

ALASKA LEGISLATURE COMMITTEE FILES 1981-1982 86/2

1265 SCRA SB 126 - SB 126 BACK UP

1265

State	No. Statutory Coverage	Number of Statutes	Public Employees	State Employees	Municipal or Local Employees	Teachers or Certificated Staff	Higher Education Faculty	Other Public Employees
Alabama								X(F)
Alaska								X(F)
Arizona	2/1	0	X					X(F)
Arkansas	2/1	0						X(F)
California	2/1	0						X(F)
Colorado	2/1	0						X(F)
Connecticut		0						X(F)
Delaware		0	X	X	X	X	X	X(F)
Florida		1	X	X	X	X	X	X(F)
Georgia		1	X					X(F)
Hawaii		1						X(F)
Idaho		1						X(F)
Illinois		1		2/				X(F)
Indiana		1						X(F)
Iowa		1	X	X	X	X	X	X(F)
Kansas		2	X	X	X	X	X	X(F)
Kentucky		0						X(F)
Louisiana	2/1	0						X(F)
Maine		0	X	X	X	X	X	X(F)
Maryland		0						X(F)
Massachusetts		2	X	X	X	X	X	X(F)
Michigan		1	X	X	X	X	X	X(F)
Minnesota		1	X	X	X	X	X	X(F)
Mississippi		0						X(F)
Missouri	X	1	X	X	X	X	X	X(F)
Montana		2	X	X	X	X	X	X(F)
Nebraska		2	X	X	X	X	X	X(F)
Nevada		1						X(F)
New Hampshire		1	X	X	X	X	X	X(F)
New Jersey		1	X	X	X	X	X	X(F)
New Mexico	2/1	0						X(F)
New York	2/1	1	X	X	X	X	X	X(F)
North Carolina	2/1	0						X(F)
North Dakota	2/1	1						X(F)
Oalo		2						X(F)
Oklahoma		0						X(F)
Oregon		1	X	X	X	X	X	X(F)
Pennsylvania		2	X	X	X	X	X	X(F)
Rhode Island		0						X(F)
South Carolina	X	0						X(F)
South Dakota		1	X	X	X	X	X	X(F)
Tennessee		1						X(F)
Texas		1						X(F)
Utah	X	0						X(F)
Vermont		0	X	X	X	X	X	X(F)
Virginia	2/1	0						X(F)
Washington		0	X	X	X	X	X	X(F)
West Virginia	X	0						X(F)
Wisconsin		0						X(F)
Wyoming		1						X(F)
Total		12	29	25	26	21	14	X(F)

X = statute included in definition for coverage

X = excluded from coverage
 F = firefighters
 P = police

FOOTNOTES:

- 1/ Alabama and Texas have laws for consultation on certain terms and conditions of employment for teachers.
- 2/ Court decisions have ruled public employers may negotiate with their employees.
- 3/ Negotiation rights established in executive order or personnel regulations.
- 4/ States have enacted grievance policy regulations for either state and/or local employees.
- 5/ Court decisions have ruled public sector negotiation is against public policy.
- 6/ Transit workers
- 7/ Non-certificated school employees
- 8/ Nurses
- 9/ Post district employees, Marine Employees, Public Utility Districts and State Civil Service Employees

OF STATE STATUTES

States	Mediation			Advisory arbitration			Binding arbitration		
	Volun- tary	Request of party	Required	Volun- tary	Request of party	Required	Volun- tary	Request of party	Required
Alaska		X				X			
California		X			X				
Connecticut		X	X						X
Delaware		X			X				
Florida		X				X ¹			
Hawaii		X	X			X	X		
Idaho		X			X				
Indiana		X	X		X	X	X		
Iowa		X				X		X ²	
Kansas		X			X				
Maine		X	X	X	X		X	X ³	
Maryland	X	X							
Massachusetts	X	X		X	X		X		
Michigan		X							
Minnesota		X			X		X	X ⁴	
Montana			X		X	X	X		
Nebraska						X		X ⁵	X
Nevada	X				X		X	X ⁶	X
New Hampshire	X		X	X		X	X ⁷		
New Jersey		X			X		X		
New York	X	X	X	X	X	X	X		
North Dakota	X	X			X	X			
Oklahoma	X					X			
Oregon		X	X		X	X	X	X ⁸	
Pennsylvania	X		X			X	X		
Rhode Island		X			X			X ⁹	
South Dakota		X			X				
Tennessee		X			X				
Vermont	X	X			X				
Washington		X			X				
Wisconsin		X	X		X		X	X	X ¹⁰

- 1 Parties have 15 days to reject factfinder's report or binding
- 2 Request of either party, final-offer arbitration
- 3 Either party may request arbitration which is binding on all items except salaries, pensions, and insurance
- 4 Binding, if petitioned for by employer
- 5 Court of Industrial Relations may intervene, decision is binding
- 6 Binding at governor's request
- 7 Voluntary arbitration binding on non-cost items
- 8 Request of either party or initiation of the Board
- 9 Request of either party, decision binding on all matters not involving expenditures of money
- 10 Either party may petition for mediation-arbitration; parties submit final offers; both must withdraw their offers, otherwise, neither is considered withdrawn

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BACK-UP

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[NOTE: This Committee Substitute was prepared by Committee staff and is offered for conceptual consideration only. All changes to the CS from Senate HESS will be submitted to legal services for approval as to form and content. Material deleted from the CS (HESS) is bracketed and added material is underlined.]

1 IN THE SENATE

BY THE SENATE COMMUNITY AND
REGIONAL AFFAIRS COMMITTEE

2 CS FOR CS FOR SENATE BILL NO. 126 (C&RA)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to labor relations involving teachers
7 and school districts; and providing for an effective
8 date."

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

10 * Section 1. AS 14.20.570 is repealed and reenacted to read:

11 Sec. 14.20.570. MEDIATION. (a) Mediation between the employee
12 bargaining agency and the school board in accordance with the provisions
13 of this section

14 (1) shall begin if the parties have failed to negotiate a
15 collective bargaining agreement before [MARCH 1;] February 1,
16 however, the parties may mutually agree to extend negotiations until
17 March 1;

18 (2) may begin at any time before [MARCH 1] February 1

19 (A) if the employee bargaining agency and the school
20 board mutually agree; or

21 (B) if the employee bargaining agency or the school
22 board certifies to the other party that, in its opinion, good
23 faith negotiations between the parties are at an impasse and the
24 services of a mediator are necessary to resolve the dispute.

25 (b) When mediation is required or requested under (a) of this
26 section, the employee bargaining agency and the school board shall
27 choose a mediator. If the employee bargaining agency and the school
28 board are unable to agree upon a mediator within seven days of the date
29 mediation is required or requested under (a) of this section, they

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1 shall jointly request the United States Federal Mediation and Concilia-
 2 tion Service, the American Arbitration Association or other mutually
 3 acceptable arbitration association to provide mediation services.

4 [IF THE UNITED STATES FEDERAL MEDIATION AND CONCILIATION SERVICE IS UNABLE
 5 TO PROVIDE MEDIATION SERVICES, THE EMPLOYEE BARGAINING AGENCY AND THE
 6 SCHOOL BOARD SHALL JOINTLY REQUEST THE AMERICAN ARBITRATION ASSOCIATION
 7 OR ANOTHER RECOGNIZED ARBITRATION ASSOCIATION TO NAME A MEDIATOR.]

8 (c) A mediator designated under (b) of this section shall

9 (1) chair all meetings between the employee bargaining
 10 agency and the school board; and

11 (2) attempt to resolve the differences between the disputing
 12 parties and reach common acceptance of terms and conditions or other
 13 items in dispute whenever possible.

14 (d) The mediator has 30 days from the first meeting with the
 15 disputing parties to secure agreement between the parties. [AND TO REDUCE
 16 THE AGREED TERMS, CONDITIONS, AND OTHER ITEMS TO A WRITTEN CONTRACT.]
 17 The employee bargaining agency and the school board may agree to extend
 18 the period during which the mediator may secure agreement and reduce
 19 the agreed terms, conditions, and other items to a written contract.

20 (e) If mediation meetings are held during a school day, teachers
 21 who represent the employee bargaining agency shall be released from
 22 classroom or other assigned duties without penalty or loss of pay.

23 (f) The expenses of mediation, if any, under this section shall
 24 be shared equally by the employee bargaining agency and the school
 25 board.

26 (g) A mediator who does not serve as arbitrator under Sec.
 27 14.20.578 shall prepare a list of items remaining at impasse at the
 28 end of mediation.

29 * Sec. 2. AS 14.20 is amended by adding new sections to read:

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1 Sec. 14.20.574. ARBITRATION. Items at impasse shall be submitted
2 to an arbitrator under this section if the employee bargaining agency
3 and the school board are unable to reach agreement [BY] after the 30th
4 day following the first meeting between the employee bargaining agency
5 and the school board with a mediator appointed under AS 14.20.570[(c)],
6 except that, if the parties mutually agree to extend the period during
7 which the mediator may secure agreement as provided by AS 14.20.570(d),
8 the extension date agreed to by the parties shall be the date applic-
9 able under this section to determine whether arbitration is required.

10 Sec. 14.20.578. APPOINTMENT OF ARBITRATOR. The mediator ap-
11 pointed under AS 14.20.570 shall serve as arbitrator. However, if the
12 mediator is unable to serve as arbitrator, or one of the parties
13 objects to the mediator serving as arbitrator, the employee bargaining
14 agency and the school board shall, within [24 HOURS] two working days
15 of the expiration of the period specified in AS 14.20.574, ask the
16 American Arbitration Association or other [RECOGNIZED] mutually accept-
17 able arbitration association to name an arbitrator.

18 Sec. 3. AS 14.20 is amended by adding new sections to read:

19 Sec. 14.20.582. ARBITRATION AWARD. (a) After accepting items
20 submitted by each party to determine an arbitration award, the arbitrator
21 shall make at least one good faith effort to secure a negotiated agreement
22 between the parties. [(a)] The arbitrator shall have at least one
23 meeting jointly with the employee bargaining agency and the school board.
24 [(b)] Submission of items to the arbitrator shall be by each party
25 separately. Each submission shall state the final offer on each of the
26 items at impasse, and only on those items, and shall be certified by
27 the authorized representative of the employee bargaining agency or of
28 the school board.

29 (b) The arbitrator shall issue an award on either a "total package"

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1 or "item by item" basis and shall notify the parties of the method to
 2 be used in determining the award. The arbitrator shall select [ON AN
 3 "ITEM BY ITEM" BASIS] the more reasonable and equitable offer, and shall
 4 issue an award incorporating the selected offer[S] without modification.
 5 The award of the arbitrator is final and binding on both parties.

6 (c) In making the award the arbitrator shall consider

7 (1) applicable state and federal laws;

8 (2) stipulations of the parties;

9 (3) the interest and welfare of the public and the parties;

10 (4) the employer's financial ability, and

11 (5) all relevant data submitted by the parties.

12 (d) The arbitrator shall prepare a written statement of the
 13 reasons for the award and submit a copy to the emp' ee bargaining
 14 agency and the school board.

15 [(c) THE ARBITRATOR MAY NOT MAKE AN AWARD WHICH WILL REQUIRE
 16 A MUNICIPALITY TO INCREASE ITS LOCAL TAX RATE TO MEET THE COST OF
 17 AN AWARD.]

18 (e) [d] The expenses of arbitration shall be shared equally by
 19 both parties.

20 Sec. 14.20.586 REVIEW OF ARBITRATOR'S AWARD. (a) The award of
 21 an arbitrator under AS 14.20.574 - 14.20.582 may be vacated by a court

22 (1) if the award fails to meet the standards of AS 14.20.-
 23 582(c); or

24 (2) on grounds specified in AS 09.43.120 (a)(1)(2)(3),
 25 (b)(c)(d)(e).

26 (b) The award of the arbitrator may be corrected or modified by a
 27 court only on grounds specified in AS 09.43.130.

28 Sec. 4. AS 14.20 is amended by adding a new section to read:
 29

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1 Sec. 14.20.595. STRIKES. (a) A teacher may not engage in a
2 strike except as permitted by (b) of this section. Upon a showing by
3 a school board [OR THE DEPARTMENT OF EDUCATION] that teachers are
4 engaging or about to engage in an illegal [A] strike, an injunction,
5 restraining order, or other order which may be appropriate shall be
6 granted by the superior court in the judicial district in which the
7 strike is occurring or is about to occur.

8 (b) If a school board rejects binding arbitration under
9 Sec. 8 of this act, certificated employees of the school board may
10 engage in a strike if a majority of the members of the collective
11 bargaining unit vote by secret ballot to do so.

12 Sec. 5. AS 14.20.610 is amended by adding a new subsection to read:

13 (b) A school board may not engage in a lockout of its teachers.
14 Upon a showing by an employee bargaining agency that a school board is
15 engaging or about to engage in a lockout, an injunction, restraining
16 order, or other order which may be appropriate shall be granted by the
17 superior court in the judicial district in which the lockout is occur-
18 ring or is about to occur.

19 Sec. 6. AS 14.20.580 is repealed.

20 Sec. 7. A right or liability of an employee bargaining agency or a
21 school district arising out of an agreement entered into under AS 14.20.
22 .570 - 14.20.580 as these provisions read before their amendment
23 and repeal by this Act is not affected by the enactment of this Act.

24 Sec. 8. A school board and an employee bargaining agency are
25 subject to AS 14.20.574 - 14.20.586, 14.20.595(a) and 14.20.610(b)
26 unless the school board by resolution rejects application of these
27 provisions within 6 months after the effective date of this Act.

28 Sec. 9. This act terminates three years after its effective date.

29 Sec. 10. This Act takes effect immediately in accordance with
AS 01.10.070(c).

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11 Sec. 14.20.570. MEDIATION. (a) Mediation between the employee
12 bargaining agency and the school board in accordance with the provisions
13 of this section

14 (1) shall begin if the parties have failed to negotiate a
15 collective bargaining agreement before March 1;

16 (2) may begin at any time before March 1

17 (A) if the employee bargaining agency and the school
18 board mutually agree; or

19 (B) if the employee bargaining agency or the school
20 board certifies to the other party that, in its opinion, good
21 faith negotiations between the parties are at an impasse and the
22 services of a mediator are necessary to resolve the dispute.

23 (b) When mediation is required or requested under (a) of this
24 section, the employee bargaining agency and the school board shall
25 choose a mediator. If the employee bargaining agency and the school
26 board are unable to agree upon a mediator within seven days of the date
27 mediation is required or requested under (a) of this section, they
28 shall jointly request the United States Federal Mediation and Concilia-
29 tion Service to provide mediation services. If the United States

Feb 1 however the EBA and the school board may mutually agree to extend negotiations until Feb 1

or they may jointly request arbitration association to appoint a mediator

1 Federal Mediation and Conciliation Service is unable to provide media-
 2 tion services, the employee bargaining agency and the school board
 3 shall jointly request the American Arbitration Association or another
 4 recognized arbitration association to name a mediator.

5 (c) A mediator designated under (b) of this section shall

6 (1) chair all meetings between the employee bargaining
 7 agency and the school board; and

8 (2) attempt to resolve the differences between the disputing
 9 parties and reach common acceptance of terms and conditions or other
 10 items in dispute whenever possible.

11 (d) The mediator has 30 days from the first meeting with the
 12 disputing parties to secure agreement between the parties, ~~and to reduce~~
 13 ~~the agreed terms, conditions, and other items to a written contract.~~

14 The employee bargaining agency and the school board may agree to extend
 15 the period during which the mediator may secure agreement and reduce
 16 the agreed terms, conditions, and other items to a written contract.

17 (e) If mediation meetings are held during a school day, teachers
 18 who represent the employee bargaining agency shall be released from
 19 classroom or other assigned duties without penalty or loss of pay.

20 (f) The expenses of mediation, if any, under this section shall
 21 be shared equally by the employee bargaining agency and the school
 22 board.

23 Sec. 2. ⁹⁾ AS 14.20 is amended by adding new sections to read:

24 Sec. 14.20.574. ARBITRATION. Items at impasse shall be submitted
 25 to an arbitrator under this section if the employee bargaining agency
 26 and the school board are unable to reach agreement ^{after} by the 30th day
 27 following the first meeting between the employee bargaining agency and
 28 the school board with a mediator appointed under AS 14.20.570 ~~(c)~~,
 29 except that, if the parties mutually agree to extend the period during

which the mediator may secure agreement as provided by AS 14.20.570(d), the extension date agreed to by the parties shall be the date applicable under this section to determine whether arbitration is required.

Sec. 14.20.578. APPOINTMENT OF ARBITRATOR. The mediator appointed under AS 14.20.570 shall serve as arbitrator. However, if the mediator is unable to serve as arbitrator, or one of the parties objects to the mediator serving as arbitrator, the employee bargaining agency and the school board shall, within ^{two working days} 24 hours of the expiration of the period specified in AS 14.20.574, ask the American Arbitration

~~Association or other recognized arbitration association to name an arbitrator.~~ ask another mutually agreeable arb assoc or AAA to name arb arbitrator.

Sec. 3. AS 14.20 is amended by adding new sections to read:

Sec. 14.20.582. ARBITRATION AWARD. (a) The arbitrator shall have at least one meeting jointly with the employee bargaining agency and the school board. After accepting items submitted by each party to determine an arbitration award, the arbitrator shall make at least one good faith effort to secure a negotiated agreement between the parties.

(b) Submission of items to the arbitrator shall be by each party separately. Each submission shall state the final offer on each of the items at impasse, and only on those items, and shall be certified by the authorized representative of the employee bargaining agency or of the school board. The arbitrator shall select ~~an item by item~~ ^{(b) insert here} the more reasonable and equitable offer, and shall issue an award incorporating the selected offer without modification. The award of the arbitrator is final and binding on both parties.

(c) In making the award the arbitrator shall consider

(1) applicable state and federal laws;

(2) stipulations of the parties;

(3) the public interest and welfare, and;

^{as the} interest & welfare of the public and the parties

5) all pertinent & relevant data as presented by the parties
 (4) the employer's financial ability.

(d) The arbitrator shall prepare a written statement of the reasons for the award and submit a copy to the employee bargaining agency and the school board.

[(c) THE ARBITRATOR MAY NOT MAKE AN AWARD WHICH WILL REQUIRE A MUNICIPALITY TO INCREASE ITS LOCAL TAX RATE TO MEET THE COST OF AN AWARD.]

(e) [d] The expenses of arbitration shall be shared equally by both parties.

Sec. 14.20.586 REVIEW OF ARBITRATOR'S AWARD. (a) The award of an arbitrator under AS 14.20.574 - 14.20.582 may be vacated by a court

(1) if the award fails to meet the standards of AS 14.20.582(c); or

(2) on grounds specified in AS 09.43.120 (a) (1) (2) (3), (b) (c) (d) (e).

(b) The award of the arbitrator may be corrected or modified by a court only on grounds specified in AS 09.43.130.

Sec. 4. AS 14.20 is amended by adding a new section to read:

Sec. 14.20.595. STRIKES. (a) A teacher may not engage in a strike except as permitted by (b) of this section. Upon a showing by a school board or the Department of Education that teachers are engaging or about to engage in an illegal [A] strike, an injunction, restraining order, or other order which may be appropriate shall be granted by the superior court in the judicial district in which the strike is occurring or is about to occur.

(b) If a school board rejects binding arbitration under Sec. 8 of this act, certificated employees of the school board may engage in a strike if a majority of the members of the collective bargaining unit vote by secret ballot to do so.

check with Amalish

original

1 Sec. 5. AS 14.20.610 is amended by adding a new subsection to read:

2 (b) A school board may not engage in a lockout of its teachers.
3 Upon a showing by an employee bargaining agency that a school board is
4 engaging or about to engage in a lockout, an injunction, restraining
5 order, or other order which may be appropriate shall be granted by the
6 superior court in the judicial district in which the lockout is occur-
7 ring or is about to occur.

8 Sec. 6. AS 14.20.580 is repealed.

9 Sec. 7. A right or liability of an employee bargaining agency or a
10 school district arising out of an agreement entered into under AS 14.20.
11 .570 - 14.20.580 as these provisions read before their amendment
12 and repeal by this Act is not affected by the enactment of this Act.

13 Sec. 8. A school board and an employee bargaining agency are
14 subject to AS 14.20.574 - 14.20.586, 14.20.595(a) and 14.20.610(b)
15 unless the school board by resolution rejects application of these
16 provisions within after the effective date of this Act.

17 Sec. 9. This Act takes effect immediately in accordance with
18 AS 01.10.070(c).
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Official Business

Alaska State Legislature

Senate

Office of the President

Pouch V
State Capitol
Juneau, Alaska 99811

April 28, 1981

file

Senator Don Gilman
Chairman
Community and Regional
Affairs Committee

Don
Dear Senator:

Your memo regarding SB 126 has been received. Thank you very much for this back-up information.

I wish to compliment you on the professional manner in which this was handled. Thanks again.

Sincerely,

Jay
Senator Jay Kerttula
Senate President

JK/aj

P.O. Box 3059
Kenai, Alaska 99611
April 22, 1981

Senator Don Gilman
Alaska State Senate
Pouch
Juneau, Alaska 99801


Dear Don:

I think the Binding Arbitration situation is more important than ever. I am sick to death of seeing the news reports of "School Board Opposes Binding Arbitration." OF COURSE THEY DO! Without it they have all the cards - they can negotiate or they can sit and vegetate.

S.B. 126, as written, not any substitute, would be a stimulation to negotiations and a method of settlement in all else fails.

Give us Binding Arbitration or a crystal clear right to strike but the Kenai Peninsula would profit far more from arbitration.

Sincerely,


Judy Salo

P.S. Two members of the Kenai School Board and three members of the Anchorage School Board admit arbitration has merits -

***** Don - how about suggesting a 3 or 5 year trial period?

cc: Hammond Mulcahy
 Hohman Kertula
 Miller Sturgulewski

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



ASSOCIATION OF ALASKA SCHOOL BOARDS

SUITE 2, 204 NORTH SAMUEL STREET • JUNEAU, ALASKA 99801 • PHONE 586-1083

April 28, 1981

Senator Donald E. Gilman
State Capitol
Pouch V
Juneau, Alaska 99811

Dear Senator Gilman:

We have been apprised of a rumor that CSHB 163, (HESS) and CSSB 126 (C&RA), Teacher Binding Arbitration, reflect a compromise between the Association of Alaska School Boards and NEA Alaska. We would like you to be aware that there is NO truth to that rumor - at all! The Association of Alaska School Boards has maintained and still remains diametrically opposed to binding arbitration for school district employee unions.

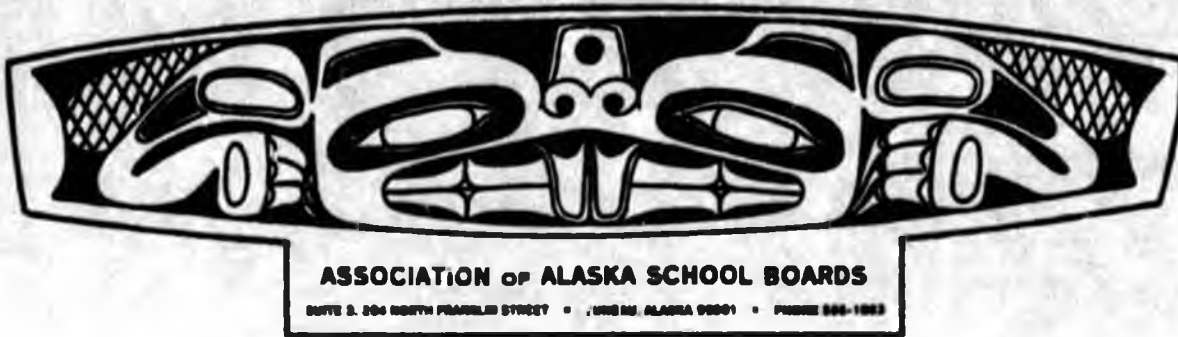
For your information we have attached the Association of Alaska School Board's position paper on binding arbitration. This position paper outlines the School Board Association's concerns and some of the parent group's concerns of the Governor's Blue Ribbon Commission on school district employee negotiations, none of which are addressed in CSHB 163 (HESS) or CSSB 126 (C&RA). The State Board of Education has recommended the Governor veto any binding arbitration legislation which does not consider the concerns of the Blue Ribbon Commission.

Thank you for your time. If you should have any questions, please do not hesitate to call our office.

Sincerely,

Robert C. Greene,
Executive Secretary

RCG/sam
enclosure



April 28, 1981

NOTE: AASB has maintained and remained opposed to binding arbitration for school districts employee groups. If legislators are going to seriously consider binding arbitration, then AASB hopes they will consider the following concerns.

AASB'S POSITION PAPER ON BINDING ARBITRATION

Following are comments and concerns of the ASSOCIATION OF ALASKA SCHOOL BOARDS relative to binding arbitration as contained in CSHB 163 (HESS) and CSSB 126 (C&RA).

1. AASB feels that these bills do not speak to what is commonly called MANAGEMENT RIGHTS. This item, spoken to well in the attached Iowa law, deals with items which we feel must be in any binding arbitration law. There must be certain guarantees that elected public officials will be able to make certain kinds of management decisions without subjecting them to the collective bargaining process.

Our rationale for pressing this issue at this time is that, while the present collective bargaining law is vague on the matter of what is negotiable, school boards could at least protect their rights to manage their districts by refusing to concede on specific items which would restrict their ability to conduct the public business. This, unfortunately, would change with passage of binding arbitration without protection in this area.

Another concern in this area stems around the 1977 Alaska Supreme Court decision which spelled out many areas that were and were not bargainable. Our fear is that a binding arbitration law without limits on what is bargainable will negate this decision and we will be back to the beginning on this topic.

2. A second concern of the Association is that there is no distinction in these bills as to what is negotiable and what can be submitted to binding arbitration.

Many states who have adopted binding arbitration have recognized the need for penalties for going to binding arbitration in an effort to minimize its use. The feeling is that if there is

nothing in the form of a penalty, if the parties do not have to give up anything in order to utilize this process, then they will use it as a means to "get a little more."

If the legislature is going to seriously consider binding arbitration, then AASB feels that the use of binding arbitration should be limited to salary and fringe benefits only. This procedure would be an incentive for both parties to settle prior to the arbitration proceedings.

Unions will be reluctant to go to binding arbitration because then they will give up the right to bargain policy items while school boards will be reluctant to do the same because arbitrators will usually give more money in settlements than boards are willing to give. Also, boards will be forced to give up final decision-making responsibility.

3. Of major concern to AASB is the lack of any provision in this bill for an employee rights section. We feel that, in addition to spelling out the rights of employees to organize and to bargain collectively, the bill should provide for the rights of individual employees NOT to join or assist employee organizations by means of agency shop provisions. Again, the Iowa law clearly makes this provision.
4. If binding arbitration is to become a reality in Alaska,, then school boards need one of two options available to them. They must either:
 - A. Have binding arbitration settlements tied in some fashion to the appropriate funding agency in order to insure that the decision can be funded, or;
 - B. The Alaska Teacher Tenure Law must be changed in order to allow school boards to release tenured teachers due to lack of money.

AASB feels strongly that the effects of binding arbitration should not mandate that the school board negotiate via the budget what it is that the board wants to offer in the areas of programming, materials to be used and the condition of the facilities in which students are to be housed. All of these items will be affected by binding arbitration unless the board has a recourse to the funding agency or to release staff because there is not enough money to do all things.

The authority of the board to prioritize the use of its resources cannot be put into the hands of a third party arbitrator if school boards are to be held responsible for the educational program and the quality of instruction for students.

5. AASB feels that there needs to be a complete set of time lines in any revision of the bargaining law as lack of such time lines are probably more conducive to extended bargaining than any differences at the bargaining table. Presently, the bill only speaks to mediation and arbitration.
6. The present bill, as amended, only makes a provision for prohibiting strikes. Nothing in the bill enforces the no-strike provision. AASB strongly recommends that an enforcement provision be included requiring that engaging in a strike constitutes grounds for loss of tenure. Strong financial penalties must also be included against employee organizations involved in strike activities. Without these strike penalties, the no-strike provision in the law is meaningless.

All the research indicates that binding arbitration will not prohibit strikes. The State of Pennsylvania has conducted a ten year study on the matter and the conclusions of that group are that binding arbitration will not guarantee that there will not be teacher strikes.

New York, on the other hand, has found that stiff penalties for striking teachers will, in fact, diminish strikes significantly. It will not, however, stop them entirely.

When binding arbitration no longer provides an advantage to unions, strikes will replace it as a means of gaining favorable settlements.

7. The present bill does not encompass intermediate bargaining processes which are commonly used on other states which have sophisticated bargaining laws. FACT FINDING is one process which should be included in such a process and defined in law. This process is a means of reducing the items at impasse during the bargaining process midway through and is a means by which public opinion can have an influence on the parties.
8. If binding arbitration is to become law in Alaska, then it should be on a last best offer of the TOTAL PACKAGE and not on an item-by-item basis. AASB's position is that unions can generate countless items to be negotiated, hoping to settle for only a fraction of those items. Boards, on the other hand, can only bargain from a position of where they currently are. The inevitable splitting of the items can only lead to sensational gains both monetarily and in the policy area by unions. Forcing an arbitration panel to decide on the most appropriate total package would put the parties on a more even basis.
9. Research in Alaska indicates that most of the districts and their employee organizations bargain collectively in a most cordial atmosphere. Only a select few are bargaining in an

adversarial position. Research also tells us that there is a direct relationship between the size of the district and the adversarial relationship. The suggestion that there is a need for binding arbitration for all school districts in Alaska is a little like fixing something that is not broken.

AASB recommends that including binding arbitration in the teacher bargaining law be LIMITED TO only the larger districts where there is claimed to be a problem. To subject the smaller districts to this process can only create problems yet to be discovered and potentially damaging to the healthy operation of the district.

10. Binding interest arbitration for teachers in Alaska should not be compared with binding interest arbitration for State workers, police and firemen, or with arbitration laws for teachers in other states.

All other employers in the above categories in Alaska have access to additional revenues to fund arbitration awards. SCHOOL BOARDS DO NOT. Some school boards in other states set the tax levy for education and, hence, have access to additional revenue, so other state laws should not be a basis for promoting binding arbitration in Alaska.

12. In Alaska, as in all other states, school boards are charged with the duty of providing an educational program for children. Binding interest arbitration in teacher collective bargaining will force certain of these decisions, relative to providing the educational program, into the hands of an arbitrator. AASB is fearful that this course of action will be challenged in the courts as being an unconstitutional delegation of the school board's authority to a third party. There is legal precedent for this in other states wherein state courts have held binding interest arbitration for teachers unconstitutional.

EMPLOYEE RELATIONS GUIDE

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IOWA PUBLIC EMPLOYMENT RELATIONS ACT

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



STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD
89 WOLF ROAD
ALBANY, NEW YORK 12206

MANDATORY/NON-MANDATORY SUBJECTS OF NEGOTIATION

Attached are updated lists of items found by the New York State Public Employment Relations Board to be mandatory or non-mandatory subjects of negotiation. The index headings and digests of cases are intended solely as reference guides. This report has been updated through December 31, 1979. It is recommended that you read the cases for the precise holdings of PERB.

We will attempt to update the lists periodically.

Thomas E. Joyner
Director of Research

January 30, 1980

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MANDATORY

GENERAL

1. Death Benefits.

Albany PFA, 7 PERB 13079; Albany Police, 7 PERB 13078; affirmed 38 NY 2d 778, 9 PERB 17005.

Benefits such as those authorized by Retirement and Social Security Law §360-b, which is only applicable to employees who joined a public retirement system before July 1, 1973, are negotiable.

See Kingston PFA, 9 PERB 13069.

2. Parking Fees at Work Locations Controlled by the Employer.

New York State, 6 PERB 13005.

It was found that free parking is a term and condition of employment. This decision was based on the application of such criteria as the nature of the benefit, the proportion of the work force at a given location and as a whole receiving the benefit, the relative value of the benefit, the availability of alternatives to employees receiving the benefit, and the extent to which the decision of whether or not to provide or continue to provide the benefit is an essential part of the employer's mission as an enterprise.

3. Retirement.

Albany PFA, 7 PERB 13079; Albany Police, 7 PERB 13078; affirmed 38 NY 2d 778, 9 PERB 17005.

The Laws of 1974, Chapter 510, Section 31 permit employee organizations to negotiate for improvements in retirement between July 1, 1974 and June 30, 1975 (extended annually and through June 30, 1981, by the 1979 Legislature) provided the improved benefits are among those already available under State Law.

See Kingston PFA, 9 PERB 13069; Mandatory - College #36.

See Non-Mandatory - General #10.

4. Wages and Hours.

The Taylor Law.

5. Residency Requirement.

Auburn, 9 PERB 13085.

Employer must negotiate imposition of a residency requirement on existing employees who are not subject to the protection of Civil Service Law §75.

See Non-Mandatory - General #7.

MANDATORY

GENERAL - cont'd.

6. Contract Continuation.

Amsterdam, 10 PERB ¶3007; Troy, 10 PERB ¶3015; Lynbrook, 10 PERB ¶3067.

Relates to the interim extension of the terms of an agreement past its expiration date. In three cases impasse was subject to interest arbitration under §209.4 of the Taylor Law. The availability of arbitration assures the parties of either a new agreement, or an arbitration award, within a reasonable time after the expiration of a predecessor agreement.

See Mandatory - College #39; Mandatory - Firefighters #64;
Mandatory - Police #121.

7. Agency Shop. Chapters 677 and 678, Laws of 1977, impose an agency shop fee upon State employees and make such a fee a mandatory subject of negotiations for local government employers. These amendments expire June 30, 1979.

New Paltz Central School District, 11 PERB ¶3057.

Board upheld hearing officer determination that amendment mandated negotiations over agency shop fee deductions even though contract was signed prior to the enactment of the amendment. The Board held that in view of the short duration of the experimental period, to hold otherwise would discriminate on the basis of the accidental factor of the terms of an agreement and frustrate the legislative purpose.

Town of Haverstraw, 11 PERB ¶3109.

A refund procedure is not a condition precedent to negotiations for agency fee deductions. There is no reason for PBA to establish or maintain such a procedure unless and until it is successful in negotiation for agency shop fee deduction privileges.

3

MANDATORY

COLLEGE

26. Access to College Property and Equipment.

Orange County Community College Association, 9 PERB 93068.

Mandatory subject insofar as it covers proper and legitimate official business relating to the Association's role as the representative of employees in the bargaining unit. See Albany City School District, 6 PERB 93012.

See also Non-Mandatory - College #26.

27. Assignments for Extra Compensation.

Orange County Community College Faculty Association, 9 PERB 93068.

Mandatory as it relates to the opportunity of employees within the negotiating unit to earn extra compensation in other teaching and related assignments.

28. Committees to Evaluate Faculty.

Orange County Community College Faculty Association, 9 PERB 93068.

Requiring written statements of criteria for promotion, retention and tenure and a written rationale for all decisions denying promotion, reappointment and tenure is a mandatory subject except to the extent that, in the absence of necessary reasons for such specification, the requirement would impose a management duty upon particular member of management.

29. Pay for Absence Due to On-the-Job Injury.

Orange County Community College Faculty Association, 9 PERB 93068.

This is a demand for compensation and therefore a mandatory subject of negotiation.

30. Professional Development Plan Which Would Constitute Basis for An Annual Evaluation and for Reappointment.

Schenectady County Community College, 6 PERB 93027.

It cannot be said that the implementation of the College's Professional Development Plan would not have an impact on terms and conditions of employment. Therefore, the College had a duty, upon request, to negotiate with the union on the impact on terms and conditions of employment. Failure to do so constitutes a violation of its duty to negotiate in good faith.

MANDATORY

COLLEGE - cont'd.

31. Reduced Work Assignment.

Orange County Community College, 10 PERB 93080.

Demand for reduced work assignment for the president of the Faculty Association a mandatory subject.

See Mandatory - Police #111.

Onondaga Community College, 11 PERB 93045.

When Department Chairperson is a member of the unit, a demand relating to his workload is a mandatory subject of negotiations.

32. Premium Pay for Increased Work Load.

Orange County Community College, 10 PERB 93080.

Although the effect of such premium pay might be to make larger classes less attractive to the employer, the demand would not impose any legal restrictions upon the employer from establishing the size of its classes unilaterally.

33. Job Duties.

Orange County Community College, 10 PERB 93080.

Demand lists five alternatives to change in counselor duties. Deals with the impact of a management determination upon terms and conditions of employment and therefore mandatory.

34. Extracurricular Activities.

Orange County Community College, 10 PERB 93080.

Compensation of sponsorship of student activities and coaching; determination of credit load equivalent and seniority of full-time members in opportunity for sponsorship of student extracurricular and co-curricular activities.

35. Textbooks.

Orange County Community College, 10 PERB 93080.

Establishment of time limits on promulgation of a required textbook. Deals with the impact of a management decision upon terms and conditions of employment.

MANDATORY

COLLEGE - cont'd.

36. Retirement.

Orange County Community College, 10 PERB 93080.

Alternative benefits, such as cash equivalent, for employees ineligible to receive benefits provided by the agreement by reason of having retired from other public employment.

For retirees, granting of identification cards, faculty and parking stickers and first opportunity after full-time faculty to teach part-time courses in the day and evening.

37. Secretarial Services.

Onondaga Community College, 11 PERB 93045.

A demand with respect to the providing of secretarial services for each department involves the terms and conditions of employment of unit members and is a mandatory subject of negotiations.

38. Layoff.

Hudson Valley Community College, 12 PERB 93030.

Proposal providing for notice in the event of layoff and for order layoff was mandatory subject of negotiations.

See Mandatory - Police #112; Mandatory - Schools #155A, #155B.

Continuation of benefits for retrenched faculty members is a mandatory subject of negotiations.

39. Maintenance of Standards.

Hudson Valley Community College, 12 PERB 93030.

Maintenance of standards clause while new agreement is negotiated is a mandatory subject of negotiations.

40. Workload.

Hudson Valley Community College, 12 PERB 93030.

Demand establishing number of classes assigned to each teacher be measured by multiplying the number of classes by the number of students in each class is a mandatory subject.

See Mandatory - Schools #155B, #170.

MANDATORY

FIREFIGHTER

51. Death Benefits.

Albany PPFA, 7 PERB 13079.

See Mandatory - General #1.

See also Kingston PFA, 9 PERB 13069.

52. Establishment of Labor-Management and Joint Safety Committee.

Albany PPFA, 7 PERB 13079.

The establishment of labor management committees to discuss matters of mutual concern is a mandatory subject of negotiations to the extent that the matters to be discussed are themselves mandatory subjects of negotiations, as is employee safety.

53. Exclusivity of Representation.

Albany PPFA, 7 PERB 13079.

According to PLRB's Rules of Procedure Sec. 201.12(h), whether or not an employee organization is granted exclusive rights of representation is subject to agreement between the organization and the public employer.

54. Parity.

Albany PPFA, 7 PERB 13079.

The Board said that to the extent that it is a demand for a wage responder and for subsequent negotiations, it is a mandatory subject of negotiations. The majority of the Board said: "...There is a relationship between the settlement of a public employer with an employee organization representing some of its employees and the settlement of another employee organization representing other employees. Settlements often follow established patterns...This is not inappropriate."

Lynbrook, 10 PERB 13067.

A wage increase patterned after the increase granted by another public employer to another employee organization representing a similar negotiating unit is a mandatory subject of negotiations.

55. Retirement.

Albany PPFA, 7 PERB 13079.

See Mandatory - General #3.

See also Kingston PFA, 9 PERB 13069.

7

MANDATORY

FIREFIGHTER - cont'd.

56. Safety.

White Plains, 9 PERB 43007.

White Plains, 11 PERB 43089.

Safety as a general subject is a mandatory subject of negotiations. Demand to establish a joint safety committee would be a mandatory subject of negotiations.

Matter of City of New Rochelle v. Crowley, et al., 61 AD 2d 1031, 11 PERB 47002.

Appellate Division, Second Department, unanimously confirmed PERB's determination that a safety committee was a mandatory subject of negotiations and cited with approval PERB decisions White Plains II and Newburgh and a labor decision in Troy. Such decisions, the Court held, demonstrated that PERB had "established an eminently reasonable balance between the conflicting considerations involved," precluding management from foreclosing negotiations over the creation of a committee to consider "individual and specific factual situations that encompass safety situations," while barring a union from forcing management "to negotiate general questions of manpower under the guise of safety."

City of Mount Vernon, 11 PERB 43049.

Board restated previous position on joint safety committee and went on to comment that "while transportation to a fire may be characterized as matters of manpower, this is not to say that in individual fact situations, safety aspects may not predominate... Therefore, any award rendered by a contract arbitrator concerning the assignment of fire fighters per se, or their transportation to or from a fire would have to be based on safety and not manpower factors..."

57. Seniority Rights.

Albany PFA, 7 PERB 43079.

This is manifestly a term and condition of employment; does not involve the decision of a government with respect to the carrying out of its mission or the manner and means by which its services ought to be rendered to its constituency.

White Plains, 9 PERB 43007.

Assignment of jobs by seniority is a term and condition of employment.

MANDATORY

FIREFIGHTER - cont'd.

58. Time to Process Grievance Without Loss of Pay.

Albany PFA, 7 PERB 93079.

Reasoning same as "Paid Leave" (See Mandatory - Police #111).

59. Tours of Duty.

White Plains, 5 PERB 93008; Niagara Falls, 8 PERB 93030;
Nalome, 8 PERB 93045.

The Board said it is the City alone which must determine the number of firemen it must have on duty at any given time. It cannot be compelled to negotiate with regard to this matter. However, there are many ways in which the schedules of individuals and groups of firemen may be manipulated in order to satisfy the City's requirement for fire protection. Within the framework which the City may impose unilaterally that a specified number of firefighters must be on duty at specified times, the City is obligated to negotiate over the tours of duty of the firefighters within its employ.

Buffalo PBA, 9 PERB 93024.

The availability of long weekends on a rotating basis involves hours of work and therefore is a mandatory subject of negotiations.

Amsterdam, 10 PERB 93007.

Change in work schedule and hours of work mandatory subject.

Corning Police, 9 PERB 93086.

Reasonable notification of change in work shift and for premium pay if such notification is not given and demand for rotation of days off are mandatory subjects of negotiation.

See also Troy, 10 PERB 93015.

See also Non-Mandatory - Firefighter #57.

60. Tuition Reimbursement.

Kingston PFA, 9 PERB 93069.

Same as Mandatory - Schools #169.

MANDATORY

FIREFIGHTER - cont'd.

61. Work Schedules.

Albany PPTA, 7 PERB 93079.

Found to be mandatory for same reasons as Tours of Duty (859) except to the extent that it would require the employer to call in off-duty personnel and would preclude the reassignment of on-duty personnel.

See also Troy, 10 PERB 93015.

62. Unpaid Leave of Absence for Union Activity.

Albany PPTA, 7 PERB 93079.

Reasoning set out for "Paid Leave" (See Mandatory - Police #111).

See also Troy, 10 PERB 93015.

63. Overtime.

White Plains Firefighters, 10 PERB 93043.

Demand for overtime payment when medical attention requires an injured firefighter to return to his assigned station after the end of his normal tour, but prior to commencement of his next tour, is a mandatory subject.

64. Contract Continuation.

Amsterdam, 10 PERB 93007; Troy, 10 PERB 93015.

See Mandatory - General #6.

65. Health Insurance.

See Non-Mandatory - Firefighter #61.

66. Hazardous Duty Pay.

Newburgh, 11 PERB 93087.

Impact of managerial decision upon terms and conditions of employment is mandatorily negotiable.

See Mandatory - Firefighter #56.

67. Favored Nations' Clause.

Newburgh, 11 PERB 93087.

Demand for response in case other bargaining units receive increases significantly in excess of existing differentials held out to be a demand for parity and thus a mandatory subject.

See Mandatory - Firefighter #56.

MANDATORY

POLICE

101. Air Conditioning in Cars.

Scarsdale, 8 PERB 93075.

Air conditioning affects employees' comfort and is thus a term and condition of employment.

See also New Rochelle, 10 PERB 93042; Amsterdam, 10 PERB 93007.

102. Death Benefits.

Albany Police, 7 PERB 93078; affirmed 38 NY 2d 778, 9 PERB 97005.

See Mandatory - General #1.

See also Kington PFA, 9 PERB 93069.

See also Mandatory - Police #122.

103. Department Rules and Regulations.

Albany Police, 7 PERB 93078; affirmed 38 NY 2d 778, 9 PERB 97005.

Rules and regulations of a police department may involve the mission of the department within the meaning of the Board's New Rochelle decision. If restricted to work rules, however, it is a mandatory subject of negotiations.

104. Discipline and Discharge.

Albany Police, 7 PERB 93078.

A mandatory subject of negotiations so long as it does not deny employees an opportunity to utilize the statutory procedures in Civil Service Law Sections 75 and 76.

Scarsdale, 8 PERB 93075.

Discretionary discipline procedures, such as investigation, must be negotiated.

Buffalo PFA, 9 PERB 93024.

Period of time of service after which police detectives become subject to Civil Service Law Section 75 removal proceedings must be negotiated.

Auburn Police Local 195 v. Tolby and City of Auburn, 62 AD 2d 12, 11 PERB 97003; affirmed ___ NY 2d ___, 11 PERB 97006.

Alternative disciplinary procedures to CSL, Sec. 75, are a mandatory subject of negotiations. PERB ruling to the contrary, Auburn Police, 10 PERB 93042, reversed.

White Plains Police, 12 PERB 93046.

Proposal relating to continuation of pay to police officers facing discipline concerns economic benefits and is a mandatory subject of negotiations.

Anchorage, 12 PERB 93071.

"Bill of Rights" for policemen under investigation for non-criminal disciplinary violations constitutes demand for disciplinary procedures.

1.

MANDATORY

POLICE - cont'd.

105. Dismissal of Probationary Employee, Decision and Procedures for Accomplishment.

Albany Police, 7 PERB 93078.

The duration of probationary service is within the jurisdiction of the municipal civil service commission and not of the City itself, and therefore a non-mandatory subject of negotiations. A decision to dismiss a probationary employee, however, and the procedure by which such a decision might be accomplished are subject to the discretion of the municipality and are, therefore, subject to mandatory negotiations.

106. Establishment of Labor-Management and Joint Safety Committees.

Albany Police, 7 PERB 93078.

Same as Mandatory - Firefighter #52.

107. Exclusivity of Representation.

Albany Police, 7 PERB 93078.

Same as Mandatory - Firefighter #53.

108. Extra Work Outside Regular Hours of Duty.

Albany Police, 7 PERB 93078.

To the extent the demand is for authorization under General Municipal Law Section 208-d for authorization to engage in extra work for all employees outside of regular hours of duty, it is a term and condition of employment and mandatory.

109. Impact of Management Decisions.

Buffalo PMA, 9 PERB 93024.

Requirement that police officers carry service revolver while off duty. (See also Non-Mandatory - Police #106.)

110. Job Duties.

Scarsdale, 8 PERB 93075.

Job content, such as repairing own equipment is a mandatory subject of negotiations.

See Mandatory - Schools #157.

See Non-Mandatory - Police #108; Non-Mandatory - Schools #161.

MANDATORYPOLICE - cont'd.

111. Paid Leave.

Albany Police, 7 PERB ¶3078; affirmed 33 NY 2d 778, 9 PERB ¶7005.

Paid leave may be occasioned by bereavement, personal concerns, jury duty, military service and other reasons. Time off is a term and condition of employment and therefore mandatory.

The ability of an employee organization to provide effective representation to its constituency is predicated upon having employee leaders of that organization available to devote time to the work of the organization. The question of whether or not such employee leaders are to be compensated, and if so, how much, are mandatory subjects of negotiations.

112. Procedures Relating to Layoff.

Albany Police, 7 PERB ¶3078.

A provision for notice of lay-off is not unreasonably related to the requirement that a public employer negotiate over the impact of its decision to eliminate or curtail a service. However, to the extent that the duration of the notice proposed by a union would impinge on an employer's obligation to provide services to the public, it is not a matter to be dealt with in negotiations.

113. Promotional Procedures for Unit Employees.

Albany Police, 7 PERB ¶3078.

In a decision involving promotion and filling of vacancies in non-competitive classification, the Board said that but for the enactment of the Taylor Law, this would be subject to the discretionary authority of the employer. Such matters, to the extent that they are terms and conditions of employment, are mandatory subjects of negotiations. To the extent promotion is sought to higher paying positions within the negotiating unit, this also is a mandatory subject of negotiations.

114. Retirement.

Albany Police, 7 PERB ¶3078; affirmed 38 NY 2d 778, 9 PERB ¶7005.

See Mandatory - General ¶3.

Haverstraw, 12 PERB ¶3085.

Pension benefits that do not require legislative approval are mandatorily negotiable, and scope of interest arbitration is co-extensive with scope of negotiations; dispute concerning police pension benefits may be submitted to interest arbitration panel.

MANDATORYPOLICE - cont'd.

115. Time to Process Grievance Without Loss of Pay.

Albany Police, 7 PERB 93078.

Reasoning same as for "Paid Leave" (See above Mandatory - Police #111).

116. Tours of Duty.

Buffalo PBA, 9 PERB 93024.

See Mandatory - Firefighter #59.

117. Unpaid Leave of Absence for Union Activity.

Albany Police, 7 PERB 93078.

Reasoning same as for "Paid Leave" (See above Mandatory - Police #111).

118. Equipment.

Scarsdale, 3 PERB 93075.

Union may demand that unit employees not ride in unsafe vehicles.

New Rochelle, 10 PERB 93042; White Plains, 12 PERB 93046.

Certain specified equipment to be provided so long as such equipment is required by the department.

119. Zipper Clause.

Albany Police, 7 PERB 93078.

This refers to the fact that the total agreement supercedes any and all personnel rules, regulations, local laws or regulations and will be amended by mutual agreement. The Board said zipper clauses per se are mandatory subjects of negotiation.

120. Termination Pay.

Lynbrook Police, 10 PERB 93065 and 10 PERB 93067; Lynbrook v. PERB, ___ NY 2d ___, 12 PERB 97021.

Termination pay provision does not involve a "payment to retirees" and this is a mandatory rather than a prohibited subject of negotiation.

See also Mandatory - Schools #167.

Hempstead Police, 11 PERB 93072.

MANDATORYPOLICE - cont'd.

121. Contract Continuation.

Lynbrook, 10 PERB 93067; Amsterdam, 10 PERB 93007.

See Mandatory - General #6.

122. Health Insurance.

Lynbrook, 10 PERB 93067.

Hospitalization benefits for beneficiaries of current police officers who die after they retire.

New Rochelle, 10 PERB 93042.

Family of a person who is an employee at the time of negotiations to be provided certain hospitalization benefits in the event of his death.

123. Pattern Bargaining.

Lynbrook, 10 PERB 93067.

See Mandatory - Firefighter #54.

124. Sick Leave.

Haverstraw, 11 PERB 93109.

A demand to increase the number of sick leave days in the event of illness in the family is a mandatory subject of negotiation.

125. Uniforms.

Haverstraw, 11 PERB 93109.

The cost of cleaning and repairing uniforms is a term and condition of employment.

126. Agency Shop.

Haverstraw, 11 PERB 93109.

See Mandatory - General #7.

127. Legal Insurance.

Haverstraw, 11 PERB 93109; Town of Haverstraw v. Newman,
— Misc. 2d —, 12 PERB 97007; 12 PERB 93064; 12 PERB 97015.

Legal insurance is a term and condition of employment. (Supreme Court decision overruling PERB has been appealed.)

MANDATORY

POLICE - cont'd.

128. Hazard Pay.

Haverstraw, 11 PERB 93109.

A demand for hazardous duty pay whenever the Town makes a unilateral determination that has an impact upon the safety of police officers is a mandatory subject of negotiation.

129. Termination Pay.

Lynbrook v. PERB and P3A, AD 24, 11 PERB 97012.

Termination pay is a mandatory subject of negotiation, not a retirement benefit proscribed from negotiations by CSL 201(4), as it is an earned lump-sum addition to current salary.

130. Premium Pay - Veterans.

City of Rochester, 12 PERB 93010.

Demand for premium pay for veterans working on Memorial and Veterans' Days is a mandatory subject.

131. Subjects Covered by Statute.

City of Rochester, 12 PERB 93010.

Proposal which relates to subject treated by statute is a mandatory subject as long as the statute does not clearly preempt entire subject matter and proposal does not diminish or merely restate statutory benefits.

132. Out-of-Title Work.

Choektougan, 12 PERB 93082.

Demand that senior police lieutenants be compensated for each hour worked as acting captains on shifts when captains are absent was a mandatory subject of negotiation.

MANDATORYSCHOOLS

131. Arbitration As Last Step of Disciplinary Proceedings Against Tenured Teachers.

Huntington, 30 NY 2d 122, 5 PERB 97507.

Called a term and condition of employment by Court of Appeals. Court said it is a provision commonly found in collective bargaining agreements in the private and public sectors and carries out Federal and State policy favoring arbitration as a means of resolving labor disputes. It assures teachers with tenure that no disciplinary action will be taken against them without just cause and that any dispute as to the existence of such cause may be submitted to arbitration.

132. Cash Payment for Accumulated Unused Sick Leave.

Board of Education, Central High School District No. 3, Nassau County, 36 AD 2d 331, 3 PERB 96012.

See Mandatory - Court Decisions #200.

133. Change in Conference Hours.

Jamontown, 6 PERB 93075.

This case arose on a charge that the school board during negotiations had unilaterally changed certain aspects of the school calendar including the number of parent-teacher conference hours for the elementary schools. PERB endorsed the hearing officer's ruling that the school board did not violate the Law because the calendar which was unilaterally decreed was tentative and subject to change based on bilateral agreement. Adoption is something that must be done at a particular period of time, and the unilateral action was based on necessity of the moment. With regard to the change in the parent-teacher conference hours, PERB said there was no compelling reason for a unilateral change in May when the conferences would be held the following November.

MANDATORY

SCIKKALS - cont'd

154. Compulsory Retirement.

Harrison, 6 PERB 93017.

The employer conceded that compulsory retirement is a term and condition of employment, but relied on language of Section 510.1b of the Education Law for the conclusion that school districts have nondelegable authority to decide whether or not to request a member of the Teachers' Retirement System to retire at age 70. PERB disagreed saying this section of the law neither obligated a Board of Education to retire a member of the Teachers' Retirement System at 70 nor does it vest a board of education with an absolute right to require such a teacher to retire at a predetermined age. The applicable language of Ed. Law Section 510 is, "Any member who has attained age seventy may be retired at his own request or at the request of the employer...." PERB said this language was designed to be permissive. The Court of Appeals in Board of Ed. Huntington v. Teachers, 30 NY 2d 122 (1972) ruled that where explicit language of a statute circumscribes the exercise of power by a board of education, as is the case with respect to the involuntary retirement of teachers younger than 70, there is no Taylor Law duty to negotiate, but where there is no such explicit statutory circumscription of the exercise of power by a board of education, there is a duty to negotiate.

155. Impact of Management Decisions.

A. Abolishing positions claimed to exist by employee organization.

North Babylon, 7 PERB 93027.

The gravamen of the charge is that the employer abolished a number of teaching positions and refused to negotiate with the teachers on the impact of such action on the terms and conditions of employment. The employer claimed there was no impact and that there was no obligation to negotiate. PERB said "An employer cannot avoid a duty to negotiate by simply making a unilateral determination that there is no impact any more than an employer could avoid an obligation to discuss a grievance on the ground that in its judgment the grievance is without merit. The employer has an obligation to meet with the teachers and discuss the issue of impact. The act of meeting and discussing would not constitute a concession on the employer's part that there is an impact on terms and conditions."

Somers, 9 PERB 93014.

Severance pay, continued medical and other fringe benefits, employment in other positions and retraining of laid-off employees must be negotiated.

MANDATORYSCHOOLS - cont'd.

155. Impact of Management Decisions. - cont'd.

B. Modification of class size.

West Irondequoit, 4 PERB ¶3070; affirmed 35 NY 2d 46, 7 PERB ¶7014.

The line of demarcation between a basic policy decision and the impact on terms and conditions of employment may not always be clear. For example, a policy decision may have an impact on teaching load. At first look, class size and teaching load may seem the same, but they are not. The first represents a determination by the public employer as to an educational policy made in the light of its resources and other needs of its constituency. This decision may have an impact on hours of work and the number of teaching periods which are clearly mandatory subjects of negotiations.

In affirming the Board decision, the Court of Appeals adopted and approved the reasoning of the Board that the impact of a policy decision, such as class size, is negotiable.

C. Reduction in work force for unit members.

New Rochelle, 4 PERB ¶3060.

The decision of the school superintendent involving budgetary cuts with concomitant job eliminations is not a mandatory subject of negotiation. The Board concluded, however, that the employer is obligated to negotiate with the union on the impact of such decisions on the terms and conditions of employment of the employees affected.

Examples of such negotiable matters are order of lay-off, severance pay, and workload for the remaining employees.

156. Incentive Pay Plan.

North Hamstead School District and Carlo Place Teachers, 6 PERB ¶7510.

See Mandatory - Court Decisions ¶202.

MANDATORY

SCHOOLS - cont'd.

157. Job Duties of Unit Employees.

West Irondequoit, 4 PERB ¶3070.

The Board affirmed the hearing officer who referred to job duties when dealing with the issue of promotional policy for unit positions. She said "Insofar as a promotional policy for unit positions is concerned the duties of a position and the procedures for promotion, as distinguished from the qualifications for promotion, are matters having a direct and significant relationship to working conditions...."

See Mandatory - Police #110.

See Non-Mandatory - Schools #158, #161; Non-Mandatory - Police #108.

158. Length of Work Year.

Onondaga, 4 PERB ¶4520.

The length of an employee's work year no less than the hours he may work each day is a term and condition of employment. With regard to the latter subject, the Law expressly requires good faith negotiations. With regard to the former, good faith negotiations are also required unless the length of the work year is a subject which involves a decision concerning the basic goals and direction of the employer.

159. Procedures for Evaluating Probationary or Untenured Teachers.

Monroe-Woodbury, 3 PERB ¶3104.

The employer contended that such proposals are in derogation of the authority of school superintendents and boards of education as granted in the Education Law, Section 3012 and Section 3013, relating to the granting or denial of tenure. PERB said that while the procedures proposed in this case go beyond that required by the Education Law, it does not appear that the procedures contravene the provisions of the Education Law. PERB ruled that this is not barred by existing law and as it deals with a term and condition of employment is mandatory.

MANDATORYSCHOOLS - cont'd.

140. Promotional Procedures for Unit Employees.

West Lonsdale, 4 PERB ¶3070.

The Board upheld the hearing officer who said "insofar as a promotional policy for unit positions is concerned, the duties of a position and the procedures for promotion, as distinguished from the qualifications for promotion, are matters having a direct and significant relationship to working conditions. At the same time, these matters do not as heavily bear upon the fundamental goals and direction of the employer...."

141. Reallocation of Job Grades.

New Rochelle, 7 PERB ¶3021.

The employer's argument that it complied with various sections of the contract was not persuasive since there was no provision in the agreement granting to the employer the right to change wages and other terms and conditions of employment unilaterally and without prior negotiations as required by Section 204 of the Law. Moreover, in further reference to that part which alleged that a local ordinance impliedly excluded job reallocations for local employees from their terms and conditions of employment, it is noted that local laws are not in pari materia with the Taylor Law.

142. Reimbursement for Job-Related Personal Property Damage.

Huntington, 5 PERB ¶7507.

The Court of Appeals said this provision constitutes a term or condition of employment. It went on to say "It is certainly not uncommon for collective agreements in the public sector, as well as in the private sector, to contain 'damage reimbursement' provisions similar to the one before us. If, during the course of performing his duties, an employee has his clothing, eyeglasses, or other personal effects damaged or destroyed, it is certainly reasonable to reimburse him for the cost of repairing or replacing them."

MANDATORYSCHOOLS - cont'd.

167. Special Salary Increment in Last Year of Service Before Retirement.

Huntington, 30 NY 2d 122, 5 PERB 47507.

Termed a term and condition of employment by the Court of Appeals. "Employers, both in the public and private sectors, have traditionally paid higher salaries based upon length of service and training. In addition to the fact that the payment was to be for service actually rendered during their last year of employment, the benefit provided for served the legitimate purpose of inducing experienced teachers to remain in the employ of the school district. It is not, therefore, a constitutionally prohibited 'gift' of public moneys since the retiring teachers who benefit from this provision have furnished a 'corresponding benefit or consideration to the State'."

168. Subcontracting.

Somers, 9 PERB 43014; Buffalo, 9 PERB 43015.

The decision to subcontract does not contemplate a change in the employer's operating method or the nature or extent of its services and is bound to other mandatory negotiating subjects; it must be negotiated.

Northport, 9 PERB 43003.

The reassignment of unit work to non-unit employees must also be negotiated.

Saratoga Springs, 11 PERB 43037; affirmed AD 2d, 12 PERB 47008.

Board sustained the determination of a hearing officer that school district had subcontracted transportation services without prior negotiation with the unit bargaining representative. The subcontract involved the replacement of unit employees of the public employer with employees of a subcontractor who do the same work under similar performance standards. As such, the subject of subcontracting plainly comes within the meaning of the words, "terms and conditions of employment."

169. Tuition Reimbursement.

Huntington School District, 38 NY 2d 122.

Tuition reimbursement clearly relates to a term and condition of employment.

See Kingston PFA, 9 PERB 43069.

MANDATORYSCHOOLS - cont'd.

170. Workload.

Yorktown, 7 PERB 93030.

In this matter the Board referred to its decision in the Matter of West Irondequoit Board of Education, 4 PERB 93070 in which it distinguished between matters of education policy that are not terms and conditions of employment such as class size and the impact of such decisions on terms and conditions of employment, such as teacher workload. Class size is but one factor in the calculation of WSCM; a demand for limitations on the WSCM is a workload demand and a mandatory subject of negotiations. The formula for the determination of WSCM includes not only class size but also hours of work and the number of teaching periods.

1.1. Workday Schedule.

Troy, 11 PERB 93056.

Improper practice charge by teachers alleges that school district unilaterally added fifteen to thirty minutes to their workday. Board sustains charge and finds that there had been no serious negotiations on the length of the teacher workday (the parties were negotiating a new contract), and no deadline had been reached. The school district had not indicated that the change had a high priority. Even if it appeared to the school district that there was a compelling need for a change, such action must be deemed to have been premature insofar as the state of negotiations on this issue were concerned. Prior teacher workday schedule ordered restored.

MANDATORYCOURT DECISIONS

(Following are items termed mandatory subjects of negotiation by the Courts.)

200. Cash Payment for Accumulated unused Sick Leave.

Teacher Association, Central High School District #3 v. Board,
3 A.D. 2d 351 (3 PERB 98012).

The Appellate Court said that "...sick leave as a condition of employment offer an inducement to competent and efficient workers to enter public service and the right to accumulate unused sick leave encourages them to stay in public service and at the same time deters absenteeism for trifling ailments. There is no constitutional barrier to the payment of a sum equivalent to a percentage of accumulated unexercised sick leave when the employee dies in service or severs his relationship." The Court also said the Board of Education did not lack the authority to make the contract for the payment of the amount attributable to the unused sick leave.

201. Medical, Dental and Life Insurance Benefit Payments by Employer to A Union Administered Welfare Fund.

Local 356 IFT v. Town of Cortlandt, 68 Misc. 2d 645 (4 PERB 98012).

The Court said that a town has power to make payments, as called for by a collective bargaining agreement with the union to a trusteesd welfare fund (Insurance Law, Art. 3-A) of monies to provide medical, dental, hospital, eyeglass and life insurance benefits for its members. Such payments accord with the public policy of the State as embodied in the Insurance Law (Art. 3-A) and the Taylor Law.

202. Incentive Pay Plan.

North Hempstead School District and Carle Place Teachers, 6 PERB 97510.

The Court decided that the incentive compensation plan was a valid negotiable term and condition of employment. In doing so, the Court said "It would appear that before the Taylor Law was enacted the school authorities were empowered to reward superior performance of its teachers in the manner plaintiff here devised. Was this power eliminated by the Taylor Law? In approaching a solution to this query, the Court referred to the Court of Appeals decision in the Huntington case (5 PERB 17507) saying in part "...there is no reason why the mandatory provisions of that act should be limited, in any way except in cases where some other applicable statutory provision explicitly and definitively prohibits the public employer from making an agreement as to a particular term or condition of employment."

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NON-MANDATORYGENERAL

1. Agency Shop.

See Mandatory - General 17.

2. Civil Service or Other Statutory Requirements.

Albany Police, 7 PERB 13078.

Matters within the discretion of a local civil service commission or mandated by Civil Service Law are not negotiable.

Scarsdale, 8 PERB 13075.

Inclusion of statutory provision or provision contrary to statutory mandate in contract is not mandatorily negotiable.

3. Death Benefits.

Albany Police, 7 PERB 13078.

Death benefit authorized by the appropriate sections of the Retirement and Social Security Law available only to employees hired before July 1, 1973 and prohibited for those hired after July 1, 1973.

See Non-Mandatory - Firefighters #61.

4. Employment Qualifications.

Nassau County, 8 PERB 13058.

New employees to furnish own tools.

5. Mission of Government and Overall Policies.

Albany Police, 7 PERB 13078.

A public employer exists to provide certain services to its constituents, be it police protection, sanitation or education. Of necessity, the public employer, acting through its executive or legislative body, must determine the manner and means by which such services are to be rendered and the extent thereof, subject to the approval or disapproval of the public so served, as manifested in the electoral process. Decisions of a public employer with respect to the carrying out of its mission, such as a decision to eliminate a service, are matters that a public employer should not be compelled to negotiate with its employees.

NON-MANDATORYGENERAL - cont'd.

6. Reduction in Work Force.

See Non-Mandatory - Schools #164.

7. Residency Requirements.

Rochester, 4 PERB 93058.

A residency requirement is not a condition of, but a qualification for, employment. Like other employment qualifications, it defines a level of achievement or a special status deemed necessary for optimum on-the-job performance. Traditionally, qualifications for employment have been matter of managerial prerogative, and no cogent reason appears to justify a departure from this rule.

Buffalo, 9 PERB 93015.

Residency requirement for prospective, but not existing, employees is a management prerogative.

8. Vacancies.

Albany Police, 7 PERB 93078.

This subject matter covered in part by mandatory language in Civil Service Law and in part lies within the discretionary authority of the local civil service commission. As to matters set forth in proposal, employer has no power or discretion.

Albany PFA, 7 PERB 93079; New Rochelle, 4 PERB 93060; Scarsdale, 8 PERB 93075.

Filling of vacancies within 30 days goes to the mission of the employer and is a management prerogative.

Orange County Community College Faculty Association, 9 PERB 93068.

Screening and interviewing candidates for teaching vacancies done with responsibility for administrative operation of the institution.

See Non-Mandatory - College #31.

White Plains Firefighters, 10 PERB 93043.

Filling of vacancies "as soon as possible."

NON-MANDATORYGENERAL - cont'd.9. Dues Deduction.Amsterdam Police/Firefighters, 10 PERB 93007.

Demand that check-off be irrevocable during term of agreement not mandatory. It is prohibited by §93-b of the General Municipal Law, which provides that "any such written authorization [for union dues deduction] may be withdrawn by such employee or member at any time by filing written notice of such withdrawal with the fiscal or disbursing officer." Civil Service Law §209.1(b), which extends the right of dues check-off, does not, by its terms, permit irrevocable authorization.

See Mandatory - General #7.

10. Retirement.

Because of changes in retirement legislation enacted in 1973 and in 1976, there are now three distinct classes of retirement system member, which the Retirement System identifies as "First Tier," "Second Tier," and "Third Tier." "First Tier" refers to employees who joined the retirement system prior to July 1, 1973. "Second Tier" applies to all employees who joined the retirement system between July 1, 1973 and June 30, 1976. "Third Tier" applies to all employees hired after July 1, 1976. Policemen and firemen are not covered by the "Third Tier." Teachers are covered by the Teachers' Retirement System, and retirement benefits for teachers were never negotiable, because all benefits are established by State legislation. Although §201.4 of the Civil Service Law (Taylor Law) prohibits the negotiation of retirement benefits by the exclusion of such benefits from the definition of terms and conditions of employment, the effect of this definition has been suspended annually with respect to retirement options already available by statute. The most recent extension is Chapter 321, Laws of 1979, which expires June 30, 1981.

See Mandatory - General #3.

11. Established Practice - Non-Mandatory.New York City Board of Education, 12 PERB 93036; Troy Firefighters, 10 PERB 93015.

School district did not violate its negotiating duty by unilaterally abandoning established practice of allowing custodial supervisors to apply for reversion and transfer to custodial vacancies. An established practice, which is a non-mandatory subject, does not become mandatory because of employee's voluntary compliance.

NON-MANDATORYGENERAL - cont'd.

12. Non-Mandatory Subject to Factfinding.

Board of Higher Education, 7 PERB 93028; Monroe-Woodbury Teachers, 10 PERB 93029; Rockville Centre Principals, 12 PERB 93021.

A party to negotiations violates its duty to negotiate in good faith when, over the objections of the other party, it presses a proposal for a non-mandatory subject into factfinding.

13. Bargaining Proposals Containing Two or More Elements - One Non-Mandatory.

Town of Haverstraw, 11 PERB 93109; City of Rochester, 12 PERB 93010; Amherst, 12 PERB 93071.

Where bargaining proposal contains two or more inseparable elements, at least one of which is non-mandatory, the entire proposal is deemed non-mandatory.

14. Negotiation Ground Rules - Observers, Transcribing Proceedings.

Shelter Island, 12 PERB 93112.

Party may not insist upon negotiation of ground rules providing for the presence of observers during negotiations or upon transcription of bargaining sessions.

15. Allocation of Titles to Grade.

Office of Court Administration, 12 PERB 93075; Evans v. Newman, Misc. 2d _____, 12 PERB 97016; Evans v. Newman, AD 2d _____, 12 PERB 97022.

PERB determination that job allocation process of assigning classified position to particular salary grade is aspect of wage determination that is mandatory subject of negotiation overturned by Supreme Court and Appellate Division decisions.

NON-MANDATORYCOLLEGE**26. Access to College Facilities and Equipment.**

Orange County Community College Faculty Association, 9 PERB 93068;
Amerat, 12 PERB 93071.

Demand for right to use employer facilities and equipment such as typewriters, duplicating equipment, mail, telephone and computer services seeks assistance from employer in the operation and conduct of the business of the Association. If granted, it could raise questions of improper public employer support of an employee organization.

Giving faculty keys to buildings is a management prerogative as it may affect security of the premises.

See also Mandatory - College #26.

27. Assignments for Extra Compensation.

Orange County Community College Faculty Association, 9 PERB 93068.

Giving full-time faculty first priority in teaching assignments and counselors and librarians first priority to work one summer school session non-mandatory to extent it would limit the assignment of faculty where necessary to accomplish the mission and educational program of the employer.

28. Attendance at Board Meeting; Also Access to Minutes of All Board Meetings.

Orange County Community College Faculty Association, 9 PERB 93068.

Attendance of Association representative at board meetings does not pertain directly to Association's appropriate role as employee representative in matters relating to working conditions. Moreover, neither party is entitled to access to the internal affairs of the other.

29. Class Size.

Orange County Community College Faculty Association, 9 PERB 93068;
West Irondequoit, 4 PERB 93070.

See Non-Mandatory - Schools #133. Same principle applies to post-secondary education.

Onondaga County Community College, 11 PERB 93045; Hudson Valley Community College, 12 PERB 93030.

NON-MANDATORYCOLLEGE - cont'd.

30. College Calendar.

Orange County Community College Faculty Association, 9 PERB 93068.

Encompasses broad non-mandatory area dealing essentially with the administrative organization of the over-all academic program.

Onondaga County Community College, 11 PERB 93045.

31. Faculty Evaluation.

City University, 7 PERB 93028.

Composition of the Personnel and Budget Committees of the City University of New York were determined to be a management prerogative. In a split decision two members ruled that designation of membership on committees, which have as a part of their function faculty retention and promotion policies, is not mandatory. In a dissenting opinion, the third member found the make-up of these committees to be a term and condition of employment and, therefore, mandatory.

Orange County Community College Faculty Association, 9 PERB 93068.

Structure of Committee on Reappointment, Promotion and Tenure is matter of administrative organization and operation of institution.

Orange County Community College Faculty Association, 9 PERB 93068.

A faculty association may insist upon negotiation of a demand for due process in the application of an evaluation system. Permitting faculty members to establish their own evaluation system each year goes beyond due process and intrudes upon a management prerogative.

See Non-Mandatory - General #5.

Orange County Community College, 10 PERB 93085.

Inclusion of members of Association on committees to screen and interview candidates for a teaching vacancy within any division and for position of Academic Dean and any other academic administrator. Management prerogative.

NON-MANDATORYCOLLEGE - cont'd.

31. Faculty Evaluation. - cont'd.

Also, inclusion of tenured members of the unit on the President's Committee on Reappointment and Tenure; faculty to have criteria for promotion, retention and tenure by September 1 of each academic year; written rationale for decision to promote, retain or deny tenure. This involves governance of the college.

Onondaga County Community College, 11 PERB 13045.

32. Course Offerings, Outlines and Evaluations.

Orange County Community College Faculty Association, 9 PERB 13068.

Deals with educational policy.

Orange County Community College, 10 PERB 13080.

Demand for faculty member to be asked what he would like to teach, with a rationale behind any rejection to be in writing.

Orange County Community College, 10 PERB 13080.

No change in printed schedule of classes unless faculty member requests change or course is cancelled due to lack of enrollment; this demand would impose a restriction on the authority of management to make educational judgments.

33. Faculty Advisors.

Orange County Community College Faculty Association, 9 PERB 13068.

Whether or not students should have access to members of the teaching faculty for advice on academic pursuits and course-related matters is an aspect of educational policy.

West Irondequoit, 4 PERB 13070.

The ratio of professional counselors to students covered in this decision.

Onondaga County Community College, 11 PERB 13045.

Counselor-student ratio is not a mandatory subject of negotiations.

NON-MANDATORYCOLLEGE - cont'd.

34. Part-Time Faculty Hiring.

Orange County Community College Faculty Association, 9 PERB 93068.

Demand goes beyond hours of work and preservation of unit work and extends to manpower policies and hiring practices.

See New Rochelle, 4 PERB 93060.

35. Hours and Days of Work and Work Location.

Orange County Community College Faculty Association, 9 PERB 93068.

Demand for no evening or weekend teaching deals with the kind of work to which faculty may be assigned and when they may be required to perform it. It is a management prerogative to decide how many employees it needs on duty at any given time and where teachers may be required to teach, whether on or off-campus.

See Non-Mandatory - Firefighter #53.

Orange County Community College, 10 PERB 93080.

Limiting teaching schedule to four days a week, Monday through Friday, and to five hours a day; would preclude offering of Saturday and Sunday classes and restrict schedule of services that may be offered.

36. Reappointment of Faculty.

Orange County Community College Faculty Association, 9 PERB 93068.

Administrators return to bargaining unit upon recommendation of search committee. To extent it would require delegation to a search committee of the authority to appoint or reappoint employees, it deals with the administrative organization and operation of an institution of higher education.

See also City University, 7 PERB 93023.

37. Teaching Materials.

Orange County Community College Faculty Association, 9 PERB 93068.

Involves educational policy.

NON-MANDATORY

COLLEGE - cont'd.

38. Vacancies.

Orange County Community College Faculty Association, 9 PERB 93068.

See Non-Mandatory - General #8; Non-Mandatory - College #31;
Non-Mandatory - Firefighter #58; Non-Mandatory - Police #116;
Non-Mandatory - Schools #167.

Onondaga County Community College, 11 PERB 93045.

39. Working Conditions.

Orange County Community College, 10 PERB 93080.

Restriction of institution of new policies and customs affecting working conditions without prior notification, discussion and written consent of the Association. Alteration of policies and practices a management prerogative.

40. Sponsorship and Attendance at Student Activities.

Orange County Community College, 10 PERB 93080.

Demand for strictly voluntary faculty attendance at student activities held non-mandatory.

41. Health Insurance and Retirement System Parity.

Onondaga County Community College, 11 PERB 93045.

Demand by community college faculty for parity with other county employees (if they receive universal benefits) with respect to health insurance and retirement benefits is a non-mandatory subject of negotiation if an automatic relationship to employees in other negotiating units is sought.

NON-MANDATORYFIREFIGHTER

51. Call In of Off-Duty Personnel.

Albany PPFA, 7 PERB 93079.

In previous decisions, the Board ruled that workload is a mandatory subject of negotiations. In this case the Board determined to the extent that the employer would have to call in off-duty personnel and that this would preclude the reassignment of on-duty personnel, this is a non-mandatory subject of negotiations.

Scarsdale, 8 PERB 93075.

Work schedule posting requirement insofar as it would prevent employer from calling in staff to work in an emergency is not mandatorily negotiable.

Corning, 9 PERB 93086; Amherst, 12 PERB 93071.

52. Equipment Safety Committee.

Kingston PFA, 9 PERB 93069.

Voting committee with duties to investigate complaint that equipment is inadequate or unsafe and to certify condition of equipment to union and the Fire Chief could give committee veto power over equipment selected by the City. Its ambiguity requires resolution against the party demanding it.

53. Manning Levels.

White Plains, 9 PERB 93007; Niagara Falls, 9 PERB 93025;
Johnson City, 9 PERB 93042; Kingston PFA, 9 PERB 93069.

The Board held that manning requirements, such as the number of men assigned to a police car or fire truck, or to be on duty, even though related to safety, is not a mandatory subject of negotiations. Safety as a general subject is mandatorily negotiable, however.

Johnson City, 9 PERB 93042.

Similarly, the Board held that a demand for a minimum manpower standard for a certain number of paid firemen to be on duty at all times is not a mandatory subject of negotiation.

NON-MANDATORYFIREFIGHTER - cont'd.

53. Manning Levels. - cont'd.

White Plains, 5 PERB 43008.

The Board said it is the City alone that must determine the number of firemen it must have on duty at any given time. It cannot be compelled to negotiate with respect to this matter. (See Mandatory - Firefighter #59)

Kingston PFA, 9 PERB 43069.

Demand that only a specific number may be on vacation at the same time would restrict the authority of the City to decide how many firefighters it requires on duty at any given time.

See also Mandatory - Firefighter #59.

Newburgh IAFF, 10 PERB 43001.

Demand that a minimum number of men must be on duty at all times per piece of fire fighting equipment is essentially a management prerogative as to how best to service public safety needs and is not a mandatory subject of negotiation.

Cornwall Police, 9 PERB 43086.

Demands which would prohibit non-emergency shift changes and permit only one work schedule for each three month period would affect employer's right to determine its manning requirement and therefore are not mandatory. Submission of such demands to interest arbitration is improper.

Amsterdam Police/Firefighters, 10 PERB 43007.

Demands for manning of switchboard with civilian dispatchers without reduction in existing work force, for minimum number of permanent professional fighters on duty each shift and for two men for each car are not mandatory. All relate to manpower needs of City and deployment of personnel.

54. Negotiating Team.

New Rochelle, 8 PERB 43071.

Employer may not seek to negotiate contract limiting the composition of the union's negotiating team and specifically to exclude from it a certain class of unit employees.

NON-MANDATORYFIREFIGHTER - cont'd.

55. Parity.

Albany PPFA, 7 PERB 13079.

If the demand is not to reopen the agreement for negotiations but to reopen it for the mechanical change of instituting the dollar value of benefits obtained later by the police in their negotiations, it is not negotiable. The firefighters can no more insist that during the life of their agreement the wage provisions thereof will be adjusted upwards automatically to equal those obtained thereafter in police negotiations than the police can insist that the wage provisions of their agreement be reopened to guarantee that they receive some amount more than the firefighters have obtained thereafter by negotiations. Such a demand concerns terms and conditions of employment outside their own negotiating unit. In effect, the firefighters seek to be silent partners in negotiations between the employer and employees in another negotiating unit. Moreover, an agreement of this type between the City and one employee organization would improperly inhibit negotiations between the City and another employee organization representing employees in a different unit. See Doyle v. City of Troy, 51 AD 2d 845, 9 PERB 17510; Voight v. Bowen, 53 AD 2d 277, 9 PERB 17525.

See Non-Mandatory - Police #117.

56. Supervision.

White Plains, 5 PERB 13003.

The Board said that the firefighters in this case have a legitimate interest in adequate supervision because it is directly related to their safety while fighting fires, but it is not for them to determine the rank of the persons assigned to supervise them. Rank of supervisors assigned is a management prerogative.

See Non-Mandatory - Police #128.

Troy Firefighters, 10 PERB 13015.

Rank of supervisors to be assigned to a duty.

57. Vacancies.

Albany PPFA, 7 PERB 13079.

See Non-Mandatory - General #8; Non-Mandatory - College #31;
Non-Mandatory - Police #116; Non-Mandatory - Schools #167.

NON-MANDATORYFIREFIGHTER - cont'd.

58. Retirement.

Troy Firefighters, 10 PERB 93015.

See Non-Mandatory - General #3; Non-Mandatory - Firefighters #61.

59. Anti-discrimination Clause.

White Plains Firefighters, 10 PERB 93043.

Inasmuch as clause would result in the establishment of private arbitration proceedings for resolving what are essentially statutory improper practice disputes, it is non-mandatory.

60. Test Requirements (Breathalyzer Polygraph).

Troy Firefighters, 10 PERB 93015.Prohibition on the use of polygraph or breathalyzer test for any reason. In this form, the demand encompasses matters beyond the employment relationship.

See Non-Mandatory - Police #115.

61. Death Benefits.

Troy Firefighters, 10 PERB 93015.Benefits for retirees and spouses and children of deceased members. No statutory duty to negotiate benefits for persons no longer employees at the time of negotiation. See also New Rochelle Police, 10 PERB 93042; Lynbrook Police, 10 PERB 93067.

62. Scheduling.

Rochester Firefighters, 12 PERB 93047.

Union proposal, which would not permit City to schedule inspections or surveys when the temperature at 12:45 PM on any given day was above or below specified levels, on holidays and weekends, or during inclement weather, is a non-mandatory subject of negotiations. Proposal would inhibit City from providing specific services at certain times.

Fairview Fire District, 12 PERB 93083.

Demand that contractual work schedule be expanded to outline more specifically present shift system and to bar change in work schedule except as permitted in agreement was too vague and, thus, not a mandatory subject.

NON-MANDATORYFIREFIGHTER - cont'd.

63. Firefighting Procedures.

Rochester Firefighters, 12 PERB 93047.

Union proposal requiring "all fire ground evolutions" to be carried out in compliance with standards established in manuals of National Fire Protection Association is not a mandatory subject of negotiations. Term "fire ground evolutions" is ambiguous, and the voluminous cited manuals deal with many matters which are not terms and conditions of employment.

64. Legislation.

Rochester Firefighters, 12 PERB 93047.

Union proposal requiring that City enact standby legislation, in the event an existing law providing compensation to injured firefighters is declared unconstitutional, is not a mandatory subject of negotiations. The content of legislation is not within the scope of negotiations unless required to implement the terms of a negotiated agreement.

65. Maintenance of Equipment.

Fairview Fire District, 12 PERB 93083.

Demand that would relieve employees of responsibility of keeping vehicles or apparatus in service and operating safely based on employees' subjective opinion that they would be unable to make or secure necessary repairs was not a mandatory bargaining subject.

66. Promotion.

Fairview Fire District, 12 PERB 93083.

Union demand that would require all promotions to be made, where possible, from department ranks for all positions except chief and in accordance with Civil Service regulations and a psychological test was not mandatory because it would interfere with fire district's right to establish qualifications for promotion.

NON-MANDATORY

POLICE

101. Agency Shop

See Mandatory - General #7.

102. Civil Service or Other Statutory Requirements.

Albany Police, 7 PERB 53078; City of Rochester, 12 PERB 53010.

See Non-Mandatory - General #2.

103. Criminal Investigation of Police Unit Employee.

Saratoga, 8 PERB 53075.

Policeman who is investigated for criminal conduct in in the same position as a civilian, nor is employee entitled to accusatory statements before a preliminary investigation.

104. Death Benefits.

Albany Police, 7 PERB 53078.

See Non-Mandatory - General #3; Non-Mandatory - Firefighters #61.

105. Dismissal of Probationary Employee, Decision and Procedures for Accomplishment.

Albany Police, 7 PERB 53078.

The duration of probationary service is within the jurisdiction of the municipal civil service commission and not of the City itself, and therefore a non-mandatory subject of negotiations.

106. Equipment.

Albany Police, 7 PERB 53078.

Even if a demand for shotguns in police cars has safety implications, those implications are overcome by the consideration specified in New Rochelle, 4 PERB 53060 decision that the manner and means by which a city should render services to its communities is a management prerogative. The selection of weapons and their tactical deployment is a management prerogative. The preservation of public order is involved.

NON-MANDATORY

POLICE - cont'd.

106. Equipment. - cont'd.

Milto Plains, 9 PERB 93007.

Increase in number of operational police cars would make job safer but is a basic managerial decision involving level of services and thus is not a mandatory subject of negotiations.

City of Buffalo, 9 PERB 93024.

Carrying of service revolver off duty not mandatorily negotiable, but impact of such requirement is.

Scarsdale, 8 PERB 93075.

Union can't demand removal of an unsafe vehicle from service rather than its assignment to a non-unit employee.

Amsterdam Police/Firefighters (Local 294, Teamsters), 10 PERB 93007.

Issuance of fresh ammunition each year to each officer is a management prerogative.

Troy Firefighters, 10 PERB 93015.

Removal of equipment from service for alleged reasons of safety. This would give employee organization veto power over equipment selected by the City.

New Rochelle Police, 10 PERB 93042.

Furnishing of specific type of revolver. Providing police vehicles with shotguns and grill lights.

107. Extra Compensation.

Albany Police, 7 PERB 93078.

Employer intercession to obtain work from other employers is not a mandatory subject of negotiations to the extent that an employer would be required to make available to employees work for other employers. Extra compensation.

NON-MANDATORY

POLICE - cont'd.

108. Job Duties.

Buffalo PBA, 9 PERB 93024.

See Non-Mandatory - Police #112.

See also Non-Mandatory - Schools #104; Mandatory - Police #110; Mandatory - Schools #157.

109. Manning Levels.

White Plains, 9 PERB 93007.

Same as Non-Mandatory - Firefighter #53.

110. Organizational Structure.

Scarsdale, 8 PERB 93075.

Demand that employer maintain a particular organizational structure is not a mandatory subject of negotiations.

Troy Firefighters, 10 PERB 93015.

Restriction on changing the employer's table of organization. Interferes with employer's right to determine manpower needs, deploy staff and render service.

111. Overall Policies and Mission of Government.

Albany Police, 7 PERB 93078.

See Non-Mandatory - General #5.

112. Assignment of Union Officers.

Buffalo, 9 PERB 93024.

Assignment of union officers to specific jobs is not a mandatory subject of negotiations.

113. Pistol Permits.

Albany Police, 7 PERB 93078.

As in the New Rochelle case, this is a decision of the public employer with respect to the carrying out of its mission. To the extent that the demand is that employees be permitted pistol permits for reasons not connected with their official duties (such as after they retire), it is not a term or condition of employment.

NON-MANDATORYPOLICE - cont'd.

114. Political Activities.

Albany Police, 7 PERB 93078.

This demand deals with matters that are covered by Election Law Section 426.3 and Second Class Cities Law Section 164. We do not regard this forum as the appropriate one to deal with the social and constitutional issues involved. Therefore, not mandatory subject of negotiation.

115. Test Requirements (Breathalyzer, Blood, Polygraph).

Buffalo, 9 PERB 93024; White Plains, 12 PERB 93044.

Requirement that police officers, who have a higher standard of compliance with law, submit to such tests or to stand in a line-up as part of investigation for violations of law, is a management prerogative.

Hempstead PBA, 11 PERB 93072.

See Non-Mandatory - Firefighters #60.

116. Vacancies.

Albany Police, 7 PERB 93078; Scarsdale, 8 PERB 93075; City of Rochester, 12 PERB 93010.

See Non-Mandatory - General #8; Non-Mandatory - College #31; Non-Mandatory - Firefighter #58; Non-Mandatory - Schools #187.

117. Parity.

New York City Police, 10 PERB 93003.

Parity clause found to be prohibited subject of negotiation. Majority ruled that bargaining for, or agreement to, a parity clause would effectively diminish the legislative grant of negotiating rights to public employees and thus contravene the letter and intent of the Taylor Law. Parity agreement would inhibit the employer from evaluating or negotiating demands on their merits, but require it to view the demands in the light of the parity agreement and would thus interfere with the negotiation rights of the union currently negotiating.

NON-MANDATORYPOLICE - cont'd.

118. Disciplinary Procedures.

New Rochelle Police, 10 PERB 93042; Town of Haverstraw, 11 PERB 93109; City of Rochester, 12 PERB 93010.

Demand that employee being questioned for a rules violation which could constitute a criminal violation not be compelled to give statement other than official police record.

See Mandatory - Police #104.

119. Compensation.

Lynbrook Police, 10 PERB 93067.

Additional compensation for employees who request assignment to rotating tours of duty rather than special details and are denied such request.

120. Retirement.

Albany Police, 7 PERB 93078; Lynbrook Police, 10 PERB 93067; New Rochelle Police, 10 PERB 93042.

See Non-Mandatory - General #3; Non-Mandatory - Firefighter #58, #61.

121. Payments to Retirees.

In re, Village of Lynbrook v. PERB, 64 AD 2d 902, 11 PERB 97012; reversed in NY 2d 308, 12 PERB 97021.

Hospitalization insurance for families of current police department employees who die after retirement held to be payment to retirees with the term of Sec. 201, subd. 4. Court of Appeals reversed and held subject to be mandatory.

Hopstead PBA, 11 PERB 93072.

Dental plan for retirees held to fall under purview of Sec. 201, subd. 4.

122. Off-duty Overtime.

Hopstead PBA, 11 PERB 93072.

Demand for same benefits when performing police duties on off-duty hours dealt with circumstances that are beyond the employment relationship of the parties. Thus, the demand does not deal with terms and conditions of employment.

NON-MANDATORYPOLICE - cont'd.

123. Employment Qualifications.

Hempstead PBA, 11 FARB 93072.

Qualifications for appointment are a management prerogative.

124. Negotiation of Departmental Rules and Regulations.

City of Rochester, 12 PERB 93010.

Proposal for negotiation of all police department rules, regulations, and general orders that are not limited to those fixing terms and conditions of employment is not a mandatory subject of negotiations. Also applicable to proposal to incorporate by reference general departmental orders relative to sick leave and vacation benefits.

125. Sick Leave Abuse.

City of Rochester, 12 PERB 93010.

Proposal permitting police officers on sick leave to leave their homes infringes on management prerogative to control sick leave abuse.

126. Off-duty Actions.

City of Rochester, 12 PERB 93010.

Proposal relating to off-duty actions of police officers, which is not limited to actions taken within the City's jurisdiction, is not mandatorily negotiable.

127. Maternity Leave.

City of Rochester, 12 PERB 93010.

Proposal which would treat maternity and child birth differently from other disabilities for leave purposes is a violation of Human Rights Law.

128. Supervisors.

Aspirant, 12 PERB 93071.

See Non-Mandatory - Firefighter #36.

129. Assignments - Distribution.

Aspirant, 12 PERB 93071.

Demand that acting assignments follow chain-of-command and be equally distributed interferes with employer's right to change schedule or replace absentees.

NON-MANDATORY

POLICE - cont'd.

130. Auxiliary Police.

Abernat, 12 PERB 43071.

* Demand limiting assignment of auxiliary police not a mandatory subject. Union had no authority to negotiate restrictions upon work of non-unit employees.

NON-MANDATORYSCHOOLS

151. Agency Swap.

See Mandatory - General #7.

152. Civil Service or Other Statutory Requirements.

Scarsdale, 8 PERB 93075; Chateaugay Central School District, 12 PERB 93019.

See Non-Mandatory - General #2.

153. Class Size.

West Irondequoit, 4 PERB 93070; affirmed 35 NY 2d 46, 7 PERB 97014.

In the New Rochelle decision (4 PERB 93060), the Board held that budgetary cuts with concomitant job eliminations were not mandatory subjects of negotiations. Underlying this determination was the concept that basic decisions as to public policy should not be made in the isolation of a negotiations table, but rather should be made by those having the direct and sole responsibility therefor, and whose actions in this regard are subject to review in the electoral process. It would appear that class size is also a basic element of education policy.

In affirming the Board decision, the Court of Appeals adopted and approved the reasoning of the Board that the impact of a policy decision, such as class size, is negotiable. The Court, using an example, indicated that although the number of pupils in a class is a policy decision, the compensation and other benefits to be received by a teacher, depending on the class size, is a mandatory subject of negotiations.

154. Demand That Each Student Have Specific Number of Contact Periods With Teaching Specialists.

Yorbtown, 7 PERB 93030.

This is a management prerogative going to the mission of employer. See New Rochelle, 4 PERB 93060.

Hours of instruction for students, however, may be negotiated. NYC Board of Education, 39 NY 2d 111, 9 PERB 97512.

NON-MANDATORY

SCHOOLS - cont'd.

- 155. Demand for Greater Role in the Formulation of Policy Relating to Student Guidance in High Schools.

Yorktown, 7 PERB 93030.

This is a management prerogative going to the mission of employer. See New Rochelle, 4 PERB 93060.

- 156. Demand for Union to Have Greater Role in Making of Decisions Relating to Development of Curriculum, the Evaluation of Principals, the Assignment of Paraprofessionals and Other Educational Matters.

Yorktown, 7 PERB 93030.

This is a management prerogative going to the mission of employer. See New Rochelle, 4 PERB 93060.

- 157. Prohibition Against Employer Consultation With Unit Employees.

New Rochelle, 8 PERB 93071.

Since such consultation is a violation of Section 209-a.1(d) of the Act, it would be a redundant provision, insistence upon which is not permitted.

- 158. Employment Qualifications.

Rochester, 4 PERB 93058.

Same reasoning as "Residency Requirements" (See Non-Mandatory - General #7).

Queensbury, 9 PERB 93057.

Assignment of duties in new programs to unit employees only.

- 159. Inspection of Employee Personnel Files by Employer.

Great Neck, 41 NY 2d 527, 10 PERB 97512.

Employer Board of Education may not agree to limit its right to inspect personnel files of its teachers.

- 160. New Programs.

Queensbury, 9 PERB 93057.

See Non-Mandatory - Schools #158.

NON-MANDATORYSCHEMES - cont'd.

161. Non-Unit Duties.

Somers, 9 PERB 93014; Queensbury, 9 PERB 93057.

Union has no standing to negotiate job duties of employees not in unit or assignment of job duties of new positions.

162. Policies and Mission of Government.

New Rochelle, 4 PERB 93060.

The level of service, including funds and manpower, is a management prerogative.

See Non-Mandatory - General #5.

163. Promotional Policy for Job Titles Not Within the Negotiating Unit.

Munroe-Woodbury, 3 PERB 93104.

Promotional policy for job titles outside the negotiating units, as well as the determination of qualifications for promotion into positions within the negotiating units, are not terms and conditions of employment.

164. Reduction in Force.

New Rochelle, 4 PERB 93060.

Budget cuts and resultant economically motivated decision to reduce work force. A management decision which is a part of carrying out the employer's mission.

Employer's budgetary cuts resulting in termination of services of substantial number of employees is a managerial decision relating to the carrying out of its mission and is not a mandatory subject of negotiations.

White Plains, 3 PERB 93008.

Demanded that work force not be reduced except by attrition or disciplinary charge for cause. Having determined that a public employer may choose to eliminate or curtail a service, it necessarily follows that a public employer may abolish positions which had been necessary for the provision of that service and that it may not be required to negotiate with respect to that decision. Of course, the employer is required to negotiate with respect to the impact of its decision to curtail services and abolish positions.

NON-MANDATORYSCHOOLS - cont'd.

164. Reduction in Force. - cont'd.

(Job security, however, is a permissive subject of negotiations. Yonkers City SD v. Teachers, 40 NY 2d 268, 9 PERB 17519; Burke v. Bowen, 40 NY 2d 264, 9 PERB 17520.)

General Brown, 10 PERB 13041.

Reduction in personnel provision does not relate to the requirement that management negotiate over impact, but rather would give an employee organization a role in the decisional process itself.

Monroe-Woodbury, 10 PERB 13029.

Demand that would guarantee that unit employees would not be laid off in the event of the merger or consolidation of school districts and that the proposed agreement would extend to the surviving district in such event.

Pearl River UFSD, 11 PERB 13085.

While public employers are required to negotiate over a demand to relieve the impact of an exercise of managerial prerogative that has the effect of increasing employee workload, the subject of the impact demand itself must be of a mandatory nature. A demand that an employer absolutely refrain from increasing class size is not such a demand.

165. Seminar or Conference Designed to Enrich the Professional Staff at Which Attendance is Not Compulsory.

Gates-Chili, 6 PERB 13065.

The Board upheld the hearing officer's determination that the ostensibly optional workshop days were, indeed, optional and that the unilateral establishment of them by the employer did not violate the Law. The Board agreed that an employer may unilaterally establish seminars or conferences designed to enrich the professional experience of its staff at which attendance is not compulsory. (If such conferences or seminars require attendance and thus expand the work year, their establishment is a mandatory subject of negotiation.)

164. Substitutes.

Seneca, 9 PERB 13014.

Demand that recommended substitutes be hired need not be negotiated since the offer of employment is a management prerogative.

NON-MANDATORYSCHOOLS - cont'd.

167. Unit Definition.

Southern Cayuga CSD, 9 PERB 96523; aff'd. 9 PERB 93056.

Inclusion of job title or position in a negotiating unit is a permissive subject of negotiations.

Binghamton, 10 PERB 93092.

168. Vacancies.

New Rochelle, 4 PERB 93060.

See Non-Mandatory - General #8; Non-Mandatory - College #31;
Non-Mandatory - Firefighter #58; Non-Mandatory - Police #116.

169. School Recess.

West Babylon Public Schools, 11 PERB 93012.

Within the discretion committed to it by law, school district may decide how best to meet the instructional needs of its pupils in any given year by designating the days of mid-year recess.

170. Teacher Evaluation.

Elwood UFSD, 10 PERB 93107.

Change in teacher evaluation form held not to be one of procedure but of standards and thus a management prerogative.

See Seneca Faculty Association, 9 PERB 93114 re 3024;
Chateaufort Central School District, 12 PERB 93015.

North Shore Union Free School District, 11 PERB 93011.

It was not an improper practice for school district employer to unilaterally change method for determining the criteria by which teachers would be evaluated since (1) change was within the prerogative of school district and was not a mandatory subject of negotiations, and (2) impact on working conditions was de minimis and did not constitute a change in terms and conditions of employment.

171. Printing Contracts.

Addison CSD, 11 PERB 93107.

Furnishing and distributing contracts is not a term and condition of employment.

NON-MANDATORYSCHOOLS - cont'd.

172. Grievance Procedure.

Pearl River UFSD, 11 PERB 93085.

Definition of grievance is too broad to constitute a mandatory subject of negotiation because it would extend the grievance procedure to matters which are not terms and conditions of employment.

173. Transfers Initiated by Teachers.

Pearl River UFSD, 11 PERB 93085.

Demands, taken together, interfere with District's prerogative of deploying teachers in accordance with its judgment as to how they should be assigned.

174. Extended Leaves of Absence.

Pearl River UFSD, 11 PERB 93085.

Demands, taken together, would unduly restrict the authority of the District to determine the assignment of a teacher who returns from an extended leave of absence.

175. Salary Tie-ins - Principals.

City of New York, 10 PERB 93003; Rockville Centre Principals, 12 PERB 93021.

Proposal to tie principals' salaries to salaries on yet-to-be-negotiated teachers' salaries held to be the same as parity and a prohibited subject of negotiations.

See Non-Mandatory - Firefighter #55; Non-Mandatory - Police #117.

176. Access to School Buildings - Union Members.

Chateaugay Central School District, 12 PERB 93015.

Demand for access to school buildings during non-school hours by union members (no others included) is a non-mandatory subject.



KENAI PENINSULA BOROUGH

BOX 850 • SOLDOTNA, ALASKA 99669
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March 13, 1981

STAN THOMPSON
MAYOR

The Honorable Donald E. Gilman
The State Senate
Pouch V
Juneau, AK 99811

Dear Senator Gilman:

Reference the new Municipal Code revision which requires state land disposals to comply with local subdivision rules. I am opposed to that particular directive being in the new Municipal Code. It seems to me much more important that state lands get disposed of and not that they follow local subdivision rules. The people of this state are very anxious for land - are demanding land - and they often can't get land in the way that they want it through the local municipality subdivision rules.

Lets delete this from the proposed Municipal Code. Lets try to get the state lands to the people as they need it in any way that they can get it. Later on we can straighten out any problems as far as local regulations are concerned.

Sincerely yours,

Stan Thompson, Mayor
Kenai Peninsula Borough

ST:lc

THE ARBITRATORS' VIEWS

by

Joan Weitzman* and John Stochaj**

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On May 10, 1977, the Governor of New Jersey signed into law what is known today as Chapter 85 of the Public Laws of 1977, the Fire and Police Arbitration Act. This statute provides for compulsory binding arbitration of contract negotiations disputes for employees of public fire and police departments at the state, county, and municipal levels of government. The act is similar to those found in some twenty-two other states providing for compulsory interest arbitration. It is unique, however, in that while it prescribes final offer arbitration, it also permits the parties to select other options for finality, if they so choose.

Chapter 85 became effective on November 1, 1977 and thus, at the time of this writing, there have been two "seasons" of bargaining experience under the law. This article attempts to show, through the eyes of the neutrals, the impact of the law on collective bargaining and dispute settlement for firefighters and police in the State of New Jersey. Before reporting the results of a survey taken among New Jersey arbitrators, we shall first describe briefly the statutory impasse procedures and the statistical experience under the act in its first one and one-half years of operation.

*Joan Weitzman is an associate professor of industrial relations at the Institute of Management and Labor Relations, Rutgers University and a labor arbitrator.

**John Stochaj is a professor of economics and industrial relations at the New Jersey Institute of Technology and a labor arbitrator.

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Sent off*

(2)

Description of the New Jersey Law

The impasse machinery of Chapter 85 encompasses the three distinct procedures of mediation, fact-finding, and final-offer arbitration. Mediation and fact-finding may be invoked upon the request of either party, or upon the motion of the Public Employment Relations Commission (PERC), when negotiations reach an impasse. In contrast to the laws of several other states (e.g., New York and Massachusetts), Chapter 85 does not provide that mediation and fact-finding must be exhausted prior to the initiation of arbitration. If negotiations have failed to produce an agreement within sixty days of the public employer's required budget submission date, the parties must notify the Commission as to whether or not they have agreed upon a terminal procedure to resolve their dispute. If no such agreement is reached, the law mandates final offer arbitration on a package basis for economic issues and on an issue-by-issue basis for non-economic issues.

The law clearly urges labor and management to agree voluntarily upon any terminal procedures that provide for finality. While a particular form of final offer arbitration is mandated in the absence of voluntary agreement, the statute suggests alternative procedures that may be submitted to PERC for approval: (1) conventional arbitration; (2) final offer arbitration as a package; (3) final offer arbitration on an issue-by-issue basis; (4) final offer arbitration on a package basis with the recommendations of the fact-finder as a third choice; (5) final offer arbitration on an issue-by-issue basis with the recommendations of the fact-finder as a

third choice on each issue; and (6) final offer arbitration on a package basis for economic issues and on an issue-by-issue basis for non-economic issues.

Arbitrators are appointed from a special panel of arbitrators that the Commission is required to maintain. Arbitrators are appointed to this panel for three-year terms and are subject to re-appointment "contingent upon a screening process similar to that used for determining their initial appointments."

The statute requires the parties to submit their final offers in two parts: economic items as a package and non-economic items individually. In the event of a dispute over which issues are economic, the Commission is authorized to make a determination based on the following statutory definition of economic issues: "those items which have a direct relation to employe income including wages, salaries, hours in relation to earnings, and other forms of compensation such as paid vacation, paid holidays, health and medical insurance, and other economic benefits to employees."

Arbitration is specifically limited to those items that are within the required scope of negotiations, unless both parties agree to the submission of one or more permissive subjects to arbitration.¹ Disputes as to whether a subject is a mandatory or permissive subject are resolved through PERC's scope of negotiations procedure.

¹The statute further restricts the scope of the arbitrator's authority by prohibiting the arbitrator from rendering findings or orders as to whether a public employer shall remain as a participant in the New Jersey State Health Benefits Program or any governmental retirement or pension system.

The arbitrator is required to render his or her decision "based on a reasonable determination of the issues, giving due weight to those factors listed below that are judged relevant for the resolution of the specific dispute." The factors listed, which are quite similar to the statutory criteria set forth in other state laws, are:

- (1) The interests and welfare of the public.
- (2) Comparison of the wages, salaries, hours, and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours, and conditions of employment of other employees performing the same or similar services and with other employees generally:
 - (a) In public employment in the same or similar comparable jurisdictions.
 - (b) In comparable private employment.
 - (c) In public and private employment in general.
- (3) The overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received.
- (4) Stipulations of the parties.
- (5) The lawful authority of the employer.
- (6) The financial impact on the governing unit, its residents and taxpayers.
- (7) The cost of living.

(8) The continuity and stability of employment including seniority rights and such other factors not confined to the foregoing which are ordinarily or traditionally considered in the determination of wages, hours, and conditions of employment through collective negotiations and collective bargaining between the parties in the public service and in private employment.

A key feature of the law is its flexibility and the latitude it gives the arbitrator to assist the parties in reaching a voluntary agreement. Although the statute provides that the parties shall submit to the arbitrator their final offers prior to the arbitration proceedings, the law also states:

"Throughout formal arbitration proceedings the chosen arbitrator or panel of arbitrators may mediate or assist the parties in reaching a mutually agreeable settlement."

Toward that end, PERC has adopted rules and regulations designed to enhance the arbitrator's authority as a conciliator as well as an adjudicator. As was explained by James Mastriani, the Commission's Director of Conciliation and Arbitration:

"While functioning in a mediatory capacity, the arbitrator by statute will be cloaked with confidentiality. The extent to which the arbitrator can perform in such a mediatory capacity will no doubt be based on the acceptability of the individual involved and the sophistication of the parties. Based on the statutory direction to permit mediation to enhance the prospect for voluntary settlement, we have adopted rules and regulations providing flexibility for the arbitrator to operate in a mediation-arbitration capacity. The arbitrator will have the authority

to fix the time for the parties to submit their positions on all issues in dispute. It is not our intent nor the wishes of labor or management within our state to force an ostrich-like approach to arbitration, locking the parties into a rigid, inflexible posture. This becomes especially important in light of the fact that many negotiations will move to arbitration in a time context in which their negotiations have not matured. We have provided that the arbitrator may at his or her discretion accept a revision of position by either party on any issue until a hearing has been deemed closed provided that the other party is given the opportunity to respond. The arbitrator can, therefore, permit the flow of negotiations to continue if the parties so desire while maintaining the authority to bring negotiations to a halt if they are not fruitful and place the burden of proof on the parties to support their final positions. We believe that even in the event of a failure of the parties to resolve their dispute, the narrower the schism between them, the more acceptable the arbitration process will be and the more the public interest will be served.

The Theory Underlying Final Offer Arbitration

Whereas conventional arbitration is often criticized for having a "chilling effect" on the parties' incentives to reach their own settlement, final offer arbitration has, as its basic objective, the furtherance of collective bargaining and voluntary agreement. Final offer arbitration attempts to increase the parties' costs of not reaching agreement by removing the arbitrator's ability to compromise issues and by compelling a "winner-take-all" outcome. Under the theory of final offer arbitration, each party will make increasingly reasonable negotiating

²James W. Mastriani, "Interest Arbitration for Protective Services in New Jersey." New Jersey Public Employer-Employee Relations Institute of Management and Labor Relations, Rutgers University, No. 6, November 1977.