Ability to pay. Comparison with employees doing similar work and with other employees generally in public and private sectors in same or comparable community. Cost of living. Overall compensation. Changes in circumstances during arbitration proceeding. Other factors normally considered.</p>	<p>Total package final offer.</p>
VERMONT	<p>Municipal employees</p>	<p>Parties may voluntarily resort to arbitration.</p>	<p>Each party submits 3 names to PERC which selects 1 from each list. These two may ask Commission to select 3rd member with parties paying own member and Commission paying other costs, or they may select chairman themselves with costs of chairman and other costs shared equally. If they cannot agree on chairman within 2 days, either party may apply to superior court for appointment.</p>	<p>Lawful authority of employer. Stipulations of parties. Public interest and welfare. Ability to pay. Comparison with employees in public and private sectors doing similar work. Cost of living. Overall compensation. Changes in circumstances during arbitration. Factors normally considered.</p>	<p>Two forms of arbitration: 1) arbitrator to determine all issues; 2) final offer. Parties to agree prior to hearing which form is to be used.</p>
WASHINGTON	<p>City and county firefighters, police in city with 15,000 population or more, police in King County.</p>	<p>If no agreement within 45 days after mediation and factfinding, arbitration panel shall be created. Hearings must be concluded within 20 days; award within 15.</p>	<p>Either party, or jointly, may petition WERC to appoint mediator-arbitrator.</p>	<p>Parties select own member; these two select central chairman. If they cannot agree, superior court appoints chairman.</p>	
15. WISCONSIN	<p>State employees Municipal employees and teachers</p>	<p>Voluntary. Binding arbitration statute became effective 1/1/78 permitting employees in cities not affecting public health. Late-ly to cities where both parties decline to go to arbitration, or withdraw final offers on contract package. Either party with consent of other, during mediation, may modify final offer in writing. Final report on effects of law to Legislature by 2/1/81.</p>	<p>WERC provides list of 5 names from which parties select an arbitrator. Costs shared equally by parties.</p>		
	<p>Police and firefighters</p>	<p>May be requested by either party.</p>			
WYOMING	<p>Firefighters</p>	<p>Required if no agreement reached within 30 days. Arbitration conducted under state's Uniform Arbitration Act.</p>			

(b) If a teacher who has not acquired tenure rights is not to be retained for the following school year the employer shall notify the teacher of the nonretention by writing delivered on or before the last day of the school term or by registered mail postmarked on or before the last day of the school term. (Sec. 1 ch 92 SLA 1960; am Sec. 15 ch 98 SLA 1966)

Sec. 14.20.145. Automatic reemployment. If notification of nonretention is not given according to sec. 140 of this chapter a teacher is entitled to be reemployed in the same district for the following school year on the contract terms the teacher and the employer may agree upon, or if no terms are agreed upon, the provisions of the previous contract are continued for the following school year, subject to sec. 158 of this chapter. The right to be reemployed according to this section expires if the teacher does not accept reemployment within 30 days after the date on which the teacher receives his contract for reemployment. (Sec. 16 ch 98 SLA 1966)

Sec. 14.20.147. Attendance area transfer, absorption. When an attendance area is transferred from a currently operating district to, or absorbed into, a new or existing school district, the teachers for the attendance area also shall be transferred unless otherwise mutually agreed by the teacher or teachers and the chief school administrator of the new district. Accumulated or earned benefits, including but not limited to, seniority, salary level, tenure, leave, and retirement, accompany the teacher who is transferred.

(b) When a school operated by a federal agency is transferred to or absorbed into a new or existing school district the teachers shall also be transferred if mutually agreed by the teacher or teachers and the school board of the new or existing district. A teacher transferred from a federal agency school, which does not have an official salary schedule or teacher tenure in the same manner as a public school district in the state, shall be placed on a position on the salary schedule of the absorbing district; the salary may not be less than the teacher would have received in the federal agency school. If the teacher taught two or more years in the federal agency school and, at the time of transfer, had a valid Alaska teaching certificate, that teacher shall be placed on tenure in the absorbing district.

(c) On the first day of service in the absorbing school district, a teacher transferred from a federal agency school shall be allowed the actual number of days of accumulated sick leave that the teacher has earned while teaching in Alaska. Consistent with the established district policy the absorbing district may allow credit for any other type of leave. Credit for retirement shall be allowed in accordance with AS 14.25.060.

(Sec. 1 ch 53 SLA 1972; am Secs. 1, 2 ch 150 SLA 1975)

Sec. 14.20.148. Intradistrict teacher reassignments. When a teacher is involuntarily transferred or reassigned to a position for which he is qualified, within the district, his moving expenses shall be paid unless the one-way driving distance is 20 miles or less from the teacher's present place of residence, or unless otherwise mutually agreed by the teacher and chief school administrator of the district. (Sec. 1 ch 136 SLA 1972)

Sec. 14.20.150. Acquisition of tenure rights. (a) A teacher acquires tenure rights in a district when he

- (1) possesses a standard teaching certificate;
- (2) has been employed as a teacher in the same district continuously for two full school years and is reemployed for the school year immediately following the two full school years.

(b) The tenure rights acquired under (a) of this section become effective on the first day the teacher performs teaching services in the district during the school year immediately following the two full school years. (Sec. 1 ch 92 SLA 1960; am Sec. 17 ch 98 SLA 1966)

Sec. 14.20.155. Effect of tenure rights. (a) A teacher who has acquired tenure rights has the right to employment within the district during continuous service.

(b) A teacher who has acquired tenure rights may agree to a new contract at any time. However, if the teacher fails to agree to a new contract, the provisions of the previous contract are continued subject to sec. 158 of this chapter. (Sec. 18 ch 98 SLA 1966)

Sec. 14.20.158. Continued contract provisions. Continuation of the provisions of a teacher's contract according to secs. 145 or 155 of this chapter does not

(1) affect the alteration of the teacher's salary in accordance with the salary schedule prescribed by state law, or in accordance with a local salary schedule applicable to all teachers in the district and adopted by bylaws;

(2) limit the right of the employer to assign the teacher to any teaching, administrative, or counseling position for which the teacher is qualified; or

(3) limit the right of the employer to assign the teacher, as is reasonably necessary, to any school in the district. (Sec. 19 ch 98 SLA 1966)

Sec. 14.20.160. Loss of tenure rights. Tenure rights are lost when the teacher's employment in the district is interrupted or terminated, or when the teacher reaches the age of 65. (Sec. 1 ch 92 SLA 1960; am Sec. 1 ch 104 SLA 1965; am Sec. 20 ch 98 SLA 1966)

Sec. 14.20.165. Restoration of tenure rights. A teacher who held tenure rights and who was retired due to disability under AS 14.25.130, but whose disability (1) has been removed, and the removal of that disability is certified by a competent physician following a physical or mental examination, or (2) has been compensated for by rehabilitation or other appropriate restorative education or training, and that rehabilitation or restoration to health has been certified by the division of vocational rehabilitation of the Department of Education, shall be restored to full tenure rights in the district from which he was retired, at such time as an opening for which he is qualified becomes available. (Sec. 1 ch 71 SLA 1975)

Sec. 14.20.170. Dismissal. (a) A teacher, including a teacher who has acquired tenure rights, may be dismissed at any time only for the following causes:

(1) incompetency, which is defined as the inability or the unintentional or intentional failure to perform the teacher's customary teaching duties in a satisfactory manner.

(2) immorality, which is defined as the commission of an act which, under the laws of the state, constitutes a crime involving moral turpitude; or

(3) substantial noncompliance with the school laws of the state, the regulations or bylaws of the department, the bylaws of the district, or the written rules of the superintendent.

(b) A teacher may be suspended temporarily with regular compensation during a period of investigation to determine whether or not cause exists for the issuance of a notification of dismissal according to sec. 180 of this chapter. (Sec. 2 ch 92 SLA 1960; am Sec. 21 ch 98 SLA 1966; am Sec. 1, 2 ch 104 SLA 1966)

Sec. 14.20.175. Nonretention. (a) A teacher who has not acquired tenure rights is subject to nonretention for the school year following the expiration of his contract for any cause which the employer determines to be adequate. However, at his request, the teacher is entitled to a written statement of the cause for his nonretention. The boards of city and borough school districts and regional educational attendance areas shall provide by regulation or bylaw a procedure under which a nonretained teacher may, at his request, be heard informally by the board.

(b) A teacher who has acquired tenure rights is subject to nonretention for the following school year only for the following causes:

(1) incompetency, which is defined as the inability or the unintentional or intentional failure to perform the teacher's customary teaching duties in a satisfactory manner.

(2) immorality, which is defined as the commission of an act which, under the laws of the state, constitutes a crime involving moral turpitude;

(3) substantial noncompliance with the school laws of the state, the regulations or bylaws of the department, the bylaws of the district, or the written rules of the superintendent; or

(4) a necessary reduction of staff occasioned by a decrease in school attendance.

(Sec. 22 ch 98 SLA 1966; am Sec. 1 ch 11 SLA 1968; am Sec. 13 ch 46 SLA 1970; am Sec. 15 ch 124 SLA 1975)



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SUBJECT: Arbitration as the final step in the impasse procedure in teacher negotiations.

FROM: NEA-Alaska

MEMORANDUM OF SUPPORT

This memorandum is presented by NEA-Alaska as a general overview of some of the basic reasons relative to the need to change and improve the teacher negotiations law: AS 14.20.550 - 14.20.610. It is intended to provide the reader with some of the basic data, rationale, and arguments for said change. NEA-Alaska welcomes the opportunity to provide additional supportive information, especially as it may pertain to the various problems attendant to teacher negotiations throughout the State.

1. General Reasons to Change the Statute:

The bargaining process has lengthened significantly in recent years. This is due primarily to the fact that the bargaining law as it is presently written does not provide for finality of the process and is ambiguous at best relative to impasse procedures. The result has been significantly increased frustration on both sides of the bargaining table which creates high potential for conflict and confrontation. There is no incentive for early resolution of negotiations. Where there is legislation providing public employees and teachers with the right to negotiate their terms and conditions of employment, it is essential that this legislation define a process which enhances the potential for agreement between the parties.

2. Positive Effect of the Proposed Changes:

In any negotiations process the best agreement is the one which is reached between the parties. The presence of a mediation/arbitration provision within the impasse procedures increases the potential for a voluntary bilateral agreement between the parties. It provides an orderly process with appropriate time frames which lead to clear finality; an Agreement. When final and binding arbitration is the last step in impasse procedures,

both parties are forced to constantly re-examine the reasonableness of their positions on the issues. With the mediator also having statutory authority to function as an arbitrator, thus making final determinations if necessary, the mediator can cause the parties to constantly examine their positions on the issues and more effectively make recommendations which would lead to their resolution short of imposing an arbitration award. Use of the "last best offer" technique on an item by item basis is of significant value to the mediation/arbitration process in that it forces the parties to constantly examine the reasonableness and validity of their positions against the possibility that they may have to stand the tests and scrutiny of objective third party analysis. Additionally, last best offer on an item by item basis clearly restricts the latitude of the mediator/arbitrator and insures that any award will be within the parameters set by the parties themselves.

3. Arbitration in the Teacher Bargaining Law Benefits the Public:

The mere presence of arbitration as the final step in the impasse procedures in the teacher bargaining law significantly diminishes, if not eliminating entirely, the conflict potential which exists in the negotiations process. It is a fair, equitable, and objective mechanism for dispute resolution and clearly increases the potential for a bilateral agreement reached short of implementation of the arbitration process. By so doing, the continuity of the instructional program is assured. Negotiations settlements reached by the end of a given school year also favorably insure the stability of the teaching staff and provide the employer more reliable information to use in the recruitment process. The statutory changes which have been proposed provide the parties with access to the mediation/arbitration process at any time on a voluntary basis while assuring statutory access to either party after March 1. This insures a final agreement by the end of the school year. It further protects the public interest by restricting the arbitrator to an award which does not require a tax rate increase or additional funding from any source. Finally, the changes provide an equity which has been missing. Since 1972, certain categories of public employees in essential services in Alaska, negotiating under the Public Employment Relations Act, have had access to final and binding arbitration. If we are to suggest that teaching and education is so important that disruption of the program is to be minimized, arbitration as the final step in the bargaining process is essential.

4. Criticisms from Opponents:

Some suggest that arbitration may usurp the local control of a school board. This attitude represents a conflict in thinking in that school boards have a statutory obligation to also negotiate with certificated employees on matters pertaining to their employment and fulfillment of their professional duties and enter into Agreements regarding the same. Further, it suggests a possible admission by some that the positions taken on some of the bargaining issues are not reasonable or defensible. Third party intervention as a dispute settlement procedure has long been established as effective in Alaska, around the country and in the private sector for many years. The statutory procedures, which provide for binding arbitration, have been in place and working for a number of years and have been accepted as a means of dispute resolution. The reality of this process shows us that the parties reach agreement on their differences in the vast majority of cases

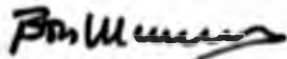
without the need for arbitration. Another argument put forward is that of resisting 'outside' intervention in the dispute. However, as was previously stated, "outsiders" acting as arbitrators are the very people who are effective in the grievance dispute settlement process. Further, school boards are increasingly hiring "outsiders" to represent them in negotiations and to act on their behalf in the process. In agreeing that the current teacher bargaining law is in need of improvement, opponents must recognize that the bargaining process is compatible with the statutory responsibility to make decisions attendant to educational policies. Collective negotiations is a process by which the parties may reach agreement on matters which are of mutual concern.

5. Other Supportive Data and Information:

Two major studies recently conducted within the State of Alaska have concluded that Arbitration is a viable means for the definition of finality to the teacher negotiations process. The Governor's Blue Ribbon Commission on the Teacher Bargaining Law and the Task Force on Labor Relations established by the Anchorage School Board of Education essentially came to the same conclusions in support of arbitration. Recent surveys by various Legislators found significant public support for arbitration, one of them at a level in excess of 75%. States around the nation are moving toward arbitration as the effective, fair, and equitable means of resolution of negotiations disputes as demonstrated by the data which is attached. In speaking before the Blue Ribbon Commission the representative of the Federal Mediation and Conciliation Service advocated consideration of the mediation/arbitration option. Data from around the nation shows an increasing frequency of arbitration being provided for in bargaining laws. This same data reveals no noticeable change in the substance in arbitrated settlements and; where the law has been in place for a number of years, fewer situations where the parties have the need to avail themselves of the arbitration process. In other words, they are successfully reaching bilateral agreements short of intervention by the arbitrator. Further, it should be noted that the use of arbitration is increasing in private sector bargaining and in the judicial arena in civil disputes.

With an increasing number of teacher bargaining disputes going into the impasse process and not coming to resolution until after the school year commences, it is essential that we provide for final and binding arbitration now.

Respectfully submitted:



Robert Manners
Executive Secretary