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proposals in the hope of winning the award, or stated another way, the parties will gradually narrow the differences between their positions because of their mutual fear that the arbitrator will select the other side's last offer. Thus, final offer arbitration should not "chill" collective bargaining because its potentially high risk all-or-nothing outcome should push the parties closer much the same way as does the pressure of a strike deadline in the private sector. As one commentator writes:

> "(Final offer arbitration) is the hydrogen bomb poised above the bargaining table whose very terror should assure its non-use."[3]

Commentators also suggest that final offer arbitration stimulates collective bargaining in another way as well. It gives police and firefighter unions an effective weapon to insure that meaningful negotiations will occur. In this sense, the procedure again generates "strikelike" pressure because the employer cannot adopt a "take-it-or-leave-it" posture or adhere to an unrealistically low final offer without running the risk of losing the award. In this sense, legislated final offer arbitration has been seen as a significant boon to the employees affected, particularly those in small local unions that would otherwise lack the numerical or political strength to achieve favorable bargaining outcomes.

While final offer arbitration has been hailed as a process that both achieves finality and yet preserves the parties' incentives

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[3]Lawrence T. Holden, Jr., "Final-Offer Arbitration in Massachusetts," The Arbitration Journal, Vol. 31, No. 1, March 1976, p. 28.

to bargain, it has also been criticized by some for being too "gimmicky" and for encouraging gamesmanship as the parties place more emphasis on reading the arbitrator's mind rather than resolving the issues. The process is also criticized for its potential for inequitable awards, particularly under a whole package selection scheme. The arbitrator is precluded from discarding from the package any offensive or unreasonable proposals even if their inclusion will result in an equitable award. Thus, the arbitrator may find himself confronted with two unpalatable last best offers, each of which contains one or more unreasonable proposals which, nevertheless, must be adopted as part of the package selected by the arbitrator.

The study conducted by the authors was aimed, in part, at testing some of the theories underlying final offer arbitration. It was hoped that by interviewing the arbitrators who have served in the majority of police and firefighter impasses in New Jersey, meaningful data could be generated on the dynamics and effects of the final offer process.

Experience With Compulsory Interest Arbitration

Because Chapter 85 has been in effect for less than two years, it is difficult to offer conclusive assessments of the new law. Certain trends have developed, however, which can be identified.

There has been substantial utilization of the statutory procedure. In fiscal year 1978, the Public Employment Relations Commission received 210 petitions to initiate compulsory arbitration, the

majority of which were filed by employee organizations. Between July 1, 1978 and June 30, 1979, 221 petitions for arbitration were filed, indicating a slight increase in the number of bargaining impasses.

Concerning the origin of the cases, of the 208 police/firefighter petitions filed between November 1, 1977 and June 30, 1978,[4] 19 were under county governments, 185 were in municipal units, and 2 were under park authorities. In fiscal year 1979, the breakdown of police/firefighter petitions was as follows: 14 were under county governments, 195 were in municipal units, 4 were in state units, 2 were in park authorities, and 2 were under the judiciary.

In fiscal year 1978, mediation as a separate dispute settlement process was employed in only 28 cases, and a fact-finder was appointed in only 3 cases. Of the 208 filings for arbitration by police or firefighter units, 174 resulted in the appointment of an arbitrator. The available data indicate that 29 cases were settled voluntarily by the parties after the filing of a petition or notice of impasse but prior to the appointment of an arbitrator; 11 of these settlements were with the assistance of a mediator. Twenty-two impasses were settled voluntarily after an arbitrator had been designated but prior to any intervention by the arbitrator. Thirty-three disputes were settled with the designated

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[4] Of the remaining two petitions, one was filed by the Neptune Teachers Association and one was filed by the Camden AFSCME Council 71. (These were for voluntary interest arbitration.)

arbitrator acting in a mediatory capacity. Thus, there were 84 reported voluntary settlements. In 115 cases, interest arbitration ran its full course with written awards being issued. In 67 of these cases, the mandatory final offer procedure was utilized. In 4 cases, the parties employed issue-by-issue final offer arbitration, and in 1 case, they used final offer arbitration on economic items and conventional arbitration on non-economic items. In 20 cases, conventional awards were issued. Of the arbitrated awards, 16 were consent awards, and 7 awards, as of time of this writing, are still pending.

With respect to fiscal year 1979, out of 205 cases for which data are available, there were only 23 mediator appointments and no fact-finder appointments. There were 67 assignments of an arbitrator, and 113 cases remained "open," meaning unresolved, as of the close of the fiscal year.

There were 59 voluntary settlements. Nineteen cases were settled directly by the parties without the appointment of an arbitrator. Twenty cases were settled voluntarily by the parties following the appointment of an arbitrator but without any action by the arbitrator, and twenty cases were settled with the mediation assistance of the arbitrator.

Thirty-three cases went to final offer arbitration, with 31 employing the prescribed statutory procedure and 2 using issue-by-issue final offer arbitration. There were 8 conventional awards. Three awards were issued as consent awards.

As noted earlier, the statutorily mandated procedure, if no other form of arbitration is selected by the parties, requires the arbitrator to select the last position of the employer or the last position of the union on a single package basis for economic items. It is difficult to analyze the "won" and "lost" record of the parties since in one situation an award wherein management "wins" may result in a higher economic package for the employees than in another situation in which the union's final offer is selected. With this caution in mind, however, where it has been possible to ascertain a clear-cut arbitral choice on the economic package, in fiscal 1978 the arbitrator selected the final economic offer of the employer in 26 cases and the economic offer of the union in 41 cases. In fiscal year 1979, the employer's last offer was chosen in 13 cases, and the union's last offer was selected in 15 cases.

In both fiscal 1978 and 1979, there have been relatively few petitions filed with PERC in regard either to disputes concerning arbitrable subjects (i.e., mandatorily negotiable) or to disputes concerning issue definition (i.e., economic or non-economic). The available data reveal that in fiscal year 1978, there were 18 petitions filed for a scope of bargaining determination in connection with interest arbitration, and 10 petitions for a clarification of whether an issue was economic or non-economic. The statistics for fiscal year 1979 are identical in each of these areas.

Clearly, compulsory interest arbitration in New Jersey is still in its infancy and any observations as to its effect must

be made cautiously. There is no doubt that strikes and job actions by police and fire forces have been non-existent. In addition, the statistics show that once arbitration has been requested, the rate of voluntary settlement has been very high. Interesting, too, is the fact that mediation and fact-finding, as separate dispute settlement procedures are being requested and employed very infrequently. Rather, a significant amount of mediation is being performed by those neutrals designated as arbitrators. The dynamics of this mediation-arbitration phenomenon are more fully explored in the next section, which reports on a survey that was conducted among the labor neutrals who have served as arbitrators in police and firefighter impasses since Chapter 85 was enacted.

The Survey

During fiscal year 1978, PERC made 74 case assignments to ad hoc arbitrators selected by the parties from PERC's special panel of 53 interest arbitrators. However, approximately 70% of the cases, as a result of the parties' selections, were assigned to only eighteen of the arbitrators on the panel.

As we stated earlier, the intent of this study was to survey the arbitrators actively involved in police and firefighter impasses in order to learn what effect Chapter 85 is having on collective bargaining and dispute resolution--at least from the neutrals' point of view. Therefore, the authors developed a set of questions and interviewed the sixteen arbitrators[5] who received the vast majority of the cases assigned in 1977 and 1978.

[5]The authors were among the eighteen most active arbitrators involved in police and firefighter disputes. Their views, based upon their case experience, have also been incorporated in this study.

It should be noted that during the course of such interviews, the authors received a substantial amount of confidential information with respect to specific parties and cases. All interviewees' requests regarding the confidentiality of information have been honored. For this reason, no specific cases have been cited as examples, lest the identity of the parties become apparent. The authors believe, nevertheless, that the arbitrators interviewed were able to provide important information of a non-confidential nature and incisive comments about the arbitration process and the impact of Chapter 85. The interview findings are reported below.

The Knowledge, Preparation, and Representation of the Parties

The first group of questions posed to the arbitrators concerned the knowledge, preparation, and representation of the parties. The authors were interested in learning how informed the parties were about the law and whether or not they saw a need to employ professional representatives.

There was a divergence of opinion among the arbitrators as to whether the parties were knowledgeable about the statutory procedures. Some parties were very informed as to the law's provisions while others were only vaguely aware of the final offer process. Several arbitrators commented that the level of awareness on both sides of the table improved in the second year of the statute's operation.

Of the interviewees who believed the parties were not knowledgeable about the statutory procedures, a majority indicated

that the employee groups were less knowledgeable than the employers.

The vast majority of employer and employee groups involved in arbitration were represented by professional negotiators or attorneys. In fact, in all of the arbitrators' cases, at least one side had professional representation; that is, no arbitrator interviewed reported any cases where neither side had professional representation.

The arbitrators believed, in general, that the presence of professional representatives assisted the process although it did not guarantee either a sophisticated approach to the arbitration process or a successful case. This was especially true where attorneys without any labor relations experience were employed. Several of the arbitrators indicated that the parties had familiarized themselves with the "black letter law" but were somewhat naive in their strategies. Most arbitrators agreed that final offer arbitration requires the parties to "psyche out" each other and the arbitrator; many parties were ill-prepared for the tactical aspects of the process. Those who lacked experience with final offer arbitration did not know when to make movements, what kind of moves to make, and how rigorously to argue the merits of their moves. They also lacked insight into what the arbitrator considered to be a reasonable position within a given bargaining context.

All of the arbitrators indicated that they were often required to perform an educational function, particularly where a party was not represented by an experienced negotiator. While many of the

arbitrators expected that they would have to guide the parties through the process, particularly in the initial period of the law's operation, some expressed concern about appearing to "help" the weaker side present its case.

In sum, the arbitrators concurred that final offer arbitration was not a sport for amateurs and that the parties would be well-advised to better familiarize themselves with the final offer procedures and strategies or to employ professionals to represent their interests in final offer proceedings.

Use of Mediation

As mentioned earlier, one of the most significant aspects of the interest arbitration process, as prescribed by the statute, is the emphasis placed on mediation. Inasmuch as the law permits the arbitrator to mediate, it has encouraged the development of "med-arb," or the proverbial "mediation with a club." The authors were interested in the use and effect of mediation within the context of final offer arbitration and asked the interviewees a series of questions on this issue.

The extent of mediation was determined by the first question. The arbitrators were asked to indicate if they had attempted to mediate any of the disputes in which they were designated as arbitrator, and if so, at whose initiative. All of the respondents indicated that they had attempted mediation in every case. Generally, the mediation was at the arbitrators' suggestion, although most of the interviewees commented that the parties usually expected the arbitrator to mediate and, in fact, anticipated that mediation

here by the arbitrator would precede any formal hearings. Most agreed that mediation was more difficult to pursue in situations where either one or both parties were not represented by a professional spokesperson. In these cases, there was more reluctance to reveal to the med-arbitrator compromise positions. All of the interviewees concurred that the effectiveness of mediation depended, to a large degree, on the sophistication of the parties and their familiarity with the arbitrator.

The arbitrators were willing to serve as mediators largely because all adhere to the philosophy that the best agreement is one reached by the parties themselves. Thus, there was tremendous emphasis on the mediation process, with the arbitrators using a variety of mediational techniques, including holding separate talks with the parties, postponing scheduled hearing sessions, forcing the parties to confer between meetings, and bringing the parties together for face-to-face negotiations.

When questioned about the results of their mediation efforts, the arbitrators indicated that in approximately one-third of their cases, the parties were able to reach agreement with the assistance of the mediator-arbitrator. In the remaining cases, even though mediation did not bring about settlement, it either resolved some of the issues or narrowed the differences between the parties on one or more issues. Most of the arbitrators also believed mediation was helpful in that it familiarized the arbitrators with the items at impasse and enabled them to gain insight into the parties' "real", as opposed to stated, positions.

The interviewees were also asked how candid or blunt they were in telling a party that its position was acceptable or unacceptable. Approximately one-third of the arbitrators indicated that they were quite forthright in advising the parties as to the acceptability or unacceptability of their positions. These arbitrators generally adopted a very agressive mediation posture. As one neutral put it, "I beat up on the parties. I believe that scaring them helps them to settle their own dispute."

On the other hand, approximately two-thirds of the arbitrators stated that they were not blunt in informing the parties as to the reasonableness of their position, but preferred to convey their impressions by implication. Several interviewees commented that they tended to be more blunt toward the end of the process. In the earlier stages, however, they tried to produce movement by the parties without announcing their personal conclusions. This was particularly true if a hearing had not yet been convened or all of the evidence had not been submitted. In this vein, several of the arbitrators expressed their concern that the mediator-arbitrator has to exercise some caution in what he/she says to the parties in the mediation stage of the process lest he/she lose the ability to function as an impartial should an award actually have to be issued.

The Nature and Conduct of the Hearing

The question, "when is a final offer final?" has arisen frequently with respect to the administration of Chapter 85. Because

the law allows the parties and arbitrators a lot of latitude in the arbitration process, there has been wide variation in the conduct of the proceedings. The authors were interested in ascertaining the methods used by the various arbitrators in regard to the conduct of the hearing and the timing of the submission of final offers. It was hypothesized that the timing of the submission of final offers and the arbitrators' willingness (or unwillingness) to permit the parties to modify their final offers would affect the ability of the parties to reach a total agreement or to substantially narrow the differences between them.

In this regard, it should also be noted that PERC's interest arbitration rules expressly permit the arbitrator to exercise discretion with respect to the submission and and modification of final offers. Section 16-5.7 (f) provides, in pertinent part:

> "The arbitrator, prior to the arbitration hearing, shall fix the time for the parties to submit their positions on all issues in dispute. The arbitrator, may in his or or her discretion, accept a revision of position by either party on any issue until a hearing is deemed closed, provided that the other party is given the opportunity to respond. The parties may also at any time prior to the close of hearing mutually agree to adopt a different terminal procedure providing such procedure is approved by the Director of Arbitration."

The survey results show that there has been tremendous flexibility in the arbitrators' conduct of their hearings. In fact, each arbitrator is not always consistent in the way he/she handles his/her cases. Depending on the nature of the impasse and the wishes of the parties, the arbitrators will frequently modify their procedures or style in order to maximize the possibility of a settlement. Clearly, the arbitrator's discretion in regard to the submission of final positions is an important part of he mediation function. An arbitrator's willingness or unwillingness to accept a changed offer will have a direct effect on the opening and/or closing of the bargaining process.

Almost every conceivable variation has been used with respect to the timing of the submission of final offers: before the start of the hearing, at the outset of the hearing, during the hearing, at the close of the hearing, and after the close of the hearing. The overwhelming majority of the arbitrators reported that the parties often made modifications in position during the mediation and hearing process. At the end of the hearing, however, they were asked to submit their final offers. Most of the arbitrators solicited the final offers at the conclusion of the hearing. However, one reported that he asked the parties to mail their final offers after the hearing. Two arbitrators said that they permit the parties to put in their offers in a post-hearing brief. Several others indicated that

at the outset of the hearing they discuss with the parties when final offers will be due, allowing the parties to determine the procedure to be used.

The arbitrators were questioned as to whether they ever permitted the parties to change final offers after the Record had been closed. Two of the arbitrators stated that they will allow a party to change its position up until the issuance of an award. They indicated, further, that they always stood ready to reopen a hearing should a party make such a request. The other respondents were less willing to accept changed positions. Most said that after the Record had been closed, they would permit a party to alter its final position only if the other side posed no objection and had opportunity to respond. One arbitrator stated that after the hearing is closed, he does not accept any changed position. It was his belief that if the arbitrator is too flexible, the parties lose the incentive to submit reasonable final offers. By establishing a firm deadline for submission of final positions, and by insisting that those positions be final, he believes that he maximizes the potential for settlement or at least submission of reasonable last offers.

Regardless of which procedure was used for the submission of final positions, at least one-half of the arbitrators polled commented that this area raised the most critical problems regarding

the implementation of the law. They recognized that flexibility was often important to the mediation aspects of a case, but they were also interested in keeping pressure on the parties. Several also noted that there were due process considerations involved in the issue of when a final offer becomes final. For example, an arbitrator's acceptance of a modified final offer after the close of a hearing or after the submission of post-hearing briefs could leave any subsequently issued award in a position vulnerable to challenge in court.

As was indicated by the statistics reported earlier, the majority of cases resulting in awards, particularly in fiscal year 1979, were arbitrated in accordance with the statutorily prescribed procedure for finality: whole package final offer on economic items and issue-by-issue final offer on non-economic items. Only a small minority of impasses were resolved by one of the variant forms of arbitration permitted by the law. Where conventional arbitration was employed, it was pursuant to contractual agreement, voluntarily reached non-contractual agreement, or agreement reached with the mediator's assistance. Where conventional arbitration was used, most often it was to separate out from final offer arbitration one or more issues that were not conducive to an all-or-nothing approach. Several of the interviewees reported that they urged the parties to permit them to use conventional arbitration particularly in regard to non-economic items. All of those interviewed stated that they prefer conventional arbitration over final offer arbitration and are more

comfortable in issuing conventional awards where the risk of an inequitable result is reduced.

The respondents were asked whether they had ever issued consent awards under Chapter 85, a consent award being defined as one agreed upon by the parties as to both substance and issuance. Only three of the arbitrators reported having issued a consent award. All agreed that the reason for the paucity of consent awards is that they represent political problems for both sides. Even where agreement is possible between the parties, one or both sides may be politically constrained from publicly endorsing such agreement. Alternatively, the chief spokesmen of the parties may concur on a settlement, but do not believe they are they are able to "sell" it to their constituents. In such situations, it is more advantageous to have the arbitrator issue an award for which he/she alone must take the responsibility. And, in fact, this has occurred often, according to the arbitrators. Thus, while the arbitrators have issued few consent awards, they have issued agreed-upon awards, the latter being defined as decisions written by the arbitrator with the findings privately agreed upon in advance by the parties or their representatives. Although, for obvious reasons, it is not possible to ascertain the exact number of arbitration awards that were, in fact, privately agreed to in advance, 100% of the interviewees stated that they had issued such awards on one or more occasions.

While consent awards are not written frequently, all of the respondents except one said they would be willing to issue such an award if requested to do so; however, they preferred that the parties sign a memorandum of agreement rather than request a consent

tor who indicated an unwillingness to write con-
that he believed an arbitrator under the final
no authority to issue such an award.

with the conduct of the hearings, the arbitra-
stioned about the use of executive sessions. The
dicate that executive sessions, defined as pre-
record meetings with the parties' representatives,
They occur both at the request of the parties and
tor's suggestion, but generally only when the par-
nted by attorneys or professional negotiators. A
tion of the agreed-upon awards are worked out in
etings.

Upon and The Decision-Making Process

eries of questions yielded information as to the
upon by final offer arbitrators and the weight as-
criteria. They also yielded insight into the pro-
arbitrators arrive at their decisions.
e to this section, it should be noted that vir-
itrator interviewed commented on the poor quality
itted in their hearings. The inadequacy of the
and the lack of reliable data made it difficult
to reach rational decisions based on a total com-
nefit picture. As one arbitrator said, "The
nce is rarely good enough for me to rely heavily
criteria. I simply have to use my own common
itrals also indicated that the parties are not

sufficiently mindful of total compensation even though the law specifically lists "overall compensation" as a factor to be considered by the arbitrator. For instance, a union might emphasize that its members earn relatively low wages, overlooking the fact that the fringe benefits are excellent and quite costly to the employer. Or, it might submit a final offer incorporating a moderate wage demand but also an expensive longevity pay plan and new health insurance proposal, which hike up the percentage of the total economic package to an unreasonably high level. All of the arbitrators emphasized that they consider the total economic status of the employees. They believed that both unions and management have been lax in developing accurate, comprehensive economic data. As one arbitrator noted, "Too many exhibits are based solely on telephone surveys."

As to the statutory criteria most relied upon, there is no doubt that comparability, ability to pay, and cost of living play the major role. Approximately three-fourths of those interviewed placed most reliance on comparability. The remaining 25% reported that they did not place major weight on any single criterion. With respect to comparability, the arbitrators noted that problems frequently arose as to what employee groups or what jurisdictions were appropriate comparisons. The authors' impression, based on their interviews, is that arbitrators are most influenced by current adjustments (i.e., other contract settlements) for police and fire units in comparable areas (i.e., same county or similar size community). In other words, arbitrators are most mindful of what

they perceive as "the going rate." Once a wage increase or level is determined on the basis of "the going rate," ability to pay comes into play as a discounting factor to the extent that a community can prove it has an inability to pay any or all of the wage levels suggested by the application of the aforementioned criteria. Another off-setting factor will be the concept of "catch-up." If the union can demonstrate, for example, that in the prior years it experienced a wage freeze or that through the course of recent rounds of negotiations its wages have fallen increasingly below comparable groups, the arbitrator might be influenced to apply a "catch-up" factor. Obviously, however, the "catch-up" is not a unique criterion but another way of applying the comparability standard.[5]

Also on the issue of comparability, traditional comparisons are clearly more favorably regarded than newly-formed comparisons, which tend to be viewed suspiciously. Likewise, while the parties occasionally compared themselves to private sector groups, 94% of the arbitrators interviewed reported that they paid little attention to this criterion. Private sector comparisons are viewed by the neutrals as inapplicable and/or irrelevant to public emergency services.

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[6]Of the 67 final offer arbitration awards handed down in fiscal year 1978, the award on wages averaged a 6.7% increase. The average wage increase in voluntary settlements was 6.6%. In fiscal year 1979, the average wage increase awarded was 6.9%; the average wage increase negotiated voluntarily was approximately 7%. While there is obviously something of a chicken and egg problem in analyzing these figures, one may at least conclude that the arbitrators have not handed down awards far in excess of those settlements negotiated by parties on their own.

As to the more limited comparisons between police and firefighter wage levels within the same community, the majority of arbitrators were mindful of parity and viewed it as a significant factor, but did not feel obligated to slavishly apply the concept. Where circumstances would warrant distinctions, arbitrators stated that they would breach parity. What has been more impressive upon arbitrators is pattern bargaining. Where it can be demonstrated that several bargaining units within a political jurisdiction have settled upon a particular percentage increase or economic package, arbitrators are reluctant to break the pattern in the absence of compelling reasons to do so. The overwhelming majority of those interviewed saw the maintenance of bargaining patterns as important to the preservation of stable labor relations and the interests and welfare of the public.

There is in New Jersey an additional factor which, although not enumerated in the arbitration statute, has become, in effect, a shadow criterion that arbitrators must consider. In 1976, the legislature enacted the so-called Local Government Cap Law (N.J.S.A. 40A:4-45.1 et seq.). This law places a 5% limitation on the amount by which municipal and county employers can increase their budgets from one year to the next. While this "Cap" does not limit what a salary increase can be for any specific employee group, it limits the amount of the total increase for the proposed budget as a whole. Municipal and county employers have raised the "Cap" issue in arbitration in connection

with ability to pay, and the authors were therefore interested in how the neutrals have treated the constraints imposed by budgetary Caps. It should also be noted that during the period of this study, cases were pending in the New Jersey courts concerning the applicability of the Cap law to the funding of arbitration awards rendered pursuant to Chapter 85.[7]

Virtually all of the arbitrators interviewed indicated that they considered the budgetary caps in making their decisions but did not give them controlling weight. Caps were just one of the factors subsumed under the statutory criteria concerning the employer's ability to pay, the employer's lawful authority, and the financial impact on the governing unit and its taxpayers. The neutrals believed that the weight to be assigned an employer's Cap would depend upon the particular circumstances of the given case.

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[7]The lower courts had split on the issue. One superior court decision had held that costs incurred to implement an arbitrator's decision constituted an exception to appropriations under the Cap law and could be funded outside the Cap. The basis for this holding was a provision in the Cap law which exempted expenditures mandated pursuant to state or federal law enacted after the effective date of the Cap law. In contrast, another decision had found that arbitration costs had to be met within the employer's 5% ceiling - although the arbitrator's award could exceed 5%. On June 12, 1979, the New Jersey Supreme Court decided that costs incurred in implementing compulsory arbitration awards are not costs which are encompassed by the aforementioned exception and thus must be funded within appropriations included within the 5% Caps. New Jersey Policeman's Benevolent Association, Local 29 v Town of Irvington, N,J, (6/12/79).

No arbitrator felt constrained to issue an award of only 5% simply because that was the employer's overall budgetary limitation.[8]

Included in the group of questions related to use of criteria and decision-making processes was one which asked if the arbitrator had been required to deal with an issue which, in either labor or management's view, would create some sort of breakthrough (i.e., one which would establish a completely new benefit, one which might put the unit in a leadership position, or one where a benefit prevalant in other comparable units would not be granted). Approximately 50% of the interviewees had such an experience, and of those who said they had dealt with a breakthrough item, only two indicated that they awarded it. Those who refused to award a breakthrough item and the overwhelming majority of those who never confronted the problem but nevertheless commented on the question indicated that they believe interest arbitration should be a conservative process. As one arbitrator remarked:

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[8]Interestingly, the Supreme Court, in the Irvington case, supported the thinking of the neutrals regarding the application of statutory standards. The decision states that the arbitrator is required to apply each of the eight factors enumerated in Chapter 85 and that three of the factors, "(1), (5), and (6)", relate to consideration of budgetary constraints on the public employer. The Court found that failure to consider such budgetary constraints would constitute a basis under which an award may be vacated.

In the Irvington case the arbitrator selected the P.B.A.'s proposal which, on a percentage basis, exceeded 5%. The Court upheld the arbitrator's award, however, because the arbitrator had considered each of the statutory factors including the ability of the town to fund the award given its Cap law restraints. The Court rejected the employer's contention that the award was unreasonable, finding that it was supported by substantial, credible evidence.

> "Final offer arbitration should lead to a result that would have occurred had arbitration not taken place. The arbitrator should strive to reflect what's happening. He should be imaginative when he is mediating but not creative when he assumes the role of arbitrator."

Others commented, similarly, that they did not see the final offer arbitrator in the role of a "pioneer" or "innovator." With respect to economic breakthrough issues, most arbitrators commented that the real question remains the same: is the total economic package reasonable? If a new benefit, for instance, is included within a reasonable economic package, most of the arbitrators would not refrain from awarding it. As to non-economic breakthrough issues, the majority of neutrals indicated a reluctance to break new ground.

The last two questions in this section concerned issue definition and scope of bargaining. The authors were interested in whether the arbitrators had encountered problems related to distinguishing between economic and non-economic issues and between mandatory and non-mandatory subjects of negotiations. The arbitrators confirmed what was also shown by the PERC statistics reported above: relatively few problems have arisen in these two areas. Some of the interviewees reported that occasionally the parties disputed whether an issue was economic or non-economic. In all of those instances, the arbitrator offered his/her opinion as to the nature of the issue, and the parties deferred to that opinion. None of

those interviewed reported difficulties concerning the scope of bargaining. Again, informal opinions were offered, and where a dispute persisted, the parties availed themselves of their right to seek a determination from PERC. As was noted above, since the law's implementation, there have been only eithteen scope petitions filed in connection with a police or firefighter impasse.

Observations on the Arbitration Act and Its Implementation

The final series of questions were aimed at eliciting the arbitrators' opinions as to whether the law was effective, workable, and equitable.

All of the interviewees noted that the law was successful inso far as there have been no police or firefighter strikes since the law's enactment. One arbitrator went so far as to say that "final offer arbitration is a smashing success; it's working just as it was anticipated it would." Most of the other arbitrators were more reserved in their appraisal of the act. All said it was fair and workable in that it allowed the arbitrator great flexibility in his/her handling of cases. It has also tended, from the neutrals' point of view, to compel the parties to present reasonable final offers, which undoubtedly fulfills a major objective of the legislation. The almost universal comment, however, was that final-offer arbitration has chilled pre-impasse collective bargaining. Stated another way, the law has prompted substantial reliance on arbitrators. Collective bargaining occurs and indeed many agreements are voluntarily reached -- but not until the mediator-arbitrator has arrived on the scene. Interest arbitration has become a crutch, freeing the parties from the need to develop their

own solutions to bargaining problems. Ironically perhaps, many arbitrators do not want to write interest arbitration awards. As one stated: "I work hard at getting a settlement. I play judge only as a last resort." A few of the arbitrators also expressed dislike of the "gimmicky" aspect of final-offer arbitration. They likened the law to a "toy" or a "poker game." The law, they believe, fosters gamesmanship because it "encourages the parties to play with the mind of the arbitrator rather than to deal with the facts." These arbitrators prefer conventional arbitration which, in their opinion, is a more rational process.

As to predictions for the future, the interviewees were sharply split on the question of whether the chilling factor would remain. Some arbitrators suggested that ~~over~~ in time the parties will become less enamored of final offer arbitration, particularly if they have "lost" in arbitration. It was also suggested that use of the process will diminish as parties realize it is less costly to negotiate their own agreements and as their bargaining relationships mature. Other neutrals were less confident that reliance on statutory arbitration would decrease in the future. Some observed that particularly where professional attorneys and negotiators are involved, continued use of arbitration is to be expected. One arbitrator said:

> "The lawyers take the position that they will eventually be in arbitration anyway, so why bargain? There have been fewer, shorter negotiating meetings prior to the arbitrator's.

arrival. This situation will not change.

The parties are afraid to face one another.

Arbitration means less wear and tear on them."

As to the impact of the law on wages and terms of employment, most of the arbitrators believe that final offer arbitration has not had a significant effect. As was noted above, this opinion has been borne out by the small difference in wage increases between arbitrated awards and negotiated settlements. This opinion also comports with the arbitrators' widely shared belief that they should not be innovative or pioneering in their awards. Two arbitrators suggested that the law may have had an upward impact on the wages and benefits of small or weak unions which, in the absence of final offer arbitration, would have been unable to compel either meaningful bargaining or favorable settlements.

Two-thirds of the interviewees stated that they would prefer conventional arbitration over final offer arbitration in that the former gives the neutral more discretion and the ability to compromise differences. On the other hand, only three arbitrators indicated that the final offer procedure had compelled them to render what they considered to be an inequitable award. Several others reported that they had issued awards that they "didn't like" or "would not have written on my own." But the general experience was that few truly inequitable awards were issued because the arbitrators were successful in getting the parties to significantly narrow the range of differences in their final positions.

One arbitrator commented that he does not worry about rendering an inequitable award because it is the parties' responsibility to submit reasonable final positions: "The parties know the score (or should). He who lives by the sword dies by the sword."

The final subject on which the arbitrators' views were solicited was judicial review of awards. The authors anticipated that the arbitrators would express substantial interest in this issue inasmuch as several interest arbitration awards were being challenged at that time in the courts. Surprisingly, however, the arbitrators expressed little interest in this subject and offered few suggestions as to what ought to be the appropriate scope of judicial review of interest arbitration awards. Several commented that there was a lack of sophistication within the judiciary in regard to labor relations and that this had a negative effect on the review of arbitrators' awards. However, the most generally shared belief among the interviewees was that as long as they wrote well-reasoned decisions that evidenced a reliance on the statutory criteria their awards would withstand judicial scrutiny.

Concluding Comments

Clearly, Chapter 85 is working reasonably well in that it has provided finality in police and firefighter impasse and has prevented strikes. Moreover, it seems to appeal to the parties, and experience to date suggests that final offer arbitration as compared to conventional arbitration, can increase the probability of negotiated settlements by exerting a centripetal force on the parties to move toward a middle ground.

It is perhaps ironic, therefore, that the neutrals are guarded in their praise of the final offer statute. Their concern, however, is that the law has, in fact, chilled bargaining in the sense that the parties have tended to rely too heavily on the arbitrator. Although genuine negotiations often occur in the "med-arb" process, the arbitrators repeatedly commented that the parties were not engaging in meaningful bargaining prior to the initiation of arbitration. Whether this trend will continue and what effect it will have on labor relations remains to be seen.

Another major finding of the study was that there is no consistent method by which arbitrators have handled their cases. Of course, all of this flexibility has resulted in non-uniform practices, particularly with respect to the finality of final offers and the timing of their submission to the arbitrator. Moreover, several awards have been challenged in court on the grounds that the arbitrator used improper procedures in receiving the parties' final offers.[9] It is still too early to predict whether final offer procedures will become

[9] E.g., Newark Firemen's Union v. City of Newark, Superior Court, Chancery Division, Essex County, Docket No. C-347-78 (oral opinion of Hon. Judge Arthur C. Dwyer, November 9, 1978); Township of Saddle Brook v. PBA Local 102, Superior Court, Bergen County, Docket No. C-2042 Oopinion of Hon. Judge R. Lester).

more standardized as the parties gain experience and as the courts review cases on appeal. In the meantime, it is probably fair to conclude that the arbitrators will continue to utilize flexible procedures and a variety of "med-arb" techniques in their effort to move the parties toward settlement.

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STATEMENT TO THE EDUCATION COMMITTEE
PUBLIC HEARING MARCH 3, 1981
BY
MICHAEL COOPER, NEGOTIATIONS COORDINATOR

Members of the Education Committee I am Michael Cooper, Negotiations Coordinator of the Connecticut Education Association, representing over 26,000 Connecticut teacher members and over 30,000 Connecticut teachers for the purpose of bargaining and I am speaking in reference to all the bills before you today which encompass changes in the teacher negotiations act.

In considering our testimony before you today, the leadership and lobbyists at CEA decided that we would prefer to have one person give comprehensive testimony on the entire subject of the teacher negotiations act rather than have numerous local association leaders and members come before you and unduly prolong the length of the hearing. As a result I hope that you will bear with me as my testimony is rather long.

I would like to begin by speaking generally to the current statute on teacher negotiations and its effectiveness during the past two years since binding arbitration was added by the legislature to put finality into the law. I think you will be interested in some of the statistics I will be reviewing. I would then like to conclude by speaking briefly to each of the proposed changes to the statute that you are receiving testimony on today.

As you know, the legislature, in its wisdom, changed the teacher negotiations act in 1979 by incorporating last best offer, issue by issue, binding arbitration as the final step of the negotiations process. This was done over the objection of several of the management constituent groups (CABE and CCM among them) who raised the spectre of out of town arbitrators destroying the financial foundations of towns they neither knew nor cared anything about; and over the objection of the Connecticut State Federation of Teachers who instead demanded the legal right for teachers to strike and raised the spectre of teacher contracts and salaries being destroyed by arbitrators, who, since

they were appointed by the Governor, would be totally management oriented.

As we complete the second full year under binding arbitration, I'm glad to report that experience has shown that the claims of these groups could not be farther from the truth. Indeed, what has happened is that the negotiations act has worked more effectively for all parties concerned than at any time since its institution in 1965.

Just think back to the experience from 1965 to 1979 when each year an increasing number of contract negotiations continued further and further into the school year during which they should have been in effect including several cases where the parties went nearly the entire school year without a contract. Just think back to the 48 teacher strikes that took place during those 14 years lasting anywhere from one to thirteen days and think back to the anguish felt by teachers, students and citizens that resulted. And think back to the spectre of 278 Bridgeport teachers being jailed in 1978. Now compare that history to this year where of the 78 school districts bargaining for next year's contracts, 71 are already settled. That's 91% of contracts open for negotiations for next year are settled as of March 3rd; not after they were to take effect, not just before they were to take effect but a full six months prior to their commencement; and with no turmoil. Of the remaining seven contracts not settled for next year, five are currently in binding arbitration and will be finalized by the end of March. The other two are currently just beginning negotiations because they have such a late budget submission date. Last year there were also 78 contracts bargained for the current school year and they were all completely settled by the end of April, four months prior to their commencement.

Think what this has meant to the parties involved. Teachers no longer must go through the summer wondering and worrying that they may have to strike in September to get a contract settlement. They no longer have to endure the trauma and worry of having to jeopardize their careers, of having to be jailed and all the other traumatic experiences that strikes carry for them. They now have a contract four to six months in

advance of the school year and go on summer recess knowing exactly what their salary, fringe benefits and working conditions will be when they return in September. Students and parents no longer need worry about a delay in the commencement of school and all the resultant problems that situation brings about for them. And the Board of Education can now budget in total accuracy whatever the agreement will cost because the information is known well in advance of the budget submission date - the date when the Board must submit its estimated budget to the towns fiscal authority.

When the binding arbitration amendment was being considered, opponents claimed that what we would see is every teacher organization and Board of Education going to binding arbitration whenever they couldn't get any little item they wanted - in essence that it would stifle negotiations. CEA felt that the opposite would happen - that instead of stifling negotiations the presence of binding arbitration would stimulate them. That after the first year's rush to try binding arbitration, and when the parties learned that it was not a panacea for teachers to get everything they could not get in years before at the table, or for Boards to get things out of contracts that in their minds they foolishly put in years before, the presence of binding arbitration would have a stimulating effect on bargaining. That the parties would be more anxious to settle an issue at the negotiations table and in mediation rather than gamble on losing entirely on that issue before the arbitrators.

That is exactly what has happened. Let me give you some figures to that effect. Coincidentally, there have been 78 teacher contracts open for negotiations during both years since the law was amended by adding binding arbitration. The first year 25 (32%) were settled at the table and this year 29 or (37%) were settled at the table. Of course those not settled moved into mediation. Of the 53 mediations last year, 15 (32%) were successful. To appreciate this figure you should know that prior to the addition of

binding arbitration, mediation was successful less than 15% of the time. This year mediation was successful 26 out of 49 times, an amazing 53%. Why? Because the parties felt better about compromising in mediation than taking the gamble in binding arbitration. Last year there were 38 binding arbitrations or 49% of all contracts negotiated. This was to be expected during the first year and until everyone knew exactly what to expect. This year there have been only 23 with the possibility of, at most, two more. This represents a reduction from 49% last year to 28% this year. It should also be pointed out that a large number of these binding arbitrations resulted in stipulated awards where the parties came to agreement after the commencement of arbitration and the arbitrators didn't ever have to make a decision. I would expect the number of binding arbitrations to continue to diminish in coming years as the parties become more and more willing to bargain and compromise to avoid it.

These statistics compare favorably with the experience under the Municipal Employees Relations Act which has had binding arbitration as the final step since 1975. They also had numerous arbitrations the first year and a diminishing number every year since to the point where there have been only a handful in each of the past few years.

The fruitlessness of plodding through the process and not bargaining in good faith is being recognized by more and more teacher organizations and Boards of Education. Just looking at the salary settlements negotiated this year for next year's contracts bears this out. The 27 contracts negotiated at the table averaged a 9.7% raise in salaries, the 24 settled in mediation averaged a 9.6% raise and the 17 arbitration awards already completed also averaged 9.6%. Why not compromise and settle on a reasonable figure in negotiations or mediation and save the time and expense of binding arbitration if it's only going to result in a reasonable figure being dictated to you anyway? These figures also show that arbitrators are generally choosing the last best offer that most closely reflects the settlements elsewhere rather than the skyhigh one that would financially ruin the town as predicted would happen by CABE or the extremely low one that would bankrupt the teachers as predicted would happen by CSFT.

I expect that you will hear some negative testimony today from members of other teacher groups about binding arbitration; I suggest to you that such testimony comes strictly from the leadership of such groups and not from the general membership, who I'm sure are delighted at having their contracts settled without any turmoil or strike, in some cases for only the first or second time in the past ten years; or at having a contract prior to June, in some cases for the first time ever and in most cases winding up with a settlement that ranks favorably with any they've ever gotten before and without all the turmoil accompanying those previous settlements.

Let me point out to you that of the 156 teacher contracts negotiated since binding arbitration was added to the statute, 136 have been negotiated by affiliates of the Connecticut Education Association. Of the 60 binding arbitrations that have taken place over the past two years, 49 have involved affiliates of the Connecticut Education Association. As I said previously, we decided not to inundate you with testimony from numerous local association presidents and members. However, if they were here I think they would overwhelmingly say they are happy with the statute as now written. No, they're not ecstatic about it - they haven't gotten everything they've asked for just as their Boards of Education haven't gotten all that they've wanted. But for the first time in 15 years, they are generally content with the law.

It is with that in mind that we ask you to make no changes whatsoever to the statute as it nows reads. This includes even those bills before you that CEA submitted. Their submission took place prior to the experience with the law we've had during this second year. Things have gone so well and so smoothly during this present round of barygaining that we now see no reason to tamper in any way with the process. And even to put the slightest housekeeping bill (as several of ours are) out before the full legislature would open the entire bill up for any kind of amendment. BINDING ARBITRATION IS WORKING AND WORKING WELL. IT HAS DONE JUST WHAT MANY OF US HOPED IT WOULD. IT HAS PROVIDED A TREMENDOUS STIMULANT TO GOOD FAITH AT THE TABLE BARGAINING.

Let me now speak to some of the specific bills before you:

The first three bills I would like to talk about are SB 366, HB 5789 and HB 6264. One of the reasons for the success of the statute as it now stands is the tight and mandatory timeframe under which negotiations must now take place. This tight timeframe forces the parties to negotiate seriously and leaves no time for procrastination. It also forces the parties to reach agreement, on their own or through binding arbitration, prior to the budget submission date. The one problem during the first year binding arbitration was in effect was the inflexibility of the timelines during the arbitration process only. Because there were only five neutral arbitrators and five advocates for each side they were constrained by the requirement that the first hearing must be held on the 10th day following the selection of the neutral arbitrators. Since there were 38 binding arbitrations last year, since many towns have the same budget submission date and since there are so few arbitrators, we had a situation where some arbitrators were faced with two o three initial hearings on the same day. Additionally, since the hearings must be closed within 20 days and executive hearings must be held and the report issued within 15 days, many of these arbitrators did nothing more (including sleeping) for the better part of two months when most contracts still unsettled fall into binding arbitration. SB 366 which we submitted along with HB 5789 which is very similar would alleviate this problem by having the hearing <u>on or before</u> the 15th day rather than <u>on</u> the tenth day, and expanding to 25 days from 20 days, the date for closing the hearing as well as giving the arbitrators 20 days to render a decision, rather than 15. These are just housekeeping bills that would not change the overall timeframe except that the report would now be issued somewhere around 30 days prior to the budget submission date rather than 45 days prior which is now the case. Actually, the situation has been alleviated to a great extent by the reduction this year and expected further reduction in future years in the number of binding arbitrations taking place. SB 366 or HB 5789 would help but could easily be lived without if you decide not to open up the statute at all. However, HB 6264 would do irreparable damage to the effectiveness of the current

law. It would remove the mandatory aspect of the timelines and allow the parties to procrastinate as long as both were willing. This would put the conclusion of negotiations beyond the budget submission date in many instances and bring back all the financial problems inherent in that situation.

The next two bills I would like to talk about are SB 358 and HB 5393. SB 358 which we submitted attempts to alleviate the same scheduling problem for arbitrators I previously mentioned by doubling the size of the panel. Again, a housekeeping bill that we would now ask be killed based on this year's experience. HB 5393 is a different story. Part (2) calls for advocate arbitrators to be selected from sources outside the State panel. If you recall, the reason the legislature mandated that all arbitrators come from the State panel appointed by the Governor is that they would then be considered politically accountable. This was to avoid an objection that the Connecticut Superior Court raised with the constitutionality of the Municipal Employees Relations Act - that the arbitrators were not politically accountable.

Part (3) of HB 5393 provides for a waiver of mediation if the parties agree - not such a wise move when you consider that mediation, as previously stated, is proving successful over 50% of the time. This would also increase the number of binding arbitrations.

Part (4) speaks to a supposed more reasonable timeframe. I would think that it's the unreasonableness of the timeframe which forces the parties to bargain in good faith and not waste time.

Part (5) of HB 5393 and SB 725 generally speaks to the same thing. Adoption of either would gut the effectiveness of the current legislation. SB 725 asks that binding arbitration apply only to wages and fringe benefits and other decisions of arbitrators be advisory only. This would put the situation right back where it was prior to binding arbitration. The issues receiving an advisory opinion would continue to be negotiated ad infinitum, eventually resulting in job actions, strikes and resulting turmoil. Many of the issues negotiated other than wages and fringe benefits are con-

sidered just as important by the parties involved. THESE BILLS MUST BE KILLED.

Next I would like to refer to SB 537 which CEA has submitted. This bill would insure that any contract rejected by the town during the 30 day period go immediately to binding arbitration. The statement of purpose on page 6 of the bill speaks well as to why we feel it is necessary. Once again, we feel that you should consider this bill if, and only if, you decide to open up the statute at all.

HB 6005 would place control over bargaining elections with the State Labor Board rather than the State Department of Education where it presently lies. Teacher referendums have always been under the State Department of Education and they have become increasingly more competent in handling them. To move them to the labor board would also mean an increase in funding to that Board which is already tremendously overburdened handling the numerous bargaining elections of other employees and the business it is already responsible for. Furthermore, it makes no sense to take this responsibility away from the State Department of Education when it is the State Department of Education that is responsible for enforcing and overseeing the rest of the teacher bargaining law except for unfair labor practices. I notice that this bill was introduced by Rep. Truglia from Stamford, probably as a result of a teacher bargaining referendum problem that occurred in Stamford last year. I would only point out that the problem was created not by the State Department of Education but by the American Arbitration Association which was the agency selected by the two teacher organizations to conduct the election.

The next bill I would like to discuss is HB 5392 which would remove administrators from the teacher's bargaining unit. Currently, the only combined units are those that were together prior to 1969 when the law was changed. Any that have split since then can not get back together for bargaining and no new combined groups can be formed. As of now there are only about 15 such combined groups. If the teachers and administrators in these 15 towns have agreed to stay together for the purposes of bargaining all these years than they must be working well together and the legislature should not tear them apart.

The final bill I would like to comment on is HB 5787, submitted by CEA, which would make hours a mandatory subject of bargaining. Currently, because of the 1971 DeCourcey decision, hours are a permissive subject of negotiations only, meaning that a Board of Education does not have to negotiate on hours and related subjects (number of days, etc.) if they do not choose to do so. This is unheard of in collective bargaining anywhere else. The three most basic tenets that are always negotiated, whether in the public or private sector, in any collective bargaining situation are salary, fringe benefits and hours. Teachers are being denied an opportunity to negotiate one of their most basic working conditions, one which almost every other employee that has access to collective bargaining has the opportunity to bargain. If you choose to open the teacher negotiations act for any purpose, this should be the first bill you consider.

In closing, I would once again state our position that the teacher negotiations act as now written is working very effectively and should probably not be tampered with. However, if you do decide to open it up we would ask that you do so very carefully with HB 5787, SB 366 and SB 357 which will be addressed separately today by CEA as your top priorities.

MC/mb

3/2/81

Attachment

TEACHER CONTRACT NEGOTIATIONS

FOR 1980-81		FOR 1981-82
78	Contracts Open For Negotiations	78
25 (32%)	Settled at the Table	29 (37%)
53 (68%)	Mediations	49 (63%)
15 (28%)	Successful Mediations	26 (53%)
38 (49%)	Arbitrations	23 (29%)

WIS. STAT. 111.70 AS AMENDED AND SIGNED INTO LAW ON NOVEMBER 18, 1977

(Amendments in Italics)

(Prepared by Robert J. Taylor
Wisconsin Education Association Council
Negotiations/Arbitration Specialist)

SUBCHAPTER IV
MUNICIPAL EMPLOYMENT RELATIONS ACT

111.70 Municipal employment

(1) Definitions. As used in this subchapter:

(a) "Municipal employer" means any city, county, village, town, metropolitan sewerage district, school district, or any other political subdivision of the state which engages the services of an employe and includes any person acting on behalf of a municipal employer within the scope of his authority, express or implied.

(b) "Municipal employe" means any individual employed by a municipal employer other than an independent contractor, supervisor, or confidential, managerial or executive employe.

(c) "Commission" means the employment relations commission.

(d) "Collective bargaining" means the performance of the mutual obligation of a municipal employer, through its officers and agents, and the representatives of its employes, to meet and confer at reasonable times, in good faith, with respect to wages, hours and conditions of employment with the intention of reaching an agreement, or to resolve questions arising under such an agreement. The duty to bargain, however, does not compel either party to agree to a proposal or require the making of a concession. Collective bargaining includes the reduction of any agreement reached to a written and signed document. The employer shall not be required to bargain on subjects reserved to management and direction of the governmental unit except insofar as the manner of exercise of such functions affects the wages, hours and conditions of employment of the employes. In creating this subchapter the legislature recognizes that the public employer must exercise its powers and responsibilities to act for the government and good order of the municipality, its commercial benefit and the health, safety and welfare of the public to assure orderly operations and functions within its jurisdiction, subject to those rights secured to public employes by the constitutions of this state and of the United States and by this subchapter.

(e) "Collective bargaining unit" means the unit determined by the commission to be appropriate for the purpose of collective bargaining.

(f) "Craft employe" means a skilled journeyman craftsman, including his apprentices and helpers, but shall not include employes not in direct line of progression in the craft.

(g) "Election" means a proceeding conducted by the commission in which the employes in a collective bargaining unit cast a secret ballot for collective bargaining representatives, or for any other purpose specified in this subchapter.

(h) "Fair-share agreement" means an agreement between a municipal employer and a labor organization under which all or any of the employes in the collective bargaining unit are required to pay their proportionate share of the cost of the collective bargaining process and contract administration measured by the amount of dues uniformly required of all members. Such an agreement shall contain a provision requiring the employer to deduct the amount of dues as certified by the labor organization from the earnings of the employes affected by said agreement and to pay the amount so deducted to the labor organization.

(i) "Labor dispute" means any controversy concerning wages, hours and conditions of employment, or concerning the representation of persons in negotiating, maintaining, changing or seeking to arrange wages, hours and conditions of employment.

(j) "Labor organization" means any employe organization in which employes participate and which exists for the purpose, in whole or in part, of engaging in collective bargaining with municipal employers concerning grievances, labor disputes, wages, hours or conditions of employment.

(k) "Person" means one or more individuals, labor organizations, associations, corporations or legal representatives.

(l) "Professional employe" means:

1. Any employe engaged in work:

a. Predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical or physical work;

b. Involving the consistent exercise of discretion and judgment in its performance;

c. Of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time;

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

2. Any employe who:

a. Has completed the courses of specialized intellectual instruction and study described in subd. 1. d;

b. Is performing related work under the supervision of a professional person to qualify himself to become a professional employee as defined in subd. 1.

(m) "Prohibited practice" means any practice prohibited under this subchapter.

(n) "Referendum" means a proceeding conducted by the commission in which employes in a collective bargaining unit may cast a secret ballot on the question of authorizing a labor organization and the employer to continue a fair-share agreement. Unless a majority of the eligible employes vote in favor of the fair-share agreement, it shall be deemed terminated and that portion of the collective bargaining agreement deemed null and void.

(nm) "Strike" includes any strike or other concerted stoppage of work by municipal employes, and any concerted slowdown or other concerted interruption of operations or services by municipal employes, or any concerted refusal to work or perform their usual duties as municipal employes for the purpose of enforcing demands upon a municipal employer. Such conduct by municipal employes which is not authorized or condoned by a labor organization constitutes a "strike", but does not subject such labor organization to the penalties under this subchapter. This paragraph does not apply to collective bargaining units composed of law enforcement or fire fighting personnel.

(o) "Supervisor" means:

1. As to other than municipal and county firefighters, any individual who has authority, in the interest of the municipal employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employes, or to adjust their grievances or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

2. As to firefighters employed by municipalities with more than one fire station, the term "supervisor" shall include all officers above the rank of the highest ranking officer at each single station. In municipalities where there is but one fire station, the term "supervisor" shall include only the chief and the officer in rank immediately below the chief. No other firefighter shall be included under the term "supervisor" for the purposes of this subchapter.

(2) Rights of municipal employes. Municipal employes shall have the right of self-organization, and the right to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection, and such employes shall have the right to refrain from any and all such activities except that employes may be required to pay dues in the manner provided in a fair-share agreement. Such fair-share agreement shall be subject to the right of the municipal employer or a labor organization to petition the commission to conduct a referendum. Such petition must be supported by proof that at least 30% of the employes in the collective bargaining unit desire that the fair-share agreement be terminated. Upon so finding, the commission shall conduct a referendum. If the continuation of the agreement is not supported by at least the majority of the eligible employes, it shall be deemed terminated. The commission shall declare any fair-share agreement suspended upon such conditions and for such time as the commission decides whenever it finds that the labor organization involved has refused on the basis of race, color, creed or sex to receive as a member any employe of the municipal employer in the bargaining unit involved, and such agreement shall be made subject to this duty of the commission. Any of the parties to such agreement or any municipal employe covered thereby may come before the commission, as provided in s.111.07, and ask the performance of this duty.

(3) Prohibited practices and their prevention. (a) It is a prohibited practice for a municipal employer individually or in concert with others.

1. To interfere with, restrain or coerce municipal employes in the exercise of their rights guaranteed in sub.(2).

2. To initiate, create, dominate or interfere with the formation or administration of any labor or employe organization or contribute financial support to it, but the employer shall not be prohibited from reimbursing its employes at their prevailing wage rate for the time spent conferring with the employes, officers or agents. Supervisors may remain members of the same labor organization of which their subordinates are members, but such supervisor shall not participate in determinations of the collective bargaining policies of such labor organization or resolution of

grievances of employes. After January 1, 1974, said supervisors shall not remain members of such organizations.

3. To encourage or discourage a membership in any labor organization by discrimination in regard to hiring, tenure, or other terms or conditions of employment; but the prohibition shall not apply to a fair-share agreement.

4. To refuse to bargain collectively with a representative of a majority of its employes in an appropriate collective bargaining unit. Such refusal shall include action by the employer to issue or seek to obtain contracts, including those provided for by statute, with individuals in the collective bargaining unit while collective bargaining, mediation or fact-finding concerning the terms and conditions of a new collective bargaining agreement is in progress, unless such individual contracts contain express language providing that the contract is subject to amendment by a subsequent collective bargaining agreement. Where the employer has a good faith doubt as to whether a labor organization claiming the support of a majority of its employes in an appropriate bargaining unit does in fact have that support, it may file with the commission a petition requesting an election to that claim. An employer shall not be deemed to have refused to bargain until an election has been held and the results thereof certified to the employer by the commission. The violation shall include, though not be limited thereby, to the refusal to execute a collective bargaining agreement previously agreed upon. The term of any collective bargaining agreement shall not exceed 3 years.

5. To violate any collective bargaining agreement previously agreed upon by the parties with respect to wages, hours and conditions of employment affecting municipal employes, including an agreement to arbitrate questions arising as to the meaning or application of the terms of a collective bargaining agreement or to accept the terms of such arbitration award, where previously the parties have agreed to accept such award as final and binding upon them.

6. To deduct labor organization dues from an employe's or supervisor's earnings, unless the municipal employer has been presented with an individual order therefor, signed by the municipal employe personally, and terminable by at least the end of any year of its life or earlier by the municipal employe giving at least 30 days' written notice of such termination to the municipal employer and to the representative organization, except where there is a fair-share agreement in effect.

7. To refuse or otherwise fail to implement an arbitration decision lawfully made under sub. (4)(cm).

(b) It is a prohibited practice for a municipal employe, individually or in concert with others:

1. To coerce or intimidate a municipal employe in the enjoyment of his legal rights, including those guaranteed in sub.(2).

2. To coerce, intimidate or induce any officer or agent of a municipal employer to interfere with any of its employes in the enjoyment of their legal rights, including those guaranteed in sub.(2), or to engage in any practice with regard to its employes which would constitute a prohibited practice if undertaken by him on his own initiative.

3. To refuse to bargain collectively with the duly authorized officer or agent of a municipal employer, provided it is the recognized or certified exclusive collective bargaining representative of employes in an appropriate collective bargaining unit. Such refusal to bargain shall include, but not be limited to, the refusal to execute a collective bargaining agreement previously agreed upon.

4. To violate any collective bargaining agreement previously agreed upon by the parties with respect to wages, hours and conditions of employment affecting municipal employes, including an agreement to arbitrate questions arising as to the meaning or application of the terms of a collective bargaining agreement or to accept the terms of such arbitration award, where previously the parties have agreed to accept such awards as final and binding upon them.

5. To coerce or intimidate an independent contractor, supervisor, confidential, managerial or executive employe, officer or agent of the municipal employer, to induce him to become a member of the labor organization of which employes are members.

6. To refuse or otherwise fail to implement an arbitration decision lawfully made under sub.(4)(cm).

(c) It is a prohibited practice for any person to do or cause to be done on behalf of or in the interest of municipal employers or municipal employes, or in connection with or to influence the outcome of any controversy as to employment relations, any act prohibited by par.(a) or (b).

(d) Nothing in this subchapter shall preclude law enforcement or firefighting supervisors from organizing separate units of supervisors for purposes of negotiating with their municipal employers. The commission shall by rule establish procedures for certification of such units of supervisors and the levels of supervisors to be included. The commission may require that the representative in a supervisory unit shall be an organization that is a separate local entity from the representative of the employes but such requirement shall not prevent affiliation by a

supervisory representative with the same parent state or national organization as the employe representative.

(4) Powers of the commission. The commission shall be governed by the following provisions relating to bargaining in municipal employment in addition to other powers and duties provided in this subchapter:

(a) Prevention of prohibited practices. Section 111.07 shall govern procedure in all cases involving prohibited practices under this subchapter except that wherever the term "unfair labor practices" appears in s.111.07 the term "prohibited practices" shall be substituted.

(b) Failure to bargain. Whenever a dispute arises between a municipal employer and a union of its employes concerning the duty to bargain on any subject, the dispute shall be resolved by the commission on petition for a declaratory ruling. The decision of the commission shall be issued within 15 days of submission and shall have the effect of an order issued under s.111.07. The filing of a petition under this paragraph shall not prevent the inclusion of the same allegations in a complaint involving prohibited practices in which it is alleged that the failure to bargain on the subjects of the declaratory ruling is part of a series of acts or pattern of conduct prohibited by this subchapter.

(c) Methods for peaceful settlement of disputes. 1. "Mediation". The commission may function as a mediator in labor disputes. Such mediation may be carried on by a person designated to act by the commission upon request of one or both of the parties or upon initiation of the commission. The function of the mediator shall be to encourage voluntary settlement by the parties but no mediator shall have the power of compulsion.

2. "Arbitration". Parties to a dispute pertaining to the meaning or application of the terms of a written collective bargaining agreement may agree in writing to have the commission or any other appropriate agency serve as arbitrator or may designate any other competent, impartial and disinterested person to so serve.

3. "Fact-finding". If a dispute has not been settled after a reasonable period of negotiation and after the settlement procedures, if any, established by the parties have been exhausted, and the parties are deadlocked with respect to any dispute between them arising in the collective bargaining process, either party, or the parties jointly, may petition the commission, in writing, to initiate fact-finding, as provided hereafter, and to make recommendations to resolve the deadlock.

a. Upon receipt of a petition to initiate fact-finding, the commission shall make an investigation with or without a formal hearing, to determine whether a deadlock in fact exists. After its investigation the commission shall certify the results thereof. If the commission decides that fact-finding should be initiated, it shall appoint a qualified, disinterested person or 3-member panel, when jointly requested by the parties, to function as a fact finder.

b. The fact finder may establish dates and place of hearings which shall be where feasible, and shall conduct the hearings pursuant to rules established by the commission. Upon request, the commission shall issue subpoenas for hearings conducted by the fact finder. The fact finder may administer oaths. Upon completion of the hearing, the fact finder shall make written findings of fact and recommendations for solution of the dispute and shall cause the same to be served on the parties and the commission. Cost of fact-finding proceedings shall be divided equally between the parties. At the time the fact finder submits a statement of his costs to the parties, he shall submit a copy thereof to the commission at its Madison office.

c. Nothing herein shall be construed as prohibiting any fact finder from endeavoring to mediate the dispute, in which he is involved, at any time prior to the issuance of his recommendations.

d. Within 30 days of the receipt of the fact finder's recommendations, or within the time period mutually agreed upon by the parties, each party shall advise the other, in writing as to its acceptance or rejection, in whole or in part, of the fact finder's recommendations and, at the same time, transmit a copy of such notice to the commission at its Madison office.

4. This paragraph applies only to municipal employes who are engaged in law enforcement or fire fighting service from the effective date of this act (1977) until October 31, 1981; but after October 31, 1981, applies to all municipal employes, except as provided in s.111.77(9) or as otherwise expressly provided.

(cm) Methods for peaceful settlement of disputes. 1. "Notice of commencement of contract negotiations." For the purpose of advising the commission of the commencement of contract negotiations, whenever either party requests the other to reopen negotiations under a binding collective bargaining agreement, or the parties otherwise commence negotiations if no such agreement exists, the party requesting negotiations shall immediately notify the commission in writing. Upon failure of the requesting party to provide such notice, the other party may so notify the commission. The notice shall specify the expiration date of the existing collective bargaining agreement, if any, and shall set forth any additional information the commission may require on a form provided by the commission.

2. "Presentation of initial proposals; open meetings." The meetings between parties to a collective bargaining agreement or proposed collective bargaining agreement under this subchapter which are held for the purpose of presenting initial bargaining proposals, along with supporting rationale, shall be open to the public. Each party shall submit its initial bargaining proposals to the other party in writing. Failure to comply with this subdivision is not cause to invalidate a collective bargaining agreement under this subchapter.

3. "Mediation." The commission or its designee shall function as mediator in labor disputes involving municipal employes upon request of one or both of the parties, or upon initiation of the commission. The function of the mediator shall be to encourage voluntary settlement by the parties. No mediator has the power of compulsion.

4. "Grievance arbitration." Parties to a dispute pertaining to the meaning or application of the terms of a written collective bargaining agreement may agree in writing to have the commission or any other appropriate agency serve as arbitrator or may designate any other competent, impartial and disinterested person to so serve.

5. "Voluntary impasse resolution procedures." In addition to the other impasse resolution procedures provided in this paragraph, a municipal employer and labor organization may at any time, as a permissive subject of bargaining, agree in writing to a dispute settlement procedure, including authorization for a strike by municipal employes or binding interest arbitration, which is acceptable to the parties for resolving an impasse over terms of any collective bargaining agreement under this subchapter. A copy of such agreement shall be filed by the parties with the commission. If the parties agree to any form of binding interest arbitration, the arbitrator shall give weight to the factors enumerated under subd. 7.

6. "Mediation-Arbitration." If a dispute has not been settled after a reasonable period of negotiation and after mediation by the commission under subd. 3 and other settlement procedures, if any, established by the parties have been exhausted, and the parties are deadlocked with respect to any dispute between them over wages, hours and conditions of employment to be included in a new collective bargaining agreement, either party, or the parties jointly, may petition the commission, in writing, to initiate mediation-arbitration, as provided in this section.

a. Upon receipt of a petition to initiate mediation-arbitration, the commission shall make an investigation, with or without a formal hearing, to determine whether mediation-arbitration should be commenced. If in determining whether an impasse exists the commission finds that the procedures set forth in this paragraph have not been complied with and such compliance would tend to result in a settlement, it may order such compliance before ordering mediation-arbitration. The validity of any arbitration award or collective bargaining agreement shall not be affected by failure to comply with such procedures. Prior to the close of the investigation each party shall submit in writing its single final offer containing its final proposals on all issues in dispute to the commission. Such final offers may include only mandatory subjects of bargaining. Permissive subjects of bargaining may be included by a party if the other party does not object and shall then be treated as a mandatory subject. No later than such time, the parties shall also submit to the commission a stipulation, in writing, with respect to all matters which are agreed upon for inclusion in the new or amended collective bargaining agreement. The commission, after receiving a report from its investigator and determining that mediation-arbitration should be commenced, shall issue an order requiring mediation-arbitration and immediately submit to the parties a list of 5 mediator-arbitrators. Upon receipt of such list, the parties shall alternately strike names until a single name is left, who shall be appointed as mediator-arbitrator. The petitioning party shall notify the commission in writing of the identity of the mediator-arbitrator selected. Upon receipt of such notice, the commission shall formally appoint the mediator-arbitrator and submit to him or her the final offers of the parties. The final offers shall be considered public documents and shall be available from the commission. In lieu of a single mediator-arbitrator and upon request of both parties, the commission shall appoint a tripartite mediation-arbitration panel consisting of one member selected by each of the parties and a neutral person designated by the commission who shall serve as a chairperson. A mediation-arbitration panel has the same powers and duties as provided in this section for any other appointed mediator-arbitrator, and all arbitration decisions by such panel shall be determined by majority vote.

b. The mediator-arbitrator shall, within 10 days of his or her appointment, establish dates and places for the conduct of mediation-arbitration sessions. Upon petition of at least 5 citizens of the jurisdiction served by the municipal employer, filed within 10 days of the date on which the mediator-arbitrator is appointed, the arbitrator shall hold a public hearing in the jurisdiction for the purpose of providing the opportunity to both parties to explain or present supporting arguments for their positions and to members of the public to offer their comments and suggestions. The final offers of the parties, as trans-

mitted by the commission to the mediator-arbitrator, shall serve as the initial basis for mediation and continued negotiations between the parties with respect to the issues in dispute. During such time, the mediator-arbitrator, and upon his or her request the commission or its designee, shall endeavor to mediate the dispute and encourage a voluntary settlement by the parties. During such period of mediation and continued negotiations, either party, with the consent of the other party, may modify its final offer in writing.

c. If the parties have failed to reach a voluntary settlement after a reasonable period for mediation as determined by the mediator-arbitrator, the mediator-arbitrator shall provide written notification to the parties and the commission of his or her intent to resolve the dispute by final and binding arbitration. Thereafter, either party may, within a time limit established by the mediator-arbitrator, withdraw its final offer and mutually agreed upon modifications thereof, if any, and shall immediately provide written notice of such withdrawal to the other party, the mediator-arbitrator and the commission. If both parties withdraw their final offers and mutually agreed upon modifications, the labor organization, after giving 10 days' written advance notice to the municipal employer and the commission, may strike. Unless both parties withdraw their final offers and mutually agreed upon modifications, the final offer of neither party shall be deemed withdrawn and the mediator-arbitrator shall proceed to resolve the dispute by final and binding arbitration as provided in this paragraph.

d. Before issuing his or her arbitration decision, the mediator-arbitrator acting as arbitrator shall, on his or her own motion or at the request of either party, conduct a meeting open to the public for the purpose of providing the opportunity to both parties to explain or present supporting arguments for their complete offer on all matters to be covered by the proposed agreement. The mediator-arbitrator acting as arbitrator shall adopt without further modification the final offer of one of the parties on all disputed issues submitted under subd. 6. a, except those items that the commission determines not to be mandatory subjects of bargaining and those items which have not been treated as mandatory subjects by the parties, and including any prior modifications of such offer mutually agreed upon by the parties under subd. 6. b, which decision shall be final and binding on both parties and shall be incorporated into a written collective bargaining agreement. The mediator-arbitrator acting as arbitrator shall serve a copy of his or her decision on both parties and the commission.

e. Mediation-arbitration proceedings shall not be interrupted or terminated by reason of any prohibited practice complaint filed by either party at any time.

f. The costs of mediation-arbitration shall be divided equally between the parties. The mediator-arbitrator shall submit a statement of his or her costs to both parties and to the commission.

g. If a question arises as to whether any proposal made in negotiations by either party is a mandatory, permissive or prohibited subject of bargaining, the commission shall determine the issue pursuant to par. (b). If either party to the dispute petitions the commission for a declaratory ruling under par. (b), the proceedings under subd. 6. c and d shall be delayed until the commission renders a decision in the matter, but not during any appeal of the commission order. The mediator-arbitrator's award shall be made in accordance with the commission's ruling, subject to automatic amendment by any subsequent court reversal thereof.

7. "Factors considered." In making any decision under the arbitration procedures authorized by this subsection, the mediator-arbitrator shall give weight to the following factors:

a. The lawful authority of the municipal employer.

b. Stipulations of the parties.

c. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.

d. Comparison of wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes performing similar services and with other employes generally in public employment in the same community and in comparable communities and in private employment in the same community and in comparable communities.

e. The average consumer prices for goods and services, commonly known as the cost-of-living.

f. The overall compensation presently received by the municipal employes, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

g. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

h. Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

8. "Rule-making." The commission shall adopt rules for the conduct of all mediation-arbitration proceedings under subd. 6, including rules for the appointment of tripartite mediation-arbitration panels when requested by the parties, the expeditious rendering of arbitration decisions, such as waivers of briefs and transcripts, and proceedings for the enforcement of arbitration decisions of the mediator-arbitrator. Chapter 298 does not apply to such arbitration proceedings.

9. "Application." This paragraph does not apply to labor disputes involving law enforcement and fire fighting personnel.

(d) Selection of representatives and determination of appropriate units for collective bargaining. 1. A representative chosen for the purposes of collective bargaining by a majority of the municipal employes voting in a collective bargaining unit shall be the exclusive representative of all employes in the unit for the purpose of collective bargaining. Any individual employe, or any minority group of employes in any collective bargaining unit, shall have the right to present grievances to the municipal employer in person or through representatives of their own choosing, and the municipal employer shall confer with said employe in relation thereto, if the majority representative has been afforded the opportunity to be present at the conferences. Any adjustment resulting from these conferences shall not be inconsistent with the conditions of employment established by the majority representative and the municipal employer.

2. a. The commission shall determine the appropriate bargaining unit for the purpose of collective bargaining and shall whenever possible avoid fragmentation by maintaining as few units as practicable in keeping with the size of the total municipal work force. In making such a determination, the commission may decide whether, in a particular case, the employes in the same or several departments, divisions, institutions, crafts, professions or other occupational groupings constitute a unit. Before making its determination, the commission may provide an opportunity for the employes concerned to determine, by secret ballot, whether or not they desire to be established as a separate collective bargaining unit. The commission shall not decide,

however, that any unit is appropriate if the unit includes both professional employes and nonprofessional employes, unless a majority of the professional employes vote for inclusion in the unit. The commission shall not decide that any unit is appropriate if the unit includes both craft and noncraft employes unless a majority of the craft employes vote for inclusion in the unit. Any vote taken under this subsection shall be by secret ballot.

b. Any election held under subd. 2. a. shall be conducted by secret ballot taken in such a manner as to show separately the wishes of the employes voting as to the unit they prefer.

c. A collective bargaining unit shall be subject to termination or modification as provided in this subchapter.

d. Nothing in this section shall be construed as prohibiting 2 or more collective bargaining units from bargaining collectively through the same representative.

3. Whenever, in a particular case, a question arises concerning representation or appropriate unit, calling for a vote, the commission shall certify the results in writing to the municipal employer and the labor organization involved and to any other interested parties. Any ballot used in a representation proceeding shall include the names of all persons having an interest in representing or the results. The ballot should be so designed as to permit a vote against representation by any candidate named on the ballot. The findings of the commission, on which a certification is based, shall be conclusive unless reviewed as provided by s.111.07(8).

4. Whenever the result of an election conducted pursuant to subd. 3 is inconclusive, the commission, on request of any party to the proceeding, may conduct a runoff election. Any such request must be made within 30 days from the date of certification. In a runoff election the commission may drop from the ballot the name of the candidate or choice receiving the least number of votes.

5. Questions as to representation may be raised by petition of the municipal employer or any municipal employe or any representative thereof. Where it appears by the petition that a situation exists requiring prompt action so as to prevent or terminate an emergency, the commission shall act upon the petition forthwith. The fact that an election has been held shall not prevent the holding of another election among the same group of employes, if it appears to the commission that sufficient reason for another election exists.

(jm) Binding arbitration, Milwaukee. This paragraph shall apply only to members of a police department employed by cities of the 1st class. If the representative of members of the police department, as determined under par. (d), and representatives of the city reach an impasse on the terms of the agreement, the dispute shall be resolved in the following manner:

1. Either the representative of the members of the police department or the representative of the city may petition the commission for appointment of an arbitrator to determine the terms of the agreement relating to the wages, hours and working conditions of the members of the police department.

2. The commission shall conduct a hearing on the petition, and upon a determination that the parties have reached an impasse on matters relating to wages, hours and conditions of employment on which there is no mutual agreement, the commission shall appoint an arbitrator to determine those terms of the agreement on which there is no mutual agreement. The commission may appoint any person it deems qualified, except that the arbitrator may not be a resident of the city which is party to the dispute

3. Within 14 days of his appointment, the arbitrator shall conduct a hearing to determine the terms of the agreement relating to wages, hours and working conditions. The arbitrator may subpoena witnesses at the request of either party or on his own motion. All testimony shall be given under oath. The arbitrator shall take judicial notice of all economic and social data presented by the parties which is relevant to the wages, hours and working conditions of the police department members. The other party shall have an opportunity to examine and respond to such data. The rules of evidence applicable to a contested case, as defined in s.227.01(2), shall apply to the hearing before the arbitrator.

4. In determining those terms of the agreement on which there is no mutual agreement and on which the parties have negotiated to impasse, as determined by the commission, the arbitrator, without restriction because of enumeration, shall have the power to:

a. Set all items of compensation, including base wages, longevity pay, health, accident and disability insurance programs, pension programs, including amount of pension, relative contributions, and all eligibility conditions, the terms and conditions of overtime compensation, vacation pay, and vacation eligibility, sickness pay amounts, and sickness pay eligibility, life insurance, uniform allowances and any other similar item of compensation.

b. Determine regular hours of work, what activities shall constitute overtime work and all standards and criteria for the assignment and scheduling of work.

c. Determine a seniority system, and how seniority shall affect wages, hours and working conditions.

d. Determine a promotional program.

e. Determine criteria for merit increases in compensation and the procedures for applying such criteria.

f. Determine all work rules affecting the members of the police department, except those work rules created by law.

g. Establish any educational program for the members of the police department deemed appropriate, together with a mechanism for financing the program.

h. Establish a system for resolving all disputes under the agreement, including final and binding 3rd party arbitration.

i. Determine the duration of the agreement and the members of the department to which it shall apply.

5. In determining the proper compensation to be received by members of the department under subd. 4, the arbitrator shall utilize:

a. The most recently published U.S. bureau of labor statistics "Standards of Living Budgets for Urban Families, Moderate and Higher Level", as a guideline to determine the compensation necessary for members to enjoy a standard of living commensurate with their needs, abilities and responsibilities; and

b. Increases in the cost of living as measured by the average annual increases in the U.S. bureau of labor statistics "Consumer Price Index" since the last adjustment in compensation for those members.

6. In determining all noncompensatory working conditions and relationships under subd. 4, including methods for resolving disputes under the labor agreement, the arbitrator shall consider the patterns of employe-employer relationships generally prevailing between technical and professional employes and their employers in both the private and public sectors of the economy where those relationships have been established by a labor agreement between the representative of those employes and their employer.

7. All subjects described in subd. 4 shall be negotiable between the representative of the members of the police department and the city.

8. Within 30 days after the close of the hearing, the arbitrator shall issue a written decision determining the terms of the agreement between the parties which were not the subject of mutual agreement and on which the parties negotiated in good faith to impasse, as determined by the commission, and which were the subject of the hearing under this paragraph. The arbitrator shall state reasons for each determination. Each proposition or fact accepted by the arbitrator must be established by a preponderance of the evidence.

9. Subject to subds. 11 and 12, within 14 days of the arbitrator's decision, the parties shall reduce to writing the total agreement composed of those items mutually agreed to between the parties and the determinations of the arbitrator. The document shall be signed by the arbitrator and the parties, unless either party seeks judicial review of the determination pursuant to subd. 11.

10. All costs of the arbitration hearing, including the arbitrator's fees, shall be borne equally by the parties.

11. Within 60 days of the arbitrator's decision, either party may petition the circuit court for Dane county to set aside or enforce the arbitrator's decision. If the decision was within the subject matter jurisdiction of the arbitrator as set forth in subd. 4, the court must enforce the decision, unless the court finds by a clear preponderance of the evidence that the decision was procured by fraud, bribery or collusion. The court may not review the sufficiency of the evidence supporting the arbitrator's determination of the terms of the agreement.

12. Within 30 days of a final court judgment, the parties shall reduce the agreement to writing and with the arbitrator execute the agreement pursuant to subd. 9.

13. Subsequent to the filing of a petition before the commission pursuant to subd. 1 and prior to the execution of an agreement pursuant to subd. 9, neither party may unilaterally alter any term of the wages, hours and working conditions of the members of the police department.

(l) Strikes prohibited; exception. Except as authorized under par. (cm) 5 and 6. c, nothing contained in this subchapter constitutes a grant of the right to strike by any municipal employe, and such strikes are hereby expressly prohibited. Par. (cm) does not authorize any strike after an injunction has been issued against such strike under sub. (7m).

(5) Procedures. Municipal employers, jointly or individually, may employ a qualified person to discharge the duties of labor negotiator and to represent such municipal employers, jointly or individually, in conferences and negotiations under this section. In cities of the 1st, 2nd or 3rd class any member including the mayor of the city council who resigns therefrom may, during the term for which he is elected, be eligible to the position of labor negotiator under this subsection, which position during said term has been created by or the selection to which is vested in such city council, and s. 66.11(2) shall be deemed inapplicable thereto.

(6) Declaration of policy. The public policy of the state as to labor disputes arising in municipal employment is to encourage voluntary settlement through the procedures of collective bargaining. Accordingly, it is in the public interest that municipal employes so desiring be given an opportunity to bargain collectively with the municipal employer through a labor organization or other representative of the employes' own choice. If such procedures fail, the parties should have available to them a fair, speedy, effective and, above all, peaceful procedure for settlement as provided in this subchapter.

(7) Penalty for striker. *(a)* Whoever violates sub. (4) (1) after an injunction against such a strike has been issued shall be fined $10. After the injunction has been issued, any employe who is absent from work because of purported illness shall be presumed to be on strike unless the illness is verified by a written report from a physician to the employer. Each day of continued violation constitutes a separate offense. The court shall order that any fine imposed under this subsection be paid by means of a salary deduction at a rate to be determined by the court.

(b) This subsection applies only to municipal employes who are engaged in law enforcement or fire fighting service from the effective date of this act (1977) until October 31, 1981; but after October 31, 1981, applies to all municipal employes, except as otherwise expressly provided.

(7m) Injunctive relief; penalties; civil liability. (a) Injunctions; prohibited strike. At any time after the commencement of a strike which is prohibited under sub. (4) (l), the municipal employer or any citizen directly affected by such strike may petition the circuit court for an injunction to immediately terminate the strike. If the court determines that the strike is prohibited under sub. (4)(l), it shall issue an order immediately enjoining the strike, and in addition shall impose the penalties provided in par. (c).

(b) Injunction; threat to public health or safety. At any time after a labor organization gives advance notice of a strike under sub. (4) (cm) which is expressly authorized under sub. (4) (cm), the municipal employer or any citizen directly affected by such strike may petition the circuit court to enjoin the strike. If the court finds that the strike poses an imminent threat to the public health or safety, the court shall, within 48 hours of the receipt of the petition but after notice to the parties and after holding a hearing, issue an order immediately enjoining the strike, and in addition shall order the parties to submit a new final offer on all disputed issues to the commission for final and binding arbitration as provided in sub. (4) (cm). The commission, upon receipt of the final offers of the parties, shall transmit them to the mediator-arbitrator who is acting as arbitrator or a successor designated by the commission. The mediator-arbitrator acting as arbitrator shall omit preliminary steps and shall commence immediately to arbitrate the dispute.

(c) Penalties. 1. "Labor organizations." a. Any labor organization which violates sub. (4) (l) shall be penalized by the suspension of any dues check-off agreement and fair-share agreement between the municipal employer and such labor organization for a period of one year. At the end of the period of suspension, any such agreement shall be reinstated unless the labor organization is no longer authorized to represent the municipal employes covered by such dues check-off or fair-share agreement or the agreement is no longer in effect.

b. Any labor organization which violates sub. (4) (l) after an injunction has been issued shall be required to forfeit $2 per member per day, but not more than $10,000 per day. Each day of continued violation constitutes a separate offense.

2. "Individuals." Any individual who violates sub. (4)(l) after an injunction against a strike has been issued shall be fined $10. Each day of continued violation constitutes a separate offense. After the injunction has been issued, any municipal employe who is absent from work because of purported illness is presumed to be on strike unless the illness is verified by a written report from a physician to the municipal employer. The court shall order that any fine imposed under this subdivision be paid by means of a salary deduction at a rate to be determined by the court.

3. "Strike in violation of award." Any person who authorizes or otherwise participates in a strike after the issuance of any final and binding arbitration award or decision under sub. (4) (cm) and prior to the end of the term of the agreement which the award or decision amends or creates shall forfeit not less than $15. Each day of continued violation constitutes a separate offense.

4. "Contempt of court." The penalties provided in this paragraph do not preclude the imposition by the court of any penalty for contempt provided by law.

(d) Compensation forfeited. No municipal employe may be paid wages or salaries by the municipal employer for the period during which he or she engages in any strike.

(e) Civil liability. Any party refusing to include an arbitration award or decision under sub. (4) (cm) in a written collective bargaining agreement or failing to implement the award or decision, unless good cause is shown, shall be liable for attorney fees, interest or delayed monetary benefits, and other costs incurred in any action by the nonoffending party to enforce the award or decision.

(f) Application. This subsection does not apply to strikes involving law enforcement and fire fighting personnel.

FOLLOWING ARE THE REMAINING SECTIONS OF ENGROSSED ASSEMBLY SUBSTITUTE AMENDMENT 2, TO SENATE BILL 15. THE IMPACT OF EACH IS EXPLAINED WITH AN EDITOR'S NOTE WHEN NECESSARY; SOME ARE SELF-EXPLANATORY

SECTION 8. 111.77 (9) of the statutes is amended to read:

111.77 (9) Section 111.70 (4) (c) 3 *and (cm)* shall not apply to employments covered by this section.

(Editor's Note: Wis. Stat. 111.77 (9) applies only to law enforcement personnel and firefighters.)

SECTION 9. 121.006 (2) (a) and (3) of the statutes, as affected by chapter 29, laws of 1977, are amended to read:

121.006 (2) (a) Hold school for at least 180 days each year, *less any days during which the state superintendent determines that school is not held or educational standards are not maintained as the result of a strike by school district employes,* the days to be computed in accordance with s. 115.01 (10).

(3) Unless the state superintendent is satisfied that failure to meet the requirements of this subsection was occasioned by some extraordinary cause not arising from intention or neglect on the part of the responsible officers, a school district operating under ch. 119 *shall hold school for at least 90 days each year, less any days during which the state superintendent determines that school is not held or educational standards are not maintained as the result of a strike by school district employes, the days to be computed in accordance with s. 115.01 (10); and* shall, for the full period during which school is in session during each year as provided by the rules of the board of school directors, employ teachers qualified under s. 118.19 and pay a salary of not less than $266 a month to each regular teacher and of not less than $10 a day to each qualified continuous substitute teacher.

SECTION 10. 121.02 (1) (h) of the statutes is amended to read:

121.02 (1) (h) School shall be held and students shall receive actual instruction for at least 180 days, *less any days during which the state superintendent determines that school is not held or educational standards are not maintained as the result of a strike by school district employes,* with additional days included as provided in s. 115.01 (10).

SECTION 11. 121.07 (6) (b) of the statutes, as affected by chapter 29, laws of 1977, is amended to read:

121.07 (6) (b) The "primary ceiling cost per member" is 110% of the state average shared cost per member for the previous school year, as determined by the state superintendent, *except as provided in s. 121.23.*

SECTION 12. 121.23 of the statutes is created to read:

121.23 PAYMENT OF AIDS IN SCHOOL DISTRICT LABOR DISPUTES. (1) In the event that the state superintendent finds that school is not held, or educational standards are not maintained in accordance with s. 121.02 (1) (h) as the result of a strike by school district employes, make-up days are authorized to be scheduled but no make-up days are required.

(2) If a school district holds less than 180 days of school as the result of a strike by school district employes, for the purposes of computing general aid, the state superintendent shall compute the school district's primary ceiling cost per member in accordance with the procedure specified in pars. (a) to (e). In making the calculation, the state superintendent shall:

(a) Determine the amount of shared cost not incurred by the school district because of the strike.

(b) Determine the amount of shared cost that the school district would have incurred had the strike not occurred.

(c) Divide the amount determined under par. (a) by the amount determined under par. (b).

(d) Multiply the quotient determined under par. (c) by the amount determined under s. 121.07 (6) (b).

(e) Subtract the product determined under par. (d) from the amount determined under s. 121.07 (6) (b).

SECTION 13. 121.91 (3) (a) 4 of the statutes is created to read:

121.91 (3) (a) 4. Salary amounts budgeted but not paid in the prior school year because of a work stoppage by school district employes.

SECTION 14. Chapter 29, laws of 1977, section 1617y is repealed.

(Editor's Note: This is a "housekeeping" matter. The law referred to becomes redundant with the passage of SB15 since it [section 1617y] dealt with cost control appeals in the event of a strike.)

SECTION 15. LEGISLATIVE COUNCIL STUDY. (1) The legislative council is directed to conduct a study of the effect of this act on the collective bargaining process in municipal employment. The study shall evaluate the effect of the act on all aspects of collective bargaining in municipal employment including, but not limited to, the following:

(a) The effect on all formal and informal elements involved in the negotiation process, including the duration of the process and the techniques and tactics used by the parties.

(b) The extent to which collective bargaining agreements are facilitated by the impasse resolution procedures authorized under this act.

(c) The economic impact of the collective bargaining agreements reached under the municipal employment relations act after the effective date of this act, especially with regard to wages, hours and conditions of employment.

(d) The availability of mediator-arbitrators, their cost to the parties and the nature of the arbitration decisions rendered under this act.

(e) The effect of this act on the services rendered by the employment relations commission.

(f) An analysis of court interpretations, if any, construing this act.

(g) The effect of this act on the frequency, intensity and duration of strikes.

(h) The extent to which the parties to a dispute under the municipal employment relations act have utilized mutually agreed upon dispute settlement procedures.

(2) The legislative council may contract for all or part of the study with a private or public institution or agency.

(3) If any part of the study is contracted for, the legislative council shall monitor the study. The council shall make periodic reports to the legislature on the findings of the study,

and shall make its final report on the results of the study to the legislature no later than February 1, 1981.

SECTION 16. APPROPRIATION INCREASE. The appropriation to the employment relations commission under section 20.425 (1) (a) of the statutes, as affected by the laws of 1977, is increased by $137,300 for the 1977-78 fiscal year and by $137,300 for the 1978-79 fiscal year for the purpose of funding 4 additional mediator positions and 2 additional clerical positions, and for court reporting expenses required to implement the provisions of this act.

SECTION 17. APPLICATION. (1) Section 111.70 (1) (nm), (3) (a) 7 and (b) 6, (4) (cm) and (7m) of the statutes, as created by this act, shall be in effect from the effective date of this act until October 31, 1981, and after that date are void, except that any proceeding under such provisions pending on October 31, 1981, shall continue to be subject to such provisions, until finally settled between the parties or adjudicated by arbitration, the employment relations commission or a court of competent jurisdiction.

(2) Except as provided in subsection (3), this act shall take effect on January 1, 1978, or on the day after publication, whichever is later.

(3) SECTION 16 of this act shall take effect on the day after publication.

(End)

PLEASE NOTE: THE FOLLOWING PAGES WERE TREATED AS A UNIT IN THE ORIGINAL DOCUMENT.

FOREWORD

The State Department of Education has developed the following procedural guidelines to assist in implementing the negotiation, mediation and arbitration process, as mandated by Connecticut General Statutes Section 10-153f, as amended by Public Act 79-405.

We have prepared these guidelines in consultation with counsel for local school boards, representatives of professional organizations and representatives of the Connecticut Association of Boards of Education. We also received cooperation of members of the State Board of Education Mediation Panel and the Governor's Arbitration Panel.

The use of this document as a framework for action will assist all parties in the collective bargaining process. We recommend that these guidelines be adopted at the initial groundrules session, in order to assure consistency and to expedite the negotiation process.

We believe that the guidelines will assist the parties in reaching an amicable accommodation of unresolved issues and in achieving a relationship which fosters a climate needed for good education.

The Office of the Commissioner is available to all parties, at all times, to assist in the negotiation process.

Mark R. Shedd
Commissioner of Education

GUIDELINES FOR NEGOTIATION/MEDIATION/ ARBRITATION

The following guidelines are intended to facilitate the negotiation/mediation/arbitration process established by Connecticut General Statutes (hereinafter C.G.S.) Section 10-153f, as amended by Public Act 79-405.

I. DEFINITIONS

A. *Disputed Issue* — For the purpose of considering an issue in dispute, the following is noted: Each paragraph of a contract or a particular topic, shall be considered as a separate issue. Particular items as to salary shall also be considered as separate issues, eg., overall percentage increase, method of distribution, number of steps, degree differential, etc. Different types of insurance will also be considered as separate items, eg., hospital, dental, drugs, etc. (Note, the above list of items is not intended to be all-encompassing or limiting, but is intended for exemplary purposes).

1. Mandatory items of negotiation – If either party or both parties made an offer on such an item and both parties have not reached a written agreement, prior to the commencement of the arbitration hearing, such item is therefore deemed a disputed issue.
2. Permissive items of negotiation – If a board has asserted its right in regard to such an item, by refusing to bargain in regard to such item, it will not be deemed a disputed issue if there is no agreement at the commencement of arbitration, but if a board agreed to negotiate in regard to such an item, but the parties have not reached a written agreement regarding such item, prior to the commencement of the arbitration hearing, such item is therefore deemed a disputed issue.

B. *Per Diem Fee* –

1. Mediators – Each mediator shall file, in writing, with the Commissioner of Education (hereinafter called Commissioner), his/her per diem fee which will be based upon the prevailing rate for such services. Any change in such fee shall be transmitted, in writing, to the Commissioner.
2. Arbitrators – Each duly appointed arbitrator shall file, in writing, with the Commissioner, his/her per diem fee which will be based upon the prevailing rate for such services. Any change in such fee shall be transmitted, in writing, to the Commissioner.

II. NEGOTIATION

The parties responsible for negotiating a contract (via their designated individuals, e.g., chairperson of a board and unit president), shall notify the Commissioner, in writing, of the day on which they will commence contract negotiations, which date shall be at least one hundred eighty (180) days prior to the board's budget submission date, as required by C.G.S Section 10-153d(b). Such notice to the Commissioner shall also state the board's budget submission date. (Lack of such notice does not waive the party's right to proceed under the applicable provisions of C.G.S. Section 10-153a et seq.).

III. MEDIATION

C.G.S. Section 10-153f provides, "If any local or regional board of education cannot agree with the exclusive representatives of a teachers' or administrators' unit after negotiation has commenced concerning the terms and conditions of employment applicable to the employees in such unit, either party may submit the issues to the commissioner for mediation. If on the one hundred twentieth day prior to the budget submission date, the parties have not reached agreement and have failed to initiate mediation, the commissioner shall order the parties to appear before said commissioner to commence mediation . . ."

Based upon the foregoing C.G.S. Section 10-153f, the following items are intended to provide procedural guidance to the parties in regard to mediation.

A. If the parties cannot reach agreement on the disputed issues of a proposed contract, either party may request mediation previous to the one hundred twentieth day prior to the budget submission date. Such request shall be in writing and directed to the Commissioner. It shall state the dates and the duration of negotiation sessions.

B. If such parties request mediation previous to the one hundred twentieth day prior to the budget submission date, the Commissioner, based upon his/her information in regard to the status of negotiations, and what the Commissioner determines is in the best interests of the parties, may either grant the request for mediation or request that the parties resume negotiations.

C. The parties shall mutually select a mediator or the Commissioner shall designate a mediator, (see C.G.S. Section 10-153f(b), as amended by Public Act 79-405). If the parties have not selected such mediator within two (2) calendar days after the date on which the mediation process is to begin, the Commissioner shall designate one in accordance with the Commissioner's authority under the law.

D. Arrangements for the *initial* mediation session will be coordinated by the Commissioner's office with a written notice of said session to be transmitted to all pertinent parties at least five (5) calendar days prior to such session.

E. Any rescheduling, continuance and/or cancellations shall be the responsibility of the mediator in cooperation with the parties. The Commissioner's office shall be notified of such action.

F. The parties are statutorily into mediation on the one hundred twentieth day prior to their

board's budget submission date. The initial mediation session shall commence no later than the ninety-fifth (95) day prior to a board's budget submission date.

G. The parties are statutorily into the binding arbitration process on the ninetieth day prior to a district's budget submission date or four days subsequent to the termination of mediation, whichever is sooner. HOWEVER, THE PARTIES ARE ENCOURAGED TO CONTINUE THE NEGOTIATION PROCESS, SUBSEQUENT TO SUCH DATE, WITH OR WITHOUT THE SERVICES OF THE MEDIATOR

H. The mediator shall receive from the parties, either jointly or separately prior to the first mediation session:

1. A copy of the current contract, if any;
2. A list of those issues in the current contract which have not been in contention during negotiation and are therefore deemed resolved;
3. A list of those issues which each party believes to have been resolved via negotiations, including the language they believe to be agreed upon;
4. A list of all issues that each party believes still to be in dispute, with their current proposals for these issues; and
5. Any other information which the parties may deem to be helpful to the mediator.

I. If the parties submitted the items enumerated in paragraph III H above separately, then each party shall also transmit a copy of such information enumerated in paragraph III H above to the other party in the dispute, at the same time that such information is submitted to the mediator.

J. The mediation session shall be regarded as a nonpublic session, with only pertinent individuals in attendance, unless the parties deem otherwise, after consultation with the mediator.

K. If the parties reach an agreement on all issues during mediation, the mediator shall inform the Commissioner, via a written memorandum, stating such fact and the date of such agreement, but if the parties have not agreed upon the specific language or terms of certain items, the mediator shall so note such items.

L. The items noted in paragraph III K above shall be reduced to writing and agreed upon and the Commissioner notified, in writing, by the parties. If the parties cannot reach agreement on the specific language or terms, they will commence the arbitration process in accordance with the mandates of the law. Any item not reduced to writing will be considered a disputed issue and will be presented to the arbitration panel or single arbitrator for a decision in regard to such issue.

M. The parties shall submit to the mediator, in writing, prior to completion of the last mediation session, in a situation where the parties cannot reach agreement, each party's position on each item still in dispute.

N. Immediately, prior to completion of such last mediation session as noted in paragraph III M above, the parties, with the assistance of the mediator, shall determine and reduce to writing a joint memorandum signed by the parties stating:

1. Any issue that was never in dispute and is agreed upon (i.e., present contract provisions that will remain status quo);
2. Any issue that is agreed upon, including the specific language;
3. Any issue that was agreed upon but for which the parties have not agreed upon the specific language; and
4. Any issue not agreed upon and therefore is in dispute.

O. If the mediator determines that it is not possible, at such last mediation session, for the parties to make the determination, as noted in

paragraph III N above, the parties shall meet with or without the mediator to make such determination and complete the above-noted memorandum prior to the initial arbitration hearing.

P. The parties shall present the written joint memorandum, noted in paragraph III N above, to the arbitration panel (copy for each arbitrator) or the single arbitrator, on the day of the initial arbitration hearing with a copy forwarded to the Commissioner's office for the Department's file.

IV. ARBITRATION

IT IS THE POSITION OF THE DEPARTMENT THAT ALL PARTIES THAT ENTER THE ARBITRATION PROCESS ARE VALIDLY AT IMPASSE AND ARE THEREFORE COMMENCING THIS STATUTORILY MANDATED ARBITRATION PROCESS TO RESOLVE GENUINE DISPUTED ISSUES.

A. If the parties have not resolved their contract dispute via mediation, they shall proceed, in accordance with C.G.S. Section 10-153f(c), to LAST BEST OFFER BINDING ARBITRATION. The parties may choose to utilize either:
   1. a single arbitrator; or
   2. a tripartite arbitration panel.

B. C.G.S. Section 10-153f(c)(2) requires that the arbitration hearing(s) be held in the school district and that the *initial* hearing be held on the tenth (10) day after the chairperson or the single arbitrator is designated, except that if such day is a Saturday, Sunday or a holiday, the hearing shall be held on the next Monday or the day following the holiday.

C. The parties will follow, where applicable, the provisions of the Uniform Administrative Procedures Act, as delineated in C.G.S. Sections 4-166 et seq. as amended.

D. Each arbitrator, representing the interests of the public in general, shall be guided by the objectives and the principles set forth in the "Code of Professional Responsibility for Arbitrators of Labor-Management Disputes" of the National Academy of Arbitrators, American Arbitration Association, and the Federal Mediation and Conciliation Service.

E. The arbitrators shall file with the Commissioner, for each arbitration case, a duly sworn oath which sets forth his/her status in each case.

F. Notice of the *initial* arbitration hearing will be sent by the Commissioner's office at least five (5) days prior to such *initial* hearing. Such notice shall be sent to all parties as required by C.G.S. Section 10-153f(c)(2).

G. It is the responsibility of the chairperson of the arbitration panel or the single arbitrator to notify the parties of any rescheduling or continuance and/or cancellations, subsequent to the *initial* hearing. The Commissioner's office shall be informed by the chairperson of the arbitration panel or the single arbitrator of all rescheduling, continuances and/or cancellations. However, the hearing *shall be concluded*, within twenty (20) calendar days after its commencement.

H. A stenographic record shall be made of the arbitration hearing and the parties shall share the cost of such record. If either party wishes a transcription of such record, such party shall pay for the transcription. If both parties request a transcription, they shall share equally the cost of transcription.

I. The arbitration hearing shall be regarded as a nonpublic session, with only pertinent individuals in attendance, unless the arbitration panel or the single arbitrator, after consultation with the parties, decides otherwise.

J. The parties shall present, in writing, at the commencement of the initial hearing, to the chairperson of the arbitration panel or the

single arbitrator, the names and addresses of the individuals who should receive an official copy of the decision, on behalf of each of the parties.

K. Each party shall designate their spokesperson(s). Such individual(s) will present their party's offers and submit all relevant evidence, introduce documents and written material, including questioning any pertinent witnesses and may argue on behalf of their party's positions, in regard to such offers.

L. The parties may agree to waive, prior to the commencement of the arbitration hearing, any requirement that witnesses take an oath prior to testimony.

M. The parties shall mutually submit, at the initial arbitration hearing, to each of the three arbitrators, a copy of the present contract.

N. Only those issues still in dispute, will be presented by the parties at the hearing. Those issues which were agreed upon and/or were never in dispute will not be addressed at the hearing but will be noted and incorporated in the arbitration decision.

O. Prior to the initial arbitration hearing, the parties shall be orally informed by the arbitrator that represents their interests or the single arbitrator the extent of the initial arbitration hearing. Where there is a tripartite panel the three members of the panel will consult and determine, based upon the available time for the hearing, what will be required from the parties at such first hearing. Note, the joint memorandum noted in paragraph III N will always be required to be submitted at the initial arbitration hearing, to either the tripartite panel or the single arbitrator.

P. Each party shall present to the arbitration panel or the single arbitrator, and the other party, no later than the second session of the arbitration hearing, its offers in writing, issue by issue, which shall constitute such party's proposal for each disputed issue. The offer for each disputed issue shall be on a separate sheet of paper. The submission of each offer shall consist of:

1. Title of the issue; and
2. The language of such proposal on such issue. (If the issue is in the present contract, it shall be cited by article and section of the contract with the language of such article and section).

Q. 1. During the hearing each party may change its written offer on any disputed issue.

2. If any offer is changed during the hearing, such change shall be in writing. It shall then become such party's proposal for such issue. The other party shall have the opportunity to re-evaluate its offer as a result of such change, but any change by such party must be in writing.

3. The chairperson of the arbitration panel or the single arbitrator shall inform the parties prior to the close of the arbitration hearing that they shall make their LAST BEST OFFER on each issue still in dispute. The date for such submission shall not be later than the fifteenth (15) day after the initial arbitration hearing.

4. If a party does not change a proposal and wishes it to become its LAST BEST OFFER on that issue, they shall note that on the record and in writing stating that such proposal (identifying it) is now its LAST BEST OFFER.

5. If a party's LAST BEST OFFER is different from its proposal, it shall state the LAST BEST OFFER in writing (listing each LAST BEST OFFER on a separate sheet of paper) and such party shall have the opportunity to support this LAST

BEST OFFER with evidence. The opposing party shall be given the opportunity to rebut such evidence. Either party may waive its opportunity to either support or rebut such LAST BEST OFFER. Such waiver shall be noted on the record and stated in writing by the waiving party.

R. If the parties reach an agreement on any issue prior to any final decision of the arbitration panel or the single arbitrator, they (the parties) may so stipulate, in writing, and jointly file with the arbitrators or the single arbitrator such stipulation setting forth the contract provisions which both parties agree to accept. These stipulations must include the exact language agreed upon by the parties. C.G.S. Section 10-153f (c)(4), as amended requires that the decision of the arbitrators or the single arbitrator incorporate those items of agreement the parties have reached prior to the issuance of a decision.

S. No hearing shall extend beyond twenty (20) calendar days from the commencement of such hearing. Once the hearing has been terminated, the decision of the arbitration panel or the single arbitrator shall be rendered, in writing, within fifteen (15) calendar days of the close of such hearing. There shall be no extension of the fifteen (15) calendar day period for any reason, including executive sessions.

T. The decision shall include:
   1. The names of the parties to the dispute on the first page;
   2. The date of the decision on the first page;
   3. The date or dates on which the hearing was held;
   4. The names of all spokesperson(s) and titles;
   5. A separate list of witnesses for each party;
   6. All issues agreed upon by the parties including those issues which were never in dispute, and those which may have been stipulated in writing and filed with the arbitrators;
   7. A list of the issues in dispute;
   8. The decision of the arbitrators or the single arbitrator on each issue in dispute including the specific language stating in detail the nature of the decision (see C.G.S. Section 10-153f(c)(4));
   9. Any dissent shall be noted immediately after each issue, with the name of the dissenting arbitrator noted. A more detailed dissent may be attached to the decision with the items noted in T-1 and 2, above, listed on the first page of such dissent for identification. This detailed dissent, if any, shall be subscribed by the dissenter. Such dissent shall be attached to the decision and submitted at the same time as the decision in accordance with the timelines;
   10. The decision shall be subscribed by the single arbitrator or arbitrators.

U. A copy of such decision shall be mailed, not later than the next business day after signing by the arbitration panel or the single arbitrator, but no later than the sixteenth (16) calendar day after the close of the hearing, by the chairperson of the arbitration panel or the single arbitrator, certified, return receipt requested (to such individual) to:
   1. the Commissioner of Education;
   2. the individual designated by each party to receive such decision, and
   3. each town clerk in the school district involved.

V. All documents and exhibits shall be transmitted to the Commissioner's office to be kept on file during the statutory period for appeal of the decision.

W. The arbitration decision shall become the parties contract (unless modified or vacated by the court in accordance with C.G.S. Section 10-153f(c)(7) as amended) and shall therefore state or incorporate by reference all the terms and conditions agreed upon and/or stipulated to by the parties, and the decision of the arbitration panel or the single arbitrator in regard to the parties LAST BEST OFFER for each disputed issue.

PLEASE NOTE: THE PRECEDING PAGES WERE TREATED AS A UNIT IN THE ORIGINAL DOCUMENT.

Teacher Negotiation Act

The following is the full text of the revised Connecticut statute concerning the Right of Certified Professional Employees to Negotiate with Boards of Education (Sections 10-153a through 10-153j of the General Statutes), as amended by Public Act Nos. 79-405 and 79-422 enacted by the 1979 Connecticut General Assembly. PA 79-405 took effect July 1, 1979 and PA 79-422 was effective October 1, 1979.

SECTION 10-153a. RIGHTS CONCERNING PROFESSIONAL ORGANIZATION AND NEGOTIATIONS.

(a) Members of the teaching profession shall have and shall be protected in the exercise of the right to form, join or assist, or refuse to form, join or assist, any organization for professional or economic improvement and to negotiate in good faith through representatives of their own choosing with respect to salaries and other conditions of employment free from interference, restraint, coercion or discriminatory practices by any employing board of education or administrative agents or representatives thereof in derogation of the rights guaranteed by this section and sections 10-153b to 10-153f, inclusive.

← Right of teaching profession to organize and negotiate through representatives

(b) Nothing in this section or in any other section of the General Statutes shall preclude a local or regional board of education from making an agreement with an exclusive bargaining representative to require as a condition of employment that all employees in a bargaining unit pay to the exclusive bargaining representative of such employees an annual service fee, not greater than the amount of dues uniformly required of members of the exclusive bargaining representative organization which represents the cost of collective bargaining, contract administration and grievance adjustment; and that such service fee be collected by means of a payroll deduction from each employee in the bargaining unit.

← Right to bargain annual service fee

← Annual service fee defined

SECTION 10-153b. SELECTION OF TEACHERS' REPRESENTATIVES.

(a) Whenever used in this section or in sections 10-153c to 10-153f, inclusive: (1) The "administrators' unit" means those certified professional employees in a school district who are employed in positions requiring an intermediate administrator or supervisor certificate, or the equivalent thereof, and are not excluded from the purview of sections 10-153a to 10-153g, inclusive. (2) The "teachers' unit" means the group of certified professional employees who are employed by a local or regional board of education in positions requiring a teaching or other certificate and are not included in the administrators' unit or excluded from the purview of sections 10-153a to 10-153g, inclusive. (3) "Commissioner" means the commissioner of education. (4) "To post a notice" means to post a copy of the indicated material on each bulletin board for teachers in every school in the school district or, if there are no such bulletin boards, to give a copy of such information to each employee in the unit effected by such

← Administrators' unit defined

← Teachers' unit defined

← Commissioner defined

← To post notice defined

CONNECTICUT EDUCATION ASSOCIATION
21 Oak Street, Hartford, Conn. 06106

2500 — 7/79 G.P.

Budget submission date defined → notice. (5) "Budget submission date" means the date on which a school district is to submit its itemized estimate of the cost of maintenance of public schools for the next following year to the board of finance in each town having a board of finance, to the board of selectmen in each town having no board of finance and, in any city having a board of finance, to said board, and otherwise to the authority making appropriations therein. (6) "Days" means calendar days.

Days defined →

Certain professional personnel excluded from the purview of this act → (b) The superintendent of schools, assistant superintendents, certified professional employees who act for the board of education in negotiations with certified professional personnel or are directly responsible to the board of education for personnel relations or budget preparation, temporary substitutes and all noncertified employees of the board of education are excluded from the purview of this section and sections 10-153c to 10-153g, inclusive.

Designation for representation procedure → (c) The employees in either unit defined in this section may designate any organization of certified professional employees to represent them in negotiations with respect to salaries and other conditions of employment with the local or regional board of education which employs them by filing, during the period between March first and March thirty-first of any school year, with the board of education a petition which requests recognition of such organization for purposes of negotiation under this section and sections 10-153c and 10-153d and is signed by a majority of the employees in such unit. Within three school days next following the receipt of such petition, such board shall post a notice of such request for recognition and mail a copy thereof to the commissioner. Such notice shall state the name of the organization designated by the petitioners, the unit to be represented and the date of receipt of such petition by the board. If no petition which requests a representation election and is signed by twenty per cent or the employees in such unit is filed in accordance with the provisions of subsection (d) with the commissioner within the thirty days next following the date on which the board of education posts notice of the designation petition, such board shall recognize the designated organization as the exclusive representative of the employees in such unit for a period of one year or until a representation election has been held for such unit pursuant to this section and section 10-153c, whichever occurs later. If a petition complying with the provisions of subsection (d) is filed within such period of thirty days, the local or regional board of education shall not recognize any organization so designated until an election has been held pursuant to said sections to determine which organization shall represent such unit.

Election for representation procedure

Petition →

Date for filing with commissioner →

Action of the commissioner →

(d) Twenty per cent or more of the personnel in an administrators' unit or teachers' unit may file during the period between March first and April thirtieth of any school year with the commissioner a petition requesting that a representation election be held to elect an organization to represent such unit. The commissioner shall file notice of such petition with the local or regional board of education on or before the third school day following receipt of the petition. The commissioner shall not divulge the names on such petition or any petition filed with the commissioner pursuant to this section to anyone except upon court order. Such notice shall

state the name of the petitioning group, the unit for which an election is sought and the date the petition was filed. Within three school days after receipt of such notice, the local or regional board of education shall post a copy of the notice. Any organization interested in representing personnel in such unit may intervene within ten school days after the board posts notice of such petition by filing with the commissioner a petition signed by ten per cent of the employees in such unit provided that any employee who signs more than one such petition between March first and April thirtieth in any one school year shall not be deemed to have signed any such petition. The commissioner shall notify the local or regional board on or before the third day following receipt of the intervening petition, and such board shall post notice of the intervening petition within three days following receipt thereof. No intervening petition shall be required from any incumbent organization previously designated by the board or elected and such incumbent organization shall be listed on the ballot if a petition for a representation election is filed. The petitioning organization, the incumbent organization, if any, and any intervening organization may agree on an impartial person or agency to conduct such an election consistent with the other provisions of this section, provided not more than one such election shall be held to elect an organization to represent the employees in such unit in any one school year, except, however, if no organization receives a majority of the vote validly cast, the election shall not be deemed completed and within ten days after the initial election a run-off election shall be held. In the event of a disagreement on the agency to conduct the election, the method shall be determined by the board of arbitration selected in accordance with section 10-153c. The person or agency so selected shall conduct, between twenty and forty-five days after the first petition requesting an election is filed with the commissioner, an election by secret ballot to determine which organization, if any, shall represent such unit, provided if no organization receives a majority of the vote validly cast, such election shall not be deemed completed and a run-off election shall be held within ten days after the initial election. The organizations participating in the representative election shall share equally in the cost incurred by the impartial person or agency selected to conduct the election. Such person or agency shall immediately report the results of the election to the commissioner. If satisfied that the election has been conducted properly, the commissioner shall certify that the organization receiving a majority of votes is the exclusive representative of the employees in such unit.

(e) The representative designated or elected in accordance with this section shall, from the date of such designation or election, be the exclusive representative of all the employees in such unit for the purposes of negotiating with respect to salaries and other conditions of employment, provided any certified professional employee or group of such employees shall have the right at any time to present any grievance to such persons as the local or regional board of education shall designate for that purpose. Whenever a multiple year contract is in effect, no representative election shall be held until two years of such contract have elapsed or until less than one year remains prior to the

← Board shall post a copy of notice from the commissioner

← Intervening petitions

← Incumbent organization

← Selection of impartial agency to conduct the election

← Time period for conducting election

← Secret ballot

← Majority vote

← Run-off election

← Cost of elections

← Certification of representative

← Duty of designated representative

← Multiple year contract bar

expiration date of such contract, whichever is sooner. The terms of any existing contract shall not be abrogated by the election or designation of a new representative. During the balance of the term of such contract the board of education and the new representative shall have the duty to negotiate pursuant to section 10-153d concerning a successor agreement. The new representative shall, from the date of designation or election, acquire the rights and powers and shall assume the duties and obligations of the existing contract during the period of its effectiveness.

Combined unit representation →

(f) Any organization which has been designated or elected the exclusive representative of a unit which includes teachers and administrators shall continue to be the exclusive representative of such personnel upon expiration of the salary agreement in effect between such organization and the board of education employing such personnel on July 1, 1969, until or unless employees of such board of education in either of the units defined in this section initiate a petition for designation or election of an organization to represent them in accordance with the procedures set forth in this section and sections 10-153c to 10-153g, inclusive.

SECTION 10-153c. DISPUTES AS TO ELECTIONS.

Disputes as to eligibility of persons voting or agency to conduct the election →

Any dispute as to the eligibility of personnel to vote in an election, or the agency to conduct the election required by section 10-153b, shall be submitted to a board of arbitration for a binding decision with respect thereto. If there are two or more organizations seeking to represent employees, each may name an arbitrator within five days after receipt of a request for arbitration made in writing by any party to the dispute. Such arbitrators shall select an additional impartial member thereof within five days after the arbitrators have been named by the parties. The impartial agency selected to conduct the election shall decide all procedural matters relating to such election and shall conduct such election fairly. Each organization shall have, during the election process, equal access to school mail boxes and facilities.

Negotiations

SECTION 10-153d. MEETING BETWEEN BOARD OF EDUCATION AND FISCAL AUTHORITY REQUIRED. DUTY TO NEGOTIATE.

Board of education shall meet with authority for making appropriations →

(a) Within thirty days prior to the date on which the local or regional board of education is to commence negotiations pursuant to this section, such board of education shall meet and confer with the board of finance in each town or city having a board of finance, with the board of selectmen in each town having no board of finance and otherwise with the authority making appropriations therein. A member of such board of finance, such board of selectmen, or such other authority making appropriations, shall be permitted to be present during negotiations pursuant to this section and shall provide such fiscal information as may be requested by the board of education.

Authority for appropriations shall be permitted to be present during negotiations and shall provide fiscal information as requested by the board of education →

Duty to negotiate →

(b) The local or regional board of education and the organization designated or elected as the exclusive representative for the appropriate unit, through designated officials or their representatives, shall have the duty to negotiate with respect to salaries and other conditions of em-

ployment about which either party wishes to negotiate. Such negotiations shall commence not less than one hundred eighty days prior to the budget submission date. Any local board of education shall file forthwith a signed copy of any contract with the town clerk and with the commissioner of education. Any regional board of education shall file a signed copy of any such contract with the town clerk in each member town and with the commissioner of education. Upon receipt of a signed copy of such contract the clerk of such town shall give public notice of such filing. The terms of such contract shall be binding on the legislative body of the local or regional school district, unless such body rejects such contract at a regular or special meeting called and convened for such purpose within thirty days of the filing of the contract. If a vote on such contract is petitioned for in accordance with the provisions of section 7-7, in order to reject such contract, a minimum of fifteen per cent of those persons eligible to vote shall be required to participate in the voting and a majority of those voting shall be required to reject. Any regional board of education shall call a district meeting to consider such contract within such thirty-day period if the chief executive officer of any member town so requests in writing within fifteen days of the receipt of the signed copy of the contract by the town clerk in such town. The body charged with making annual appropriations in any school district shall appropriate to the board of education whatever funds are required to implement the terms of any contract not rejected pursuant to this section. If the legislative body rejects such contract within such period, the parties shall renegotiate the terms of the contract in accordance with the procedure in this section. All organizations seeking to represent members of the teaching profession shall be accorded equal treatment with respect to access to teachers, principals, members of the board of education, records, mail boxes and school facilities and, in the absence of any recognition or certification as the exclusive representative as provided by section 10-153b, participation in discussions with respect to salaries and other conditions of employment.

← Negotiations shall commence not less than 180 days prior to the budget submission date

← Filing a signed contract

← Terms of contract binding unless local legislative body rejects within a calendar period

← If legislative body rejects . . .

← Equal treatment to organizations seeking to represent members of the teaching profession

SECTION 10-153e. STRIKES PROHIBITED. INTERFERENCE WITH THE EXERCISE OF EMPLOYEES' RIGHTS PROHIBITED. HEARING BEFORE STATE BOARD OF LABOR RELATIONS. APPEAL. PENALTY.

(a) No certified professional employee shall, in an effort to effect a settlement of any disagreement with the employing board of education, engage in any strike or concerted refusal to render services. This provision may be enforced in the superior court for any judicial district in which said board of education is located by an injunction issued by said court or a judge thereof pursuant to sections 52-471 to 52-479, inclusive, provided the commissioner of education shall be given notice of any hearing and the commissioner or said commissioner's designee shall be an interested party for the purposes of section 52-474.

← No strike

← Issuance of injunctions

(b) The local or regional board of education or its representatives or agents are prohibited from: (1) interfering, restraining or coercing certified professional employees in the exercise of the rights guaranteed in sections 10-153a to 10-153g; (2) dominating or interfering with the

← Board of education prohibited from . . .

formation, existence or administration of any employees' bargaining agent or representative; (3) discharging or otherwise discriminating against or for any certified professional employee because such employee has signed or filed any affidavit, petition or complaint under said sections, (4) refusing to negotiate in good faith with the employees' bargaining agent or representative which has been designated or elected as the exclusive representative in an appropriate unit in accordance with the provisions of said sections; or (5) refusing to participate in good faith in mediation or arbitration. A prohibited practice committed by a board of education, its representatives or agents shall not be a defense to an illegal strike or concerted refusal to render services.

Professional employees organization prohibited from . . . ⟶ (c) Any organization of certified professional employees or its agents is prohibited from: (1) interfering, restraining or coercing (A) certified professional employees in the exercise of the rights guaranteed in this section and sections 10-153a to 10-153c, inclusive, provided that this shall not impair the right of an employees' bargaining agent or representative to prescribe its own rules with respect to acquisition or retention of membership orovided such rules are not discriminatory and (B) a board of education in the selection of its representatives or agents; (2) discriminating against or for any certified professional employee because such employee has signed or filed any affidavit, petition or complaint under said sections; (3) refusing to negotiate in good faith with the employing board of education, if such organization has been designated or elected as the exclusive representative in an appropriate unit; (4) refusing to participate in good faith in mediation or arbitration: or (5) soliciting or advocating support from public school students for activities of certified professional employees or organizations of such employees.

"To negotiate in good faith" defined ⟶ (d) As used in this section, sections 10-153a to 10-153c, inclusive, and section 10-153g, "to negotiate in good faith" is the performance of the mutual obligation of the board of education or its representatives or agents and the organization designated or elected as the exclusive representative for the appropriate unit to meet at reasonable times, including meetings appropriately related to the budget-making process, and to participate actively so as to indicate a present intention to reach agreement with respect to salaries and other conditions of employment, or the negotiation of an agreement, or any question arising thereunder and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation shall not compel either party to agree to a proposal or require the making of a concession.

Prohibitive practices ⟶ (e) Whenever a board of education or employees' representative organization has reason to believe that a prohibited practice, as defined in subsection (b) or (c) of this section, has been or is being committed, such board of education or representative shall file a written complaint with the state board of labor relations and shall mail a copy of such complaint to the party that is the subject of the complaint. Upon receipt of a properly filed complaint said board shall refer such complaint to the agent who shall, after investigation and within ninety days after the date of such referral, either (1) make a report to said board recommending dismissal

Filing complaint with state board of labor relations ⟶

Investigation ⟶

Report of investigation ⟶

of the complaint or (2) issue a written complaint charging prohibited practices. If no such report is made and no such written complaint is issued, the board of labor relations in its discretion may proceed to a hearing upon the party's original complaint of the violation of this chapter which shall in such case be treated for the purpose of this section as a complaint issued by the agent. Upon receiving a report from the agent recommending dismissal of a complaint, said board of labor relations may issue an order dismissing the complaint or may order a further investigation or a hearing thereon. Upon receiving a complaint issued by the agent, the board of labor relations shall set a time and place for the hearing. Any such complaint may be amended with the permission of said board. The party so complained of shall have the right to file an answer to the original or amended complaint within five days after the service of such complaint or within such other time as said board may limit. Such party shall have the right to appear in person or otherwise to defend against such complaint. In the discretion of said board any person may be allowed to intervene in such proceeding. In any hearing said board shall not be bound by technical rules of evidence prevailing in the courts. A stenographic or electronic record of the testimony shall be taken at all hearings of the board of labor relations and a transcript thereof shall be filed with said board upon its request. Said board shall have the power to order the taking of further testimony and further argument. If, upon all the testimony, said board determines that the party complained of has engaged in or is engaging in any prohibited practice, it shall state its finding of fact and shall issue and cause to be served on such party an order requiring it to cease and desist from such prohibited practice, and shall take such further affirmative action as will effectuate the policies of subsections (b) to (d), inclusive, of this section. Such order may further require such party to make reports from time to time showing the extent to which the order has been complied with. If upon all the testimony the board of labor relations is of the opinion that the party named in the complaint has not engaged in or is not engaging in any such prohibited practice, then said board shall make its finding of fact and shall issue an order dismissing the complaint. Until a transcript of the record in a case has been filed in the superior court, as provided in subsection (g) of this section, said board may at any time, upon notice, modify or set aside in whole or in part any finding or order made or issued by it. Proceedings before said board shall be held with all possible expedition. Any party who wishes to have a transcript of the proceedings before the board of labor relations shall apply therefor. The parties may agree on the sharing of the costs of the transcript but, in the absence of such agreement, the costs shall be paid by the requesting party.

← Hearing procedure

← Post hearing action

(f) For the purpose of hearings pursuant to this section before the board of labor relations said board shall have power to administer oaths and affirmations and to issue subpoenas requiring the attendance of witnesses. In case of contumacy or refusal to obey a subpoena issued to any person, the superior court, upon application by said board, shall have jurisdiction to order such person to appear before said board to produce evidence or to give testimony touching the matter under investigation or in question, and any failure to obey such order may be

← Powers of board of labor relations

punished by said court as a contempt thereof. No person shall be excused from attending and testifying or from producing books, records, correspondence, documents or other evidence in obedience to the subpoena of the board, on the ground that the testimony or evidence required may tend to incriminate or subject such person to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which such individual is compelled, after claiming a privilege against self-incrimination, to testify or produce evidence, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying. Complaints, orders and other processes and papers of the board of labor relations or the agent may be served personally, by registered or certified mail, by telegraph or by leaving a copy thereof at the principal office or place of business of the person required to be served. The verified return of service shall be proof of such service. Witnesses summoned before said board or the agent shall be paid the same fees and mileage allowances that are paid witnesses in the courts of this state, and witnesses whose depositions are taken and the person taking the same shall severally be entitled to the same fees as are paid for like services in the courts of this state. All processes of any court to which an application or petition may be made under this chapter may be served in the judicial district wherein the person or persons required to be served reside or may be found.

Board of labor relations may petition the superior court for enforcement →

(g) (1) The board of labor relations may petition the superior court for the judicial district wherein the prohibited practice in question occurred or wherein any party charged with the prohibited practice resides or transacts business, or, if said court is not in session, any judge of said court, for the enforcement of an order and for appropriate temporary relief or a restraining order, and shall certify and file in the court a transcript of the entire record of the proceedings, including the pleadings and testimony upon which such order was made and the finding and orders of said board. Within five days after filing such petition in the superior court, said board shall cause a notice of such petition to be sent by registered or certified mail to all parties or their representatives. The superior court, or, if said court is not in session, any judge of said court, shall have jurisdiction of the proceedings and of the questions determined thereon, and shall have the power to grant such relief, including temporary relief, as it deems just and suitable and to make and enter a decree enforcing, modifying and enforcing as so modified, or setting aside in whole or in part, the order of said board. (2) No objection that has not been urged before the board of labor relations shall be considered by the court, unless the failure to urge such objection is excused because of extraordinary circumstances. The findings of said board as to the facts, if supported by substantial evidence, shall be conclusive. If either party applies to the court for leave to adduce additional evidence and shows to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before said board, the court may order such additional evidence to be taken before said board and to be made part of the transcript. The board of labor re-

lations may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken, and it shall file such modified or new findings, which, if supported by substantial evidence, shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. (3) The jurisdiction of the superior court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the supreme court, on appeal, by either party, irrespective of the nature of the decree or judgment or the amount involved. Such appeal shall be taken and prosecuted in the same manner and form and with the same effect as is provided in other cases of appeal to the supreme court, and the record so certified shall contain all that was before the lower court. (4) Any party aggrieved by a final order of the board of labor relations granting or denying in whole or in part the relief sought may obtain a review of such order in the superior court for the judicial district where the prohibited practice was alleged to have occurred or in the judicial district wherein such party resides or transacts business by filing in the court, or, if said court is not in session, with any judge thereof, within two weeks from the date of such order, a written petition in duplicate praying that the order of said board be modified or set aside. The clerk of the superior court shall thereupon mail the duplicate copy to said board. The board of labor relations shall then file in said court a transcript of the entire record in the proceeding, certified by said board, including the pleadings, testimony and order of the board. Upon such filing said court or such judge shall proceed in the same manner as in the case of a petition by said board under this section and shall have the same exclusive jurisdiction to grant to the party such temporary relief or restraining order as it deems just and suitable, and in like manner to make and enter a decree enforcing or modifying and enforcing as so modified or setting aside, in whole or in part, the order of said board. Unless otherwise directed by the court, commencement of proceedings under subdivisions (1) and (4) of this subsection shall not operate as a stay of such order. (5) Petitions filed under this subsection shall be heard expeditiously and determined upon the transcript filed, without requirement of printing. Hearings in the superior court or supreme court under this chapter shall take precedence over all other matters, except matters of the same character.

← Jurisdiction of the superior court

← Review

(h) Subject to regulations to be made by the board of labor relations, the complaints, orders and testimony relating to a proceeding instituted under subsection (e) of this section may be available for inspection or copying. All proceedings pursuant to said subsection shall be open to the public.

(i) Any person who willfully resists, prevents or interferes with any member of the board of labor relations or the agent in the performance of duties pursuant to subsections (e) to (i), inclusive, of this section shall be fined not more than five hundred dollars or imprisoned not more than six months or both.

SECTION 10-153f. MEDIATION AND ARBITRATION OF DISAGREEMENTS.

(a) There shall be in the department of education an arbitration panel of fifteen persons to serve as provided in subsection (c) of this

← Arbitration panel

section. The governor shall appoint such panel, with the advice and consent of the general assembly, as follows: (1) five members shall be representative of the interests of local and regional boards of education and shall be selected from lists of names submitted by such boards; (2) five members shall be representative of the interests of exclusive bargaining representatives of certified employees and shall be selected from lists of names submitted by such bargaining representatives; and (3) five members shall be representative of the interests of the public in general and shall be selected from lists of names submitted by the state board of education. Each member of the panel shall serve a term concurrent with that of the governor and may be removed for good cause. Persons appointed to the arbitration panel shall serve without compensation but each shall receive a per diem fee for each day during which he or she is engaged in the arbitration of a dispute pursuant to sections 10-153a to 10-153g, inclusive. The parties to the dispute so arbitrated shall pay the fee in accordance with subsection (c) of this section.

Mediation →

(b) If any local or regional board of education cannot agree with the exclusive representatives of a teachers' or administrators' unit after negotiation concerning the terms and conditions of employment applicable to the employees in such unit, either party may submit the issues to the commissioner for mediation.

Either party may request →
120 days prior to budget submission date the commissioner shall order mediation to commence →

If on the one hundred twentieth day prior to the budget submission date, the parties have not reached agreement and have failed to initiate mediation, the commissioner shall order the parties to appear before said commissioner to commence mediation. In either case, the parties shall meet with a mediator mutually selected by them, provided such parties shall inform the commissioner of the name of such mediator, or with the commissioner or commissioner's agents or a mediator designated by said commissioner.

Selection of mediator →

Mediators shall be chosen from a panel of mediators selected by the state board of education or from any other panel of qualified mediators.

Parties shall share the cost →

Such mediators shall receive a per diem fee determined on the basis of the prevailing rate for such services, and the parties shall share equally in the cost of such mediation. In any civil or criminal case, any proceeding preliminary thereto, or in any legislative or administrative proceeding, a mediator shall not disclose any confidential communication made to such mediator in the course of mediation unless the party making such communication waives such privilege. The parties shall provide such information as the commissioner may require.

Recommendation for settlement →

The commissioner may recommend a basis for settlement but such recommendations shall not be binding upon the parties. Such recommendation shall be made within thirty days after the day on which mediation begins.

Arbitration

When →

(c) (1) On the fourth day next following the end of the mediation session or on the ninetieth day prior to the budget submission date, whichever is sooner, the commissioner shall order the parties to report their settlement of the dispute, or, if there is no settlement, to appear

Selection of arbitrator(s) →

before the commissioner. At such meeting the parties shall notify the commissioner of the name of the single arbitrator mutually selected by them or shall notify the commissioner of the name of the arbitrator selected by each of them. Unless the parties have agreed to submit their dispute to a single arbitrator, their

designated arbitrators shall select a third arbitrator, who shall be representative of the interests of the public in general, within five days after such meeting with the commissioner and shall notify the commissioner of the name of such third arbitrator. If, at such meeting, either party fails to notify the commissioner of the name of an arbitrator, the commissioner shall designate an arbitrator to serve and the two arbitrators shall select a third who shall be representative of the interests of the public in general. If in either case the two arbitrators fail to agree on the selection of a third arbitrator within five days after said meeting with the commissioner, the commissioner shall select the third arbitrator who shall be representative of the interests of the public in general. If both parties fail to select an arbitrator, the commissioner shall recommend to the parties the names of three arbitrators, who shall be representative of the interests of the public in general, and the parties shall mutually select one of those so recommended to arbitrate the dispute, provided that if the parties are unable to agree on the selection of such arbitrator, the commissioner shall designate such arbitrator. Arbitrators shall be selected from the panel appointed pursuant to subsection (a) of this section and shall receive a per diem fee determined on the basis of the prevailing rate for such services. Whenever a panel of three arbitrators is selected, the chairperson of such panel shall be representative of the interests of the public in general.

(2) The chairperson of the arbitration panel or the single arbitrator shall set the time and place for a hearing to be held in the school district on the tenth day after such chairperson or such single arbitrator is designated except that if such day is Saturday, Sunday or a holiday, the hearing shall be held on the next Monday or the day following the holiday. At least five days prior to such hearing, a written notice of the time and place of the hearing shall be sent to the board of education and the representative organization which are parties to the dispute, and, if a three member arbitration panel is selected, to the other members of such panel. Such written notice shall also be sent to the fiscal authority having budgetary responsibility or charged with making appropriations for the school district, and a representative designated by such body may be heard at the hearing as part of the presentation and participation of the board of education. At the hearing each party shall have full opportunity to submit all relevant evidence, to introduce relevant documents and written material, and to argue on behalf of its positions. The chairperson of the arbitration panel or the single arbitrator shall preside over such hearing.

← Arbitration hearing

(3) The hearing may, at the discretion of the arbitration panel or the single arbitrator, be continued but in any event shall be concluded within twenty days after its commencement.

(4) After hearing all the issues, the arbitrators or the single arbitrator shall, within fifteen days, render a decision in writing, signed by a majority of the arbitrators or the single arbitrator, which states in detail the nature of the decision and the disposition of the issues by the arbitrators or the single arbitrator. The arbitrators or the single arbitrator shall file one copy of the decision with the commissioner, each town clerk in the school district involved and the board of education and organization which are parties to the dispute. The decision

← Filing a written decision

← Decision to be final and binding

Incorporation of previously agreed items → of the arbitrators or the single arbitrator shall be final and binding upon the parties to the dispute. Such decision of the arbitrators or the single arbitrator shall incorporate those items of agreement the parties have reached prior to its issuance. At any time prior to the issuance of a decision by the arbitrators or the single arbitrator, the parties may jointly file with the arbitrators or the single arbitrator, any stipulations setting forth contract provisions which

Factors to be considered in arriving at decision → both parties agree to accept. The factors to be considered by the arbitrators or the single arbitrator in arriving at a decision shall include (1) the negotiations between the parties prior to arbitration; (2) the public interest and the financial capability of the school district; (3) the interests and welfare of the employee group; (4) changes in the cost of living; (5) the existing conditions of employment of the employee group and those of similar groups and (6) the salaries, fringe benefits, and other conditions of employment prevailing in the state labor mar-

Last best offer → ket. The parties shall submit to the arbitrators or the single arbitrator their respective positions on each individual issue in dispute between

Issue by issue → them in the form of a last best offer. The arbitrators or the single arbitrator shall resolve separately each individual disputed issue by accepting the last best offer thereon of either of the parties, and shall incorporate in a decision each

Not subject to legislative body rejection → such accepted individual last best offer. Notwithstanding the provisions of subsection (b) of section 10-153d the decision of the arbitrators or the single arbitrator shall not be subject to rejection by the legislative body of the local or regional school district or by referendum. The parties shall each pay the fee of the arbitrator selected by or for them and share equally the fee of the third arbitrator or the single arbitrator and all other costs incidental to the arbitration.

(5) The commissioner shall assist the arbitration panel or the single arbitrator as may be required in the course of arbitration pursuant to this section.

(6) If the day for filing any document required pursuant to this section falls on Saturday, Sunday or a holiday, the time for such filing shall be extended to the next business day thereafter.

Judicial review → (7) The decision of the arbitrators or a single arbitrator shall be subject to judicial review upon the filing by a party to the arbitration, within thirty days following receipt of a final decision, of a motion to vacate or modify such decision in the superior court for the judicial district wherein the school district involved is located. The superior court, after hearing, may vacate or modify the decision if substantial rights of a party have been prejudiced because such decision is: (1) in violation of constitutional or statutory provisions; (2) in excess of the statutory authority of the panel; (3) made upon unlawful procedure; (4) affected by other error of law; (5) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or (6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Powers and duties of the commissioner and arbitrater(s) → (d) The commissioner and the arbitrators or single arbitrator shall have the same powers and duties as the board under section 31-108 for the purposes of mediation or arbitration pursuant to sections 10-153a to 10-153g, inclusive, and all provisions in section 31-108 with

respect to procedure, jurisdiction of the superior court, witnesses and penalties shall apply.

SECTION 10-153g. NEGOTIATIONS CONCERNING SALARIES AND CONDITIONS OF EMPLOYMENT UNAFFECTED BY SPECIAL ACTS, CHARTERS, ORDINANCES.

Notwithstanding the provisions of any special act, municipal charter or local ordinance, the provisions of sections 10-153a to 10-153f shall apply to negotiations concerning salaries and conditions of employment conducted by boards of education and certified personnel.

SECTION 10-153i. DESIGNATION OF STATUTORY AGENT FOR SERVICE OF PROCESS.

(a) (1) Each administrators' or teachers' representative organization shall file with the commissioner a written designation, on such form as the commissioner shall prescribe, of a statutory agent for service of process who shall be the statutory agent for all members of the administrators' unit or teachers' unit, as defined in subsection (a) of section 10-153b, who shall be (A) a natural person who is a resident of this state, or (B) a domestic corporation. (2) Each written appointment shall be signed by the president or vice president or secretary of the appointing organization. Each written appointment shall also be signed by the statutory agent for service therein appointed.

← Statutory agent required for representative organization

(b) If a statutory agent for service dies, dissolves, removes from the state or resigns, the organization shall forthwith appoint another statutory agent for service. If the statutory agent for service changes such agent's address within the state from that appearing upon the record in the office of the commissioner, the organization shall forthwith file with the commissioner notice of the new address. A statutory agent for service may resign by filing with the commissioner a signed statement in duplicate to that effect. The commissioner shall forthwith file one copy and mail the other copy of such statement to the organization at its principal office. Upon the expiration of thirty days after such filing, the resignation shall be effective and the authority of such statutory agent for service shall terminate. An organization may revoke the appointment of a statutory agent for service by making a new appointment as provided in this section and any new appointment so made shall revoke all appointments theretofore made.

← Changing statutory agent

SECTION 10-153j. THE MAKING OF SERVICE OF PROCESS, NOTICE OR DEMAND.

(a) Except for citations for contempt, any process, notice or demand in connection with any action or proceeding pursuant to subsection (a) of section 10-153e, to be served upon any member of an administrators' unit or any member of a teachers' unit as defined in subsection (a) of section 10-153b, may be served upon the statutory agent for service by any proper officer or other person lawfully empowered to make service. The person making service of such process, notice or demand shall immediately send a true and attested copy thereof by registered or certified mail to each person named in such process, notice or demand.