ALASKA LEGISLATURE COMMITTEE FILES 1981-1982 8672

1267 SCRA SB 126 BACK UP

1267

(b) If it appears from the records of the commissioner that such an organization has failed to appoint or maintain a statutory agent for service, or if it appears by affidavit endorsed on the return of the officer or other proper person directed to serve any process, notice or demand upon such a statutory agent for service appearing on the records of the commissioner that such agent cannot, with reasonable diligence, be found at the address shown on such records as the agent's address, service of such process, notice or demand may, when timely made, be made by such officer or other proper person by: (1) Leaving a true and attested copy thereof at the office of the commissioner or depositing the same in the United States mails, by registered or certified mail, postage prepaid, addressed to such office, and (2) depositing in the United States mails, by registered or certified mail, postage prepaid, a true and attested copy thereof, together with a statement by such officer that service is being made pursuant to this section, addressed to such organization at its principal office and to each person named in such process, notice or demand.

(c) The commissioner shall file the copy of each process, notice or demand received by him as provided in subsection (b) and keep a record of the day and hour of such receipt. Service made as provided in this section shall be effective as of such day and hour.

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

RECOMMENDATIONS OF THE GOVERNOR'S BLUE RIBBON COMMISSION IN CERTIFIED STAFF-SCHOOL BOARD NEGOTIATIONS

November 1980

TABLE OF CONTENTS

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PREFACE

On April 10, 1980 Governor Jay S. Hammond established a Blue Ribbon Commission of eleven members to bring the education community together to explore viable alternatives to impasse. In his letter to the Commission members, the Governor stated, "I believe this process can help avoid devisiveness that ultimately hurts Alaskans and especially our students." The Commission was charged with the following responsibilities:

a. Study the most recent situations where impasse was reached in negotiations between school boards and certified staff.

b. Evaluate the statutory and practicable procedures taken to resolve such impasses.

c. Make recommendations to change or continue the laws, rules, regulations or procedures which affect the resolution of impasse situations.

This report and the recommendations are made in the spirit of helpfulness. The Commission hopes that these recommendations can help to avoid devisiveness and assist in ensuring that all Alaskan students receive a quality education.

The Commission wishes to express its appreciation to all of those that provided aid and assistance in the carrying out of its duties.

BACKGROUND

Alaska Statute Sec. 14.20.550-610 (Article 6 Negotiations and Mediations) provides for each city, borough and regional school board and its certificated employees to negotiate in good faith on matters pertaining to their employment and the fulfillment of their professional duties.

In reviewing the most recent history of negotiations under Article 6, we find an increasing number of negotiations not resolved at the beginning of the school year, cases having exhausted the impasse procedures to no avail, school districts and employee organizations seeking court resolution to problems related to the collective bargaining process, and a work stoppage in a major school district, all resulting from what appears to be inadequacies in the collective bargaining process.

These problem areas have led to concern at all levels and led to the call for the Governor to establish a commission to review the matter and determine if there are recommendations that might be implemented that would enhance the potential for agreement between the negotiating parties.

The issue is considered critical since prolonged negotiations and work stoppages have the potential of creating problems that affect the education process long after the situation has been resolved.

COMMISSION ACTIVITIES

Commission activities included review of various documents relating to the subject and attendance, by parent and legislative members, at a conference sponsored by the American Arbitration Association. The Commission held seven meetings which were divided between the communities of Juneau, Fairbanks and Anchorage to provide the general public and persons involved in the education process to attend and participate in the Commission's deliberations. A more specific description of Commission activities includes the following:

Survey Questionnaire

The Commission prepared and distributed a questionnaire designed to gather additional information on issues that were surfacing as major problem areas. A copy of the questionnaire is included in the attachments to this report. The questionnaire was distributed through the following groups and organizations: NEA-Alaska, Association of Alaska School Boards, Alaska Council of School Administrators, Alaska Federation of Teachers (AFT), Anchorage Chamber of Commerce, Alaska Congress of Parents and Teachers (State PTA), and the Rural Alaska Community Action Program. While the Commission was disappointed at the size of the return received (25 in all), the results were tabulated and used by the Commission. A tabulation summary is also included as an attachment The responses indicated that an overwhelming majority of those responding felt that the process was taking too long and a simple majority felt that the process was not working effectively.

Parent Members Conduct Interviews

Parent members of the Commission conducted interviews with persons who had been involved in negotiations in school districts where impasse had previously occurred. Members of both negotiating teams were interviewed. Interviews were conducted in Anchorage, Mat-Su, Juneau and the Delta/Greely School Districts. No interviews were conducted in districts where the process was at the impasse step at the time of the interviews. These interviews helped the Commission gain additional information on the problem areas identified in the survey questionnaire.

Presentations by Individuals Involved in the Labor Relations Process

During the Commission meetings, presentations were received from the following individuals:

Robert D. Helsby, Director, Public Employees Relations Service. Dr. Helsby commented on studies that he had directed in Pennsylvania and New York. He also reviewed his activities as head of the New York State Labor Relations Agency. Dr. Helsby also provided the Commissioners with a paper on community involvement in the "Interest Arbitration" process.

Henry Nichols, Commissioner, U.S. Federal Mediation and Conciliation Service (US-FMCS). Commissioner Nichols described the mediation process and how the (US-FMCS) office assisted in the negotiations process described in Article 6.

Joe Kennan, Anchorage arbitrator. Mr. Kennan met with the Commission to discuss his participation in the mediation-arbitration process.

Bryce Stallard, Superintendent, Fairbanks North Star Borough School District. Dr. Stallard met with the Commission to describe the Nebraska Industrial Relations Commission. Dr. Stallard also shared with the Commission some of his experience derived from working with the Nebraska Commission.

Ron Henry, member, Alaska Labor Relations Agency. Mr. Henry discussed the duties of the Labor Relations Agency established to administer the Public Employees Relations Act (AS 23.40.070-260).

Review of Statutes and Documents from other Jurisdictions

The Commission reviewed and compared statutes from a number of states where collective bargaining in the public sector exists. Among those reviewed were statutes from New York, Iowa, Connecticut, California, and Indiana. Other documents reviewed included: The Public Employment Relations Services Review and Evaluation Team Report prepared for the Governor of Pennsylvania, Alaska Supreme Court decisions on various cases relating to collective bargaining under Article 6 and the Mandatory/Non-Mandatory Subjects of Negotiations Report prepared by the Public Employment Relations Board of New York. The review of these documents and statutes provided the Commission with background information on how other jurisdictions were dealing with the problem areas noted in the findings.

FINDINGS

As a result of the activities previously described, the following findings were developed:

1. Length of negotiating process - The Commission was informed that the negotiations process may take a year or more to conclude. The Commission was also advised that these lengthy negotiations may have a detrimental affect on the education process, including the students and the community. A major contributing factor to the length of the negotiating process appears to be the lack of clear time lines in the existing statute.

2. The current Teacher Bargaining Law is vague and ambiguous - A number of individuals indicated that they did not feel that the existing statute worked effectively because it is vague and ambiguous. The lack of a clear policy statement, and statements describing both management and employee rights appear to contribute to the ineffectiveness. At present, the statute does not define what is or is not a negotiable item, or deal with work stoppages or unfair labor practices.

3. Impact of the collective bargaining process on students - The current statute does not indicate how the collective bargaining process relates to the quality of education and the welfare of students. In some instances, it does not appear that the quality of education and the welfare of the students have been considered when the negotiations process reached impasse or later steps.

4. Disputes - At present, the negotiating parties must use the court system to adjudicate problems or disputes that arise during the negotiations process. The existing statute provides no means for resolving disputes between the parties involved. Use of the court may prolong the process.

5. Finality Step - The lack of a definitive finality step contributes to the length of the negotiations process. When parties proceed beyond the impasse step, the lack of a well-defined finality procedure contributes to the length of the negotiations process and leads to uncertainty for teachers, administrators, students, and the community.

RECOMMENDATIONS

We recommend that the Teacher Bargaining Law be revised as follows:

1. The law should include a Policy Statement. The Policy Statement should describe:

   a. The legislative intent of the law.

   b. The need to protect the interests of the students and the general public as represented by the school board.

   c. Rights of employees to organize for the purpose of collective bargaining.

   d. Rights of employee organizations to negotiate and enter into agreements.

   e. The best agreement as one that is mutually agreed to by the parties.

2. The law should include an Employee Rights Statement. The Employee Rights Statement should describe:

   a. The employee's right to form, join or assist their employee organizations.

   b. Rights of employee organizations to participate in the collective bargaining process.

   c. The financial relationship between non-members and the employee organizations.

3. The law should include a Management Rights Statement. The Management Rights Statement should describe the school board's right to:

   a. Determine standards of educational services.

   b. Select employees.

   c. Direct the work of its employees.

   d. Take disciplinary action.

   e. Discharge employees as provided by law.

f. Determine the programs in the district.

g. Exercise powers and duties granted to them by law.

4. The law should provide for an Administrative Agency or Commission to implement the statute by providing assistance to the parties. It should also provide for the option of a paid staff.

5. The law should be revised to clarify the steps in the negotiations process by adding time lines, with the option of extending by mutual agreement, for beginning and completing specific steps within the bargaining process.

6. The law should clearly address strikes and lock-outs as they relate to the collective bargaining process at the elementary and secondary school levels.

7. The law should provide for a culminating procedure in a collective bargaining agreement.

8. It is recommended that conflicts in the statute, which may develop from the suggested amendments, be eliminated.

9. A sunset provision should be established to review the changes which are implemented.

10. To meet the above-stated recommendations, the following reports prepared by the Commission members representing the respective groups are provided to the Governor.

REVIEW OF SURVEY RESPONSE

1. Does the current negotiations process work? Why/Why not?

	Yes	No
Total Response	10	15
Community College	5	8

2. Does the current negotiations process take too long?

	Yes	No
Total Response	24	1
Community College	13	0

3. What are the components most significantly affecting final resolution to the negotiation process?

4. What is your perception of the effectiveness of third party intervention?

	Good	No Good	In-between
Total Response	11	10	4
Community College	8	3	2

5. Are there other options to agreement which would be fair and equitable to both parties? If yes, explain.

MAJORITY REPORT PRESENTED BY
THE PARENT MEMBERS

PARENT MEMBERS' RECOMMENDED PROCEDURES
FOR AMENDING ARTICLE 6

This attachment contains specific suggestions developed by the parent members of the Commission to implement the recommendations developed by the full Commission. The attachment is also designed to address several key concerns that have been expressed by various Commission members. These concerns are:

Public Education

The public education system is currently under considerable pressure for a variety of reasons. We find an increasing number of families choosing to opt-out of the public education system. We feel that collective bargaining, at the elementary and secondary school level, should be organized and conducted in a manner that will enhance the educational opportunity of the students, and thereby not contribute to the problems affecting public education.

Work Stoppages

The attached Amendment #4 describes the parents' recommendation for dealing with the practices that result in work stoppages resulting from the collective bargaining process. We have recommended prohibiting such practices due to a deep concern about their potential impact on students at the secondary and elementary school levels. We feel their potential impact on student to teacher relations, student to student relations, and other school/community relations extend far beyond the duration of the work stoppage. In most instances, we feel that the impact on the various relationships are negative.

Specific Negotiation Steps and Time Frames

The attached Amendments #6-#8 outline a statutory requirement and path for parties to follow in the negotiations process. We believe the addition of these steps and time frames will further enhance the effort and force the parties to reach an agreement.

Arbitration Options

The attached Amendment #9 describes several options to what is described as conventional arbitration procedures. During Commission deliberations, several alternatives were presented involving use of local groups of 3 to 7 persons as an arbitration panel. The parent group does not object to use of the conventional

arbitration method, but strongly supports the inclusion of options that provide for community involvement if the parties choose to use it.

Amending Article 6

The entire attachment is designed around the amendment of Article 6 as opposed to developing a new statute or revising the Alaska Public Employment Relations Act (PERA). The revision of PERA was discussed on several occasions. These revisions would have to include:

a. Certificated teaching staff as a category of employees.

b. Classify this category in terms of strike or no strike.

c. Modified binding arbitration and other options.

d. Specified steps and time frames in the negotiations process.

e. A method for possible community involvement.

f. An agency that would:

1. be more than volunteer
2. have some staff
3. keep a file of available mediators
4. operate under the Governor rather than the Department of Labor or Department of Education

To make these revisions would complicate a working, functioning law that adequately deals with a certain category of public employees.

ATTACHMENT 1

Amendment 1

Article 6 should be amended by addition of a Policy Statement. This Statement should state:

1. The policy of the Legislature to promote harmonious and cooperative relations between city, borough and regional school boards and their cer _ficated employees.

2. Recognize that the policy is to protec: the interests of students and the public by assuring orderly and effective operation of the public schools.

3. Recognize the right of employees to organize for the purpose of collective bargaining.

4. Employee organizations have the right to negotiate with and enter into written agreements with employers on matters of wages, hours and other terms and conditions of employment.

5. That the best agreement is one reached by the parties involved in negotiations without outside interference or assistance; it is the aim of Article 6 to aid in the settlement.

Amendment 2

Article 6 should be amended by addition of an Employee Rights Statement. This Statement should state:

1. Employees shall have the right to form or join, or to refrain from forming or joining, employee organizations.

2. Employee organizations have the right to participate in collective bargaining with boards of education through representatives of their own choosing.

3. Employees have the right to bargain for the purpose of establishing, maintaining or improving terms and conditions of employment.

Amendment 3

Article 6 should be amended by addition of a Management Rights Statement. This Statement should state:

The right of a school board to:

1. Determine the standards of service to be offered.

2. Recruit and select staff.

3. Direct its employees in their work.

4. Take disciplinary action.

5. Relieve its employees from duty as provided by law or other legitimate reasons.

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

7. Exercise all powers and duties granted to the school board by law.

Amendment 4

Article 6 should be amended by the addition of a Public Rights Statement. This statement should state:

The Alaskan public includes:

1. Students who are required by law to attend school.

2. Alaskan citizens who are required to monetarily support public schools.

Therefore, the Alaskan public has the right to orderly and uninterrupted operation and functioning of public schools. To protect this right, work stoppages shall be prohibited under this law.

Amendment 5

Article 6 should be amended by the addition of an Educational Employee Relations Commission, hereinafter called EERC. This Commission should be established as:

1. Three members appointed by the Governor and approved by the Legislature.

2. No more than two of the members shall be from one political party.

3. The chairman of the Commission shall be appointed by the Governor for a 6 year term.

4. All members shall be appointed for 6 year staggered terms.

5. A member may be removed from office due to non-functioning.

6. All staff costs for the Commission shall be borne by the State.

7. The Commission shall administer Article 6. Its duties shall include, but are not limited to:

   a. Act as an appeal board in disputes arising from certification of employee organizations.

   b. Determination of the occurrence of and remedy for unfair labor practices.

   c. Determine the extent of negotiable and non-negotiable items when disputes arise.

   d. Maintain a current file of mediators.

   e. Provide statistical data relating to salaries, wages, benefits and employment practices to the negotiating parties, mediators, fact-finders and arbitrators.

   f. Conduct such hearings and inquiries as are deemed necessary to carry out the functions of the Commission.

   g. The Commission shall promulgate rules and regulations necessary to effectively carry out the purposes of this chapter.

When the EERC is developing its regulations, these are some of the ideas for community involvement that the parent members would like to see considered.

The Commission may recommend the following to the negotiators:

1. Establishment of a local committee to perform such duties as:

   observe negotiations

   publicize proposals and/or progress in negotiations

c. act as liaison between EERC and negotiators

d. conduct public hearings

Suggested selection of committee: An equal number of members from the community at large, chosen by each party, plus a chairman selected by the committee.

2. The parties may be requested to undergo a period of intense negotiations with or without release time.

3. The parties may be requested to undergo a period of intense mediation. This would include both parties, plus a mediator, selected by the EERC. The mediation expenses would be paid for by both parties jointly.

4. The EERC shall cause public hearings to be held whenever they feel that such public hearings will be beneficial toward both parties reaching agreement.

Amendment 6

Article 6 shall be amended by the following steps of negotiations:

Step 1

Initial negotiations should begin by November 1. STEP 1 NEGOTIATIONS MUST BE CONCLUDED WITH BOTH PARTIES REACHING AGREEMENT BY JANUARY 15, OR THE EERC SHALL DEEM THAT THE NEGOTIATIONS HAVE REACHED IMPASSE, AND STEP 2 GOES INTO EFFECT.

Amendment 7

Step 2

The EERC shall transmit a list of 5 mediators to the parties. If the parties cannot agree upon a mediator to be used, the following method shall prevail. Each party shall strike the name of one mediator. The final name remaining shall be the mediator.

A. Mediation shall not exceed a 10 day period.

B. If agreement has not been reached by the end of the 10 day period, the mediator shall prepare a list of unsettled items for publication in the affected community, and Step 3 shall be in effect.

Amendment 8

Step 3

The mediator in the negotiations shall become a fact-finder with both parties (sharing the cost). A period of 15 days shall be allowed for fact-finding, and a written report must be given to both parties within 10 days of the end of the fact-finding period. If agreement is not reached 15 days after receipt of the fact-finder's report, a public hearing shall be held under the auspices of the EERC. No later than May 15 the parties shall have determined final step procedures, which will be either Step 4 Optional, or Step 4 Statutory.

Amendment 9

Step 4 Optional

A local option which could include, but not limited to:

1. Conventional

2. Last offer

    a. Issue by issue
    b. Package
    c. Three choice arbitration - last offers of parties or fact-finder's recommendations

3. Separation of economic vs. non-economic issues. Economic handled one way; non-economic another.

4. Tri-partite arbitration panel - one member by each party, chairman by two advocate members.

5. Single arbitrator selected by parties

6. Public referendum

Step 4 Statutory

1. The EERC will direct the selection of a local tri-partite panel to act as arbitrator. This panel shall be composed of one member selected by each party, with the two advocates selecting the chairman. If agreement cannot be reached in the matter of the chairman selection, the EERC shall appoint the chairman.

2. The items remaining for negotiations shall be limited to salary and benefits.

3. By May 30, the tri-partite panel shall have selected from the last best offer of each party, plus the fact-finder's report.

4. The arbitration award would be binding unless either or both parties appealed the decision to the EERC, which would establish a local appeals panel. This panel could be:

   a. the original local panel

   b. a local panel organized along the lines of the local panel

   c. the legislative body in the area

This panel is an appellate group to determine the merits of the award of the tri-partite panel. The decision of the panel will be final and binding on both parties.

ALL STEPS WILL BE COMPLETED BY JUNE 30.

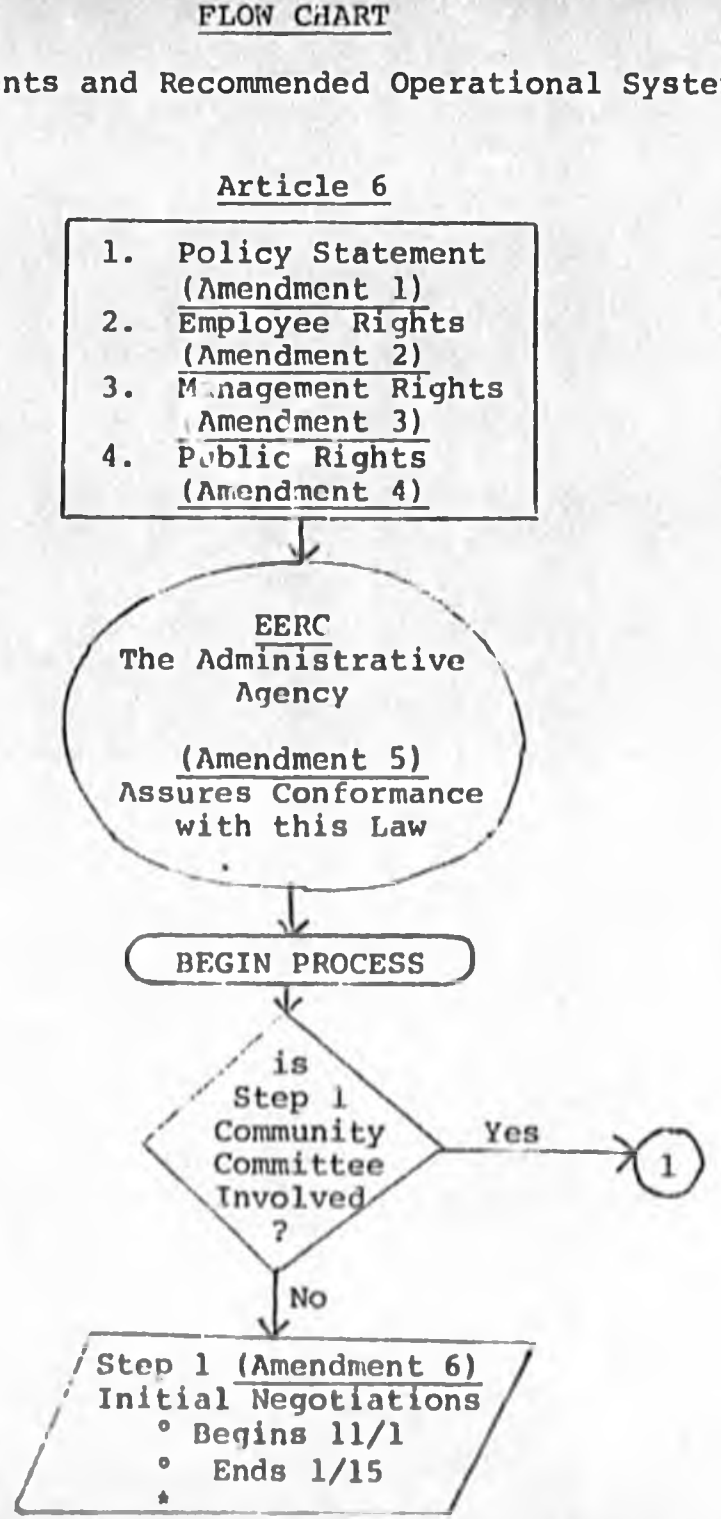
Amendment 10

Article 6 should be amended by the following sunset provision: These revisions shall be reviewed after a period of 5 years.

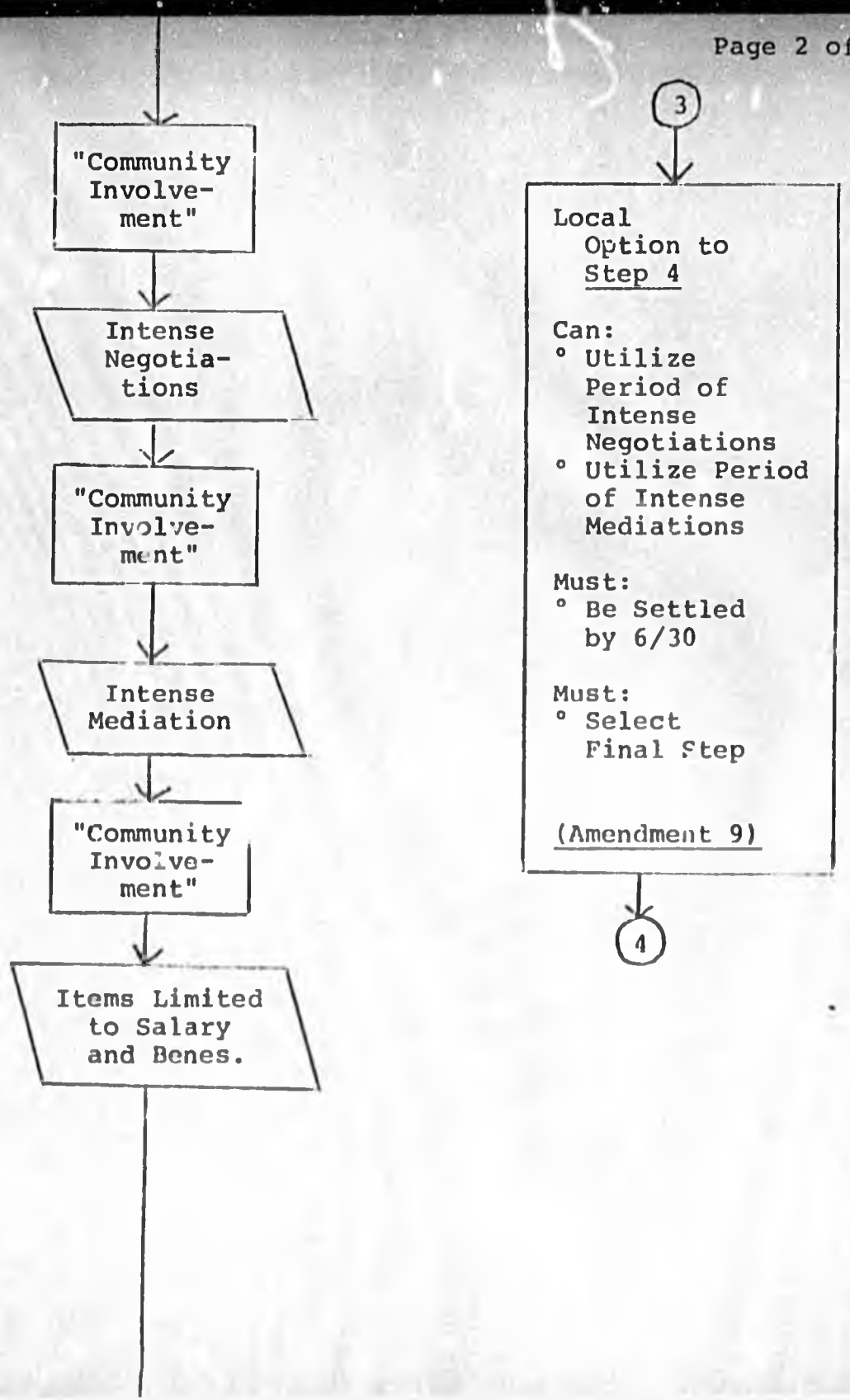
NOTE: THE COMMISSION NEEDS STATUTORY LANGUAGE TO GIVE IT LEGAL ENFORCEMENT PRIVILEGES, as in PERA Secs. 23.40.120, 23.40.130, 23.40.140, 23.40.150, 23.40.160, 23.40.170, 23.40.180...but as it pertains to this statute.

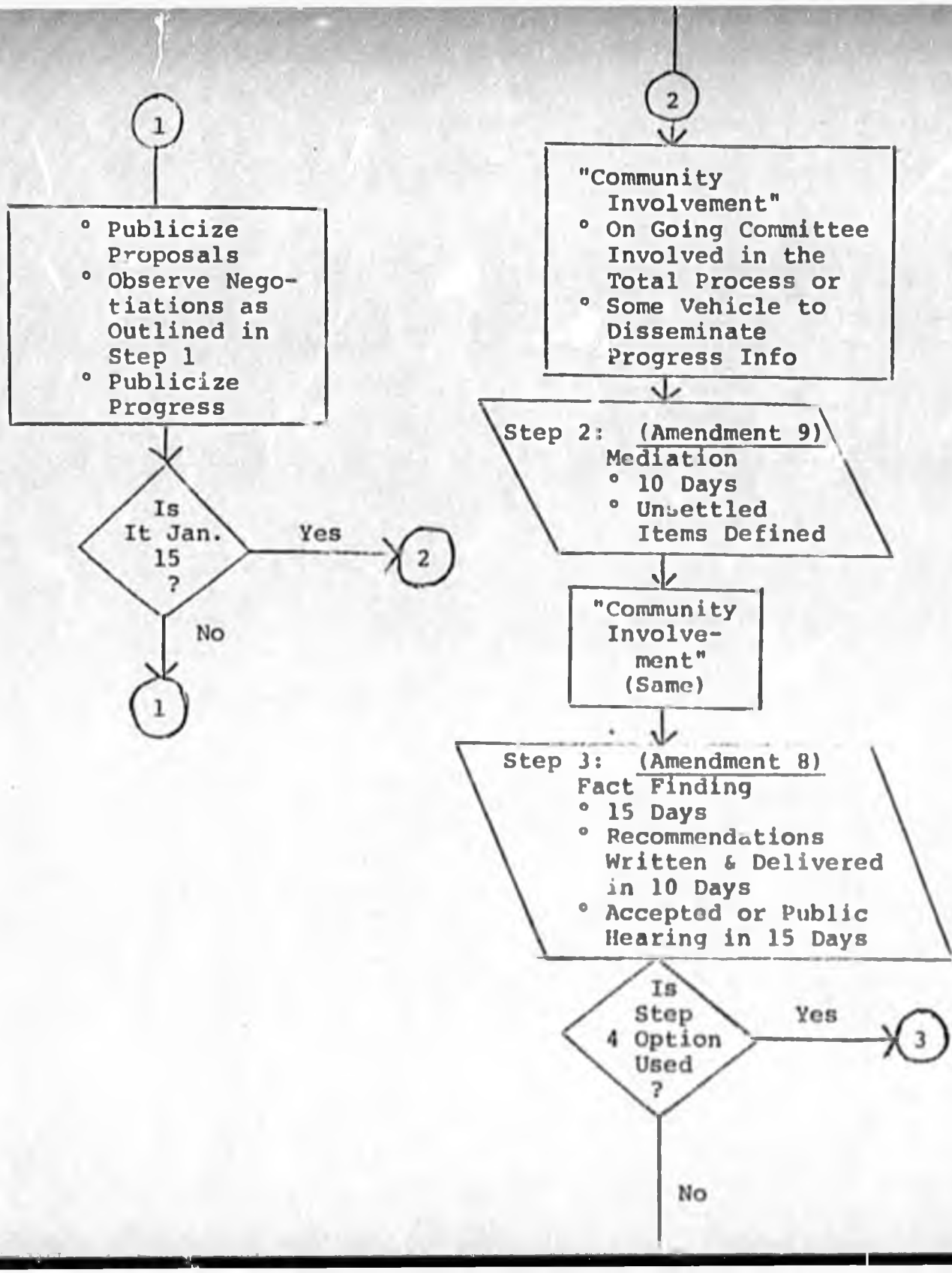
FLOW CHART

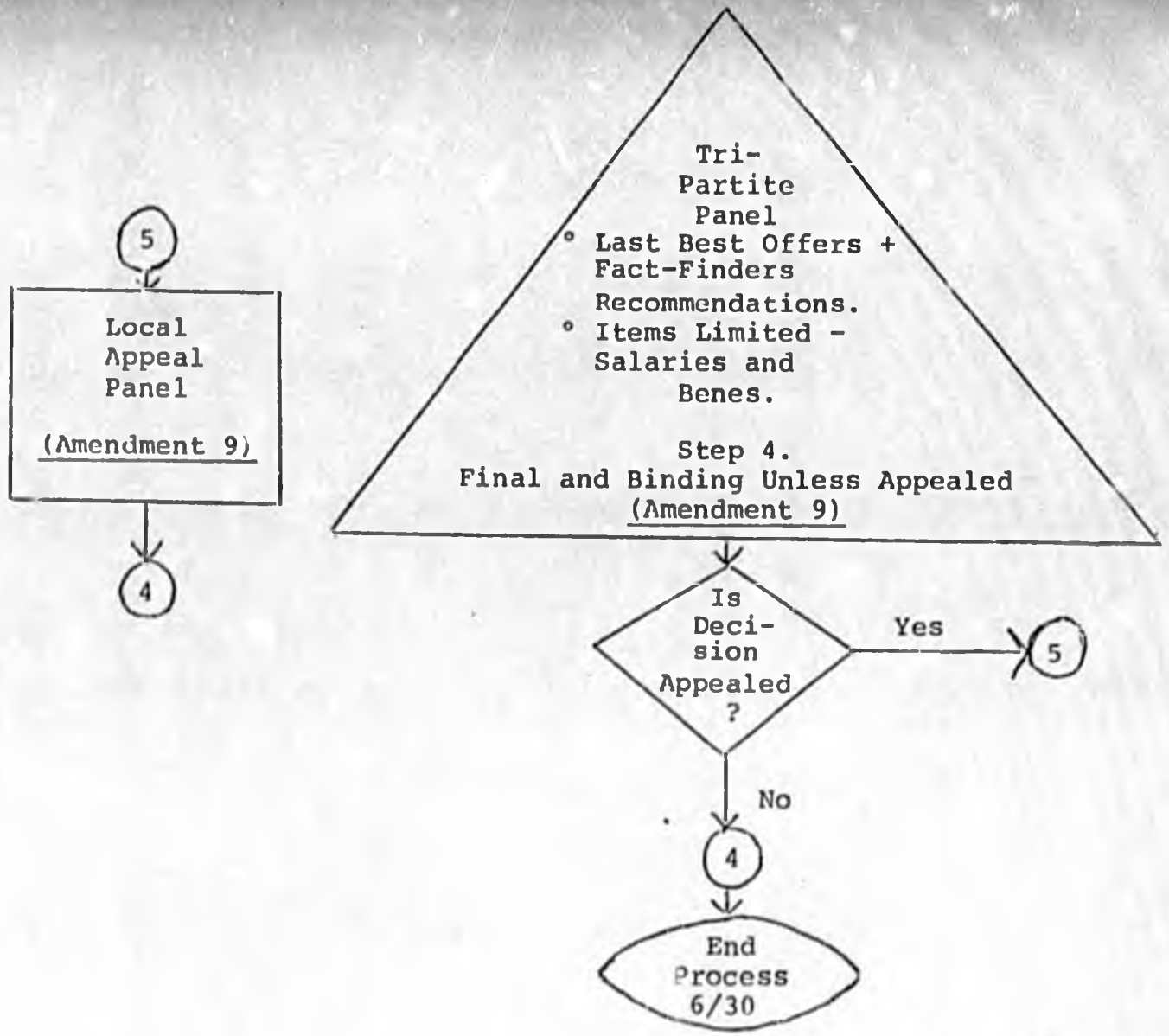
Amendments and Recommended Operational System



*NOTE: Local option: Can include a period of intense negotiations or be limited to this period, but will be declared at impasse 1/15 if not settled.


"Community Involve-ment"
Intense Negotia-tions
"Community Involve-ment"
Intense Mediation
"Community Involve-ment"
Items Limited to Salary and Benes.
3
Local Option to Step 4
Can:
° Utilize Period of Intense Negotiations
° Utilize Period of Intense Mediations
Must:
° Be Settled by 6/30
Must:
° Select Final Step
(Amendment 9)
4


1
° Publicize Proposals
° Observe Negotiations as Outlined in Step 1
° Publicize Progress
Is It Jan. 15 ?
Yes
2
No
1
2
"Community Involvement"
° On Going Committee Involved in the Total Process or
° Some Vehicle to Disseminate Progress Info
Step 2: (Amendment 9)
Mediation
° 10 Days
° Unsettled Items Defined
"Community Involvement" (Same)
Step 3: (Amendment 8)
Fact Finding
° 15 Days
° Recommendations Written & Delivered in 10 Days
° Accepted or Public Hearing in 15 Days
Is Step 4 Option Used ?
Yes
3
No


Tri-
Partite
Panel
° Last Best Offers +
Fact-Finders
Recommendations.
° Items Limited -
Salaries and
Benes.
Step 4.
Final and Binding Unless Appealed
(Amendment 9)
Is
Deci-
sion
Appealed
?
Yes
5
No
4
End
Process
6/30
5
Local
Appeal
Panel
(Amendment 9)
4

MINORITY REPORT PRESENTED BY
NEA-ALASKA AND
ALASKA FEDERATION OF TEACHERS

MINORITY REPORT PRESENTED BY
NEA-ALASKA AND ALASKA FEDERATION OF TEACHERS

NEA - ALASKA

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Mary Ann Eininger
Deputy Executive Secretary
Fairbanks Office

December 4, 1980

Frank Austin
3839 Apollo Drive
Anchorage, Alaska 99504

Dear Frank:

This letter represents the thinking conclusions and recommendations of NEA and AFT as participants on the Governor's Blue Ribbon Commission on Certified Staff-School Board Negotiations.

It is our understanding that the attached, along with this letter, will be incorporated into and as a part of the composite report/recommendations which are forwarded to the Governor for his consideration.

We basically concur with the substance and content of:

'Blue Ribbon Commission'	page i
'Preface'	pages ii and iii
'Executive Summary of Findings and Recommendations'	page 1, 2
'Backgrourd'	page 3
'Commission Activities'	page 4 - 6
'Findings'	page 7, 8
'Recommendations'	pages 9, 10

which were reviewed and revised at our last meeting on November 24, 25, 1980.

Our intent is that this letter and the attached which is entitled "NEA/AFT Recommendations to Effect Resolution of Certified Teacher Bargaining Law Problems Through Revision of Alaska Statutes 23.40, the Alaska Public Employment Act (P.E.R.A.)" be incorporated and included as a part of the report/recommendations to the Governor commencing with page 11.

Thank you for your work as chairperson of the commission and for your attention to this matter. We look forward to receiving a final and complete copy of the Commission Report and attachments as soon as it is available.

Sincerely,

[illegible]

Robert Manners
Executive Secretary
NEA/Alaska

Sincerely,

Ralph McGrath

Ralph McGrath
Alaska Federation of Teachers

cc: Betty Dillman

NEA/AFT Recommendations to Effect Resolution of Certified Teacher Bargaining Law Problems Through Revision of Alaska Statutes 23.40, the Alaska Public Employment Act (P.E.R.A.)

The Alaska Federation of Teachers and NEA-Alaska do concur with other members of the Blue Ribbon Commission in their identification of the major issues confronting labor and management in school district collective bargaining, and we commend our fellow members for their serious efforts to find a solution to the complex problems facing this Commission. There is a mutually recognized need to address the matters of a policy statement on collective bargaining; employee/employer rights, authority of a labor relations agency; scope of bargaining; right to strike; and finality through binding arbitration.

NEA-Alaska and AFT, however, regard the most viable solution to these issues to be the inclusion of teachers under the present Alaska Public Employee Relations Act (P.E.R.A.) as amended (see attached). It is our conclusion that such an inclusion would meet the concerns expressed by students, parents, teachers, and administrators and insure the constitutional rights of teachers as school district employees.

Our response is basic and striaghtforward. We question the need to establish new agencies, new procedures, and expend additional state funds when in fact an existing state agency charged with those responsibilities already exists. We believe that interjecting such a random and sweeping approach as proposed in other commission member proposals will not lead to an orderly timely or final resolution of labor management problems. We believe that such complicated mechanisms as proposed would likely exacerbate the situation. We strongly support and endorse the findings calling for the establishment of a viable labor relations agency, however, we submit that a strengthened existing agency with public sector experience, the State Labor Relations Agency (S.L.R.A.), can accomplish this mutual objective.

The need for a clearly defined state policy regarding teacher collective bargaining is unquestioned. In the absence of such a policy, only chaotic, unbalanced power by either labor or management can prevail. We are in agreement that a policy statement is essential. We find it to be consistent with, and already incorporated into, P.E.R.A.

We are in agreement that there needs to be an Employee Rights statement; however, we disagree that this Commission has the expertise to define them. It was evident that the teacher, administration, board and parent members could only agree to disagree on what those rights were. We find the clearest deliniation of these rights to be incorporated in P.E.R.A. We believe that the correct interpretation of those rights should rest with a professional disinterested agency, specifically the S.L.R.A.

We support findings relative to the role of a labor relations agency adjudicating unfair labor practice charges. The AFT and NEA-Alaska representatives believe, however, that the Agency's authority should extend to enforcement of the provisions included in any statute on collective bargaining for school employees. Resolution of grievances and interpretations of the terms of a collectively bargained agreement should only be subject to a negotiated grievance procedure.

The teacher representatives are in full agreement that the best agreement is one reached without outside interference or assistance. We do find, however, that availability of external sources (labor relations agency, mediators, arbitrators, legislators and judges) serve in various ways, as catalysts to promote resolution and finality. When their roles, as defined in P.E.R.A., are understood they enhance the likelihood of internal resolution. Their power to issue cease and desist orders, determine findings of bad faith, finalize terms and conditions, enjoin, or refuse to fund are reasons enough for the parties to reach agreement without outside intervention.

We believe that the right to strike is essential to a "good faith" bargaining process. We recommend, however, that the parties be provided an option to waive their right to strike and proceed directly to binding arbitration. We emphasize the workers' right to <u>legal</u> and <u>limited</u> economic sanction. It should be clear to all Commission members, as evidenced in Anchorage last Fall, that teachers have the power to strike and will exercise, or may be forced to exercise, that prerogative. Our intent is to legitimize, through P.E.R.A., the legality of taking such action only after all other avenues have failed. We believe that the P.E.R.A. act has sufficient safeguards to assure that such measures would not occur for unrealistic or transient reasons. An agency empowered with the right to deny such a request, conduct hearings and monitor an election on this matter are guaranteed means to that end. We therefore believe that teachers should be incorporated in the category of class 2 employees with the right to a legal, limited strike.

NEA-ALASKA AND AMERICAN FEDERATION OF TEACHERS

RECOMMENDATIONS TO THE GOVERNORS
TASK FORCE
ON AS 14.20.550--14.20.610

Teacher Bargaining Law

As representatives of NEA and AFT on the Blue Ribbon Commission our recommendations are that the best options for constructive and positive revision to the current teacher bargaining law lie within the current Alaska Statute known as the Public Employment Relations Act (PERA). This Act most effectively addresses the issues and problems attendant to teacher bargaining.

In its eight years of existence this law has proven to be an effective vehicle or public employees and employers to negotiate on hours, wages, and terms and conditions of employment. Slight modifications and revisions can be made to effectively handle the somewhat unique differences in public school bargaining.

Therefore, our approach is to comment, where appropriate, on each of the Sections of PERA.

§ 23.40.070 ALASKA STATUTES § 23.40.070

Article 2. Public Employment Relations Act.

Editor's note.—Section 4, ch. 113, SLA 1972, provides: "This Act is applicable to organized boroughs and political subdivisions of the state, home rule or otherwise, unless the legislative body of the political subdivision, by ordinance or resolution, rejects having its provisions apply."

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

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

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

(3) maintaining merit-system principles among public employees. (§ 2 ch 113 SLA 1972)

It is essential that there be a legislative statement of commitment to the principles of collective bargaining and this section is appropriate for same.

Sec. 23.40.080. Rights of public employees. Public employees may self-organize and form, join or assist an organization to bargain collectively through representatives of their own choosing, and engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection. (§ 2 ch 113 SLA 1972)

Appropriate as is.

Sec. 23.40.090. Collective bargaining unit. The labor relations agency shall decide in each case, in order to assure to employees the fullest freedom in exercising the rights guaranteed by §§ 70—260 of this chapter, the unit appropriate for the purposes of collective bargaining, based on such factors as community of interest, wages, hours and other working conditions of the employees involved, the history of collective bargaining, and the desires of the employees. Bargaining units shall be as large as is reasonable, and unnecessary fragmenting shall be avoided. (§ 2 ch 113 SLA 1972)

It is appropriate for a labor relations agency to make determinations relative to the appropriateness of a bargaining unit. This section accommodates that need.

Sec. 23.40.100. Representatives and elections. (a) The labor relations agency shall investigate a petition if it is submitted in a manner prescribed by the labor relations agency and is

(1) by an employee or group of employees or an organization acting in their behalf alleging that 30 per cent of the employees of a proposed bargaining unit

(A) want to be represented for collective bargaining by a labor or employee organization as exclusive representative, or

(B) assert that the organization which has been certified or is currently being recognized by the public employer as bargaining representative is no longer the representative of the majority of employees in the bargaining unit; or

(2) by the public employer alleging that one or more organizations have presented to it a claim to be recognized as a representative of a majority of employees in an appropriate unit.

(b) If the labor relations agency has reasonable cause to believe that a question of representation exists, it shall provide for an appropriate hearing upon due notice. If the labor relations agency finds that there is a question of representation, it shall direct an election by secret ballot to determine whether or by which organization the employees desire to be represented and shall certify the results of the election. Nothing in this section prohibits the waiving of hearings by stipulation for the purpose of a consent election in conformity with the regulations of the labor relations agency or an election in a bargaining unit agreed upon by the parties. The labor relations agency shall determine who is eligible to vote in an election and shall establish rules governing the election. In an election in which none of the choices on the ballot receives a majority of the votes cast, a runoff election shall be conducted, the ballot providing for selection between the two choices receiving the largest and the second largest number of valid votes cast in the election. If an organization receives the majority of the votes cast in the election it shall be certified by the labor relations agency as exclusive representative of all the employees in the bargaining unit.

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

(d) Nothing in this chapter prohibits recognition of an organization as the exclusive representative by a public agency by mutual consent.

(e) No election may be directed by the labor relations agency in a bargaining unit in which there is in force a valid collective bargaining agreement, except during a 90-day period preceding the expiration date. However, no collective bargaining agreement may bar an election upon petition of persons in the bargaining unit but not parties to the agreement if more than three years have elapsed since the execution of the agreement or the last timely renewal, whichever was later. (§ 2 ch 113 SLA 1972)

100 - Representatives and Elections

This section is most appropriate since it relieves local school boards from responsibility for decisions outside their experience and which may have a high potential for litigation. The presence of a Labor Relations Board having responsibility in their area insures a logical and orderly process in assuming the opportunity for fair representation.

Sec. 23.40.110. Unfair labor practices. (a) A public employer or his agent may not:

(1) interfere, restrain or coerce an employee in the exercise of his rights guaranteed in § 80 of this chapter;

(2) dominate or interfere with the formation, existence or administration of an organization;

(3) discriminate in regard to hire or tenure of employment or a term or condition of employment to encourage or discourage membership in an organization;

(4) discharge or discriminate against an employee because he has signed or filed an affidavit, petition or complaint or given testimony under §§ 70—260 of this chapter;

(5) refuse to bargain collectively in good faith with an organization which is the exclusive representative of employees in an appropriate unit, including but not limited to the discussing of grievances with the exclusive representative.

(b) Nothing in this chapter prohibits a public employer from making an agreement with an organization to require as a condition of employment

(1) membership in the organ ation which represents the unit on or after the 30th day following the beginning of employment or on the effective date of the agreement, whichever is later; or

(2) payment by the employee to the exclusive bargaining agent of a service fee to reimburse the exclusive bargaining agent for the expense of representing the members of the bargaining unit.

(c) A labor or employee organization or its agents may not

(1) restrain or coerce

(A) an employee in the exercise of the rights guaranteed in § 80 of this chapter, or

(B) a public employer in the selection of his representative for the purposes of collective bargaining or the adjustment of grievances;

(2) refuse to bargain collectively in good faith with a public employer, if it has been designated in accordance with the provisions of §§ 70—260 of this chapter as the exclusive representative of employees in an appropriate unit. (§ 2 ch 113 SLA 1972)

110

This section is extremely important in that it defines the concept of fair/unfair labor practices, the rights of both parties regarding same, obligations of both parties, and again, most importantly an orderly procedure relative to resolution of same. This can only help in removing some of the personal attitudinal conflicts as well as reducing unnecessary time frames and costly court procedures.

Sec. 23.40.120. Investigation and conciliation of complaints. If a verified written complaint by or for a person claiming to be aggrieved by a practice prohibited by § 110 of this chapter, or a written accusation that a person subject to §§ 70—260 of this chapter has engaged in a prohibited practice, is filed with the labor relations agency, it shall investigate the complaint or accusation. If it determines after the preliminary investigation that probable cause exists in support of the complaint or accusation, it shall try to eliminate the prohibited practice by informal methods of conference, conciliation, and persuasion. Nothing said or done during this endeavor may be used as evidence in a subsequent proceeding. (§ 2 ch 113 SLA 1972)

Sec. 23.40.130. Complaint and accusation. If the labor relations agency fails to eliminate the prohibited practice by conciliation and to obtain voluntary compliance with §§ 70—260 of this chapter, or, before it attempts conciliation, it may serve a copy of the complaint or accusation upon the respondent. The complaint or accusation and the subsequent procedures shall be handled in accordance with the administrative adjudication portion of the Administrative Procedure Act (AS 44.62). (§ 2 ch 113 SLA 1972)

Sec. 23.40.140. Orders and decisions. If the labor relations agency finds that a person named in the written complaint or accusation has engaged in a prohibited practice, the labor relations agency shall issue and serve on the person an order or decision requiring him to cease and desist from the prohibited practice and to take affirmative action which will carry out the provisions of §§ 70—260 of this chapter. If the labor relations agency finds that a person named in the complaint or accusation has not engaged or is not engaging in a prohibited practice, the labor relations agency shall state its findings of fact and issue an order dismissing the complaint or accusation. (§ 2 ch 113 SLA 1972)

Sec. 23.40.150. Enforcement by injunction. The labor relations agency may apply to the superior court in the judicial district in which the prohibited practice occurred for an order enjoining the prohibited acts specified in the order or decision of the labor relations agency. Upon a showing by the labor relations agency that the person has engaged or is about to engage in the practice, an injunction, restraining order, or other order which is appropriate may be granted by the court and shall be without bond. (§ 2 ch 113 SLA 1972)

Sec. 23.40.160. Power to investigate and compel testimony. (a) For the purpose of the investigations, proceedings, or hearings which the labor relations agency considers necessary to carry out the provisions of §§ 70—260 of this chapter, the labor relations agency may issue subpoenas requiring the attendance and testimony of witnesses and the production of relevant evidence.

(b) The labor relations agency may administer oaths, examine witnesses, and receive evidence.

(c) The attendance of witnesses and the production of evidence may be required from any place in the state at any designated place of hearing.

(d) If a person refuses to obey a subpoena issued under §§ 70—260 of this chapter, the superior court in the district in which the person resides or is found may, upon application by the labor relations agency, issue an order requiring him to comply with the subpoena. (§ 2 ch 113 SLA 1972)

Sec. 23.40.170. Regulations. The labor relations agency may adopt regulations under the Administrative Procedure Act (AS 44.62) to carry out the provisions of §§ 70—260 of this chapter. (§ 2 ch 113 SLA 1972)

Sec. 23.40.180. Penalty for violation of order or decision. A person who violates a provision of an order or decision of the labor relations agency is guilty of a misdemeanor and is punishable by a fine of not more than $500. (§ 2 ch 113 SLA 1972)

This is one of the more critical areas of considerations.

.120 - Investigation and Conciliation of Complaints

.130 - Complaint and Accusations

.140 - Orders and Decision

.150 - Enforcement by Injuctions

.160 - Power to Investigate and Compel Testimony

.170 - Regulation

.180 - Penalty for Violation of Order or Decision

These sections all outline the duties and responsibilities of the Labor Relations Agency to enforce effective collective bargaining and all are essential to effective implementation of any bargaining law. The presence of these sections insures that both parties to collective bargaining can participate as equal partners in the process.

Sec. 23.40.190. Mediation. If, after a reasonable period of negotiation over the terms of a collective bargaining agreement, a deadlock exists between a public employer and an organization, the labor relations agency may appoint a competent, impartial, disinterested person to act as mediator in any dispute either on its own initiative or on the request of one of the parties to the dispute. The parties may also select a mediator by agreement or mutual consent. It is the function of the mediator to bring the parties together voluntarily under such favorable auspices as will tend to effectuate settlement of the dispute, but neither the mediator nor the labor relations agency has any power of compulsion in mediation proceedings. (§ 2 ch 113 SLA 1972)

.190 - Mediation

Intervention by a competent, unpartial, disinterested professional serves as a catalyst in assisting both parties to clarify and resolve differences.

Sec. 23.40.200. Arbitration. (a) For purposes of this section, public employees are employed to perform services in one of the three following classes:

(1) those services which may not be given up for even the shortest period of time;

(2) those services which may be interrupted for a limited period but not for an indefinite period of time; and

(3) those services in which work stoppages may be sustained for extended periods without serious effects on the public.

(b) The class in (a)(1) of this section is composed of police and fire protection employees, jail, prison and other correctional institution employees, and hospital employees. Employees in this class may not engage in strikes. Upon a showing by a public employer or the labor relations agency that employees in this class are engaging or about to engage in a strike, an injunction, restraining order, or other order which may be appropriate shall be granted by the superior court in the judicial district in which the strike is occurring or is about to occur. If an impasse or deadlock is reached in collective bargaining between the public employer and employees in this class, and mediation has been utilized without resolving the deadlock, the parties shall submit to arbitration to be carried out under AS 09.43.030.

(c) The class in (a)(2) of this section is composed of public utility, snow removal, sanitation and [public school and other educational institution employees] Employees in this class may engage in a strike after mediation, subject to the voting requirement of

(d) of this section, for a limited time. The limit is determined by the interests of the health, safety or welfare of the public. The public employer or the labor relations agency may apply to the superior court in the judicial district in which the strike is occurring for an order enjoining the strike. A strike may not be enjoined unless it can be shown that it has begun to threaten the health, safety or welfare of the public. A court, in deciding whether or not to enjoin the strike, shall consider the total equities in the particular class. "Total equities" includes not only the impact of a strike on the public but also the extent to which employee organizations and public employers have met their statutory obligations. If an impasse or deadlock still exists after the issuance of an injunction, the parties shall submit to arbitration to be carried out under AS 09.43.030.

(d) The class in (a)(3) of this section includes all other public employees who are not included in the classes in (a)(1) or (a)(2) of this section. Employees in this class may engage in a strike if a majority of the employees in a collective bargaining unit vote by secret ballot to do so.

(e) Notwithstanding the provisions of (b), (c) and (d) of this section, the employees with the concurrence of the employer may agree in writing to submit a dispute arising from interpretation or application of a collective bargaining agreement to arbitration.

(f) The parties to a collective bargaining agreement may provide in the agreement a contract for arbitration to be conducted solely according to the Uniform Arbitration Act (AS 09.43) if the Act is incorporated into the agreement or contract by reference. (§ 2 ch 113 SLA 1972)

.200 - Arbitration

Public school teachers naturally fit into the (a) (2) "limited period" category.

Add a new subsection:

.205 - Mediation/Arbitration

In that the Commission has received evidence and testimony that mediation/arbitration has proven to be an effective means of negotiations dispute settlement, it is our recommendation that such a process be provided as an alternative to either party, to be determined at the outset of negotiations.

(a) The parties to a collective bargaining agreement may provide in the agreement a contract for mediation/arbitration to be conducted according to procedures set forth therein.

(b) In the initial round of negotiations under this Act, either party may request the other party to enter into a mediation/arbitration agreement as an alternative to the dispute settlement procedures contained herein. If either party declines such an agreement the party making the request for mediation/arbitration may petition the Labor Relations Board for a final and binding determination on the issue.

Sec. 23.40.210. Agreement. Upon the completion of negotiations between an organization and a public employer, if a settlement is reached, the employer shall reduce it to writing in the form of an agreement. The agreement may include a term for which it will remain in effect, not to exceed three years. The agreement shall include a grievance procedure which shall have binding arbitration as its final step. Either party to the agreement has a right of action to enforce the agreement by petition to the labor relations agency. (§ 2 ch 113 SLA 1972)

Appropriate as is.

Sec. 23.40.215. Funding. The monetary terms of any agreement entered into under the Public Employment Relations Act are subject to funding through legislative appropriation. (§ 2 ch 113 SLA 1972)

Appropriate as is.

Sec. 23.40.220. Labor or employee organization dues and employee benefits, deduction and authorization. Upon written authorization of a public employee within a bargaining unit, the public employer shall deduct from the payroll of the public employee the monthly amount of dues, fees and other employee benefits as certified by the secretary of the exclusive bargaining representative and shall deliver it to the chief fiscal officer of the exclusive bargaining representative. (§ 2 ch 113 SLA 1972)

Appropriate as is.

Sec. 23.40.225. Exemption from Public Employment Relations Act. Notwithstanding the provisions of § 220 of this chapter, a collective bargaining settlement reached, or agreement entered into, under § 210 of this chapter that incorporates union security provisions, including but not limited to a union shop or agency shop provision or agreement, shall safeguard the rights of nonassociation of employees having bona fide religious convictions based on tenets or teachings of a church or religious body of which an employee is a member. Upon submission of proper proof of religious conviction to the labor relations agency, the agency shall declare the employee exempt from becoming a member of a labor organization or employee association. The employee shall pay an amount of money equivalent to regular union or association dues, initiation fees, and assessments to the union or association. Nonpayment of this money subjects the employee to the same penalty as if it were nonpayment of dues. The receiving union or association shall contribute an equivalent amount of money to a charity of its choice not affiliated with a religious, labor or employee organization. The union or association shall submit proof of contribution to the labor relations agency. (§ 1 ch 85 SLA 1976)

Cross reference. — As to applicability of this article to ferry personnel, see note following article 2 analysis.

Effective date. — Section 3, ch. 85, SLA 1976, makes this section effective May 27, 1976, in accordance with AS 01.10.070(c).

Editor's note. — Section 2, ch. 85, SLA 1976, effective May 27, 1976, provides: "If any portion of AS 23.40.225 is declared unconstitutional or void by a court of competent jurisdiction, then that entire section is void."

Applied in Hafling v. Inlandboatmen's Union, Sup. Ct. Op. No. 1743 (File No. 3133), 585 P.2d 870 (1978).

Appropriate as is.

Sec. 23.40.230. Assistance by Department of Labor. When state employees are involved, the Department of Labor shall, if requested by the personnel board, and if there is no objection by the organization involved, assist the personnel board on matters such as, but not limited to, conducting elections and investigating unfair labor practices. (§ 2 ch 113 SLA 1972)

Editorial change is needed on line #2. Insert after employees, and public school employees.

Sec. 23.40.240. Effect on certain units, representatives and agreements. Nothing in this chapter terminates or modifies a collective bargaining unit, recognition of exclusive bargaining representative, or collective bargaining agreement if the unit, recognition, or agreement is in effect on September 5, 1972. (§ 2 ch 113 SLA 1972)

Appropriate as is.

Sec. 23.40.250. Definitions. In §§ 70—260 of this chapter, unless the context otherwise requires,

(1) "collective bargaining" means the performance of the mutual obligation of the public employer or his designated representatives and the representative of the employees to meet at reasonable times, including meetings in advance of the budget-making process and negotiate in good faith with respect to wages, hours and other terms and conditions of employment, or the negotiation of an agreement, or negotiation of a question arising under an agreement and the execution of a written contract incorporating an agreement reached if requested by either party, but these obligations do not compel either party to agree to a proposal or require the making of a concession;

(2) "election" means a proceeding conducted by the labor relations agency in which the employees in a collective bargaining unit cast a secret ballot for collective bargaining representatives, or for any other purpose specified in §§ 70—260 of this chapter;

(3) "labor relations agency" means the state personnel board with regard to the state and employees of the state, and means the Department of Labor with regard to all other public employees and all other public employers;

(4) "organization" means a labor or employee organization of any kind in which employees participate and which exists for the primary purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment and conditions of employment;

(5) "public employee" means any employee of a public employer, whether or not in the classified service of the public employer, except elected or appointed officials or teachers or noncertificated employees of school districts;

(6) "public employer" means the state or a political subdivision of the state, including without limitation, a town, city, borough, district, board of regents, public and quasi-public corporation, housing authority or other authority established by law, and a person designated by the public employer to act in its interest in dealing with public employees;

(7) "terms and conditions of employment" means the hours of employment, the compensation and fringe benefits, and the employer's personnel policies affecting the working conditions of the employees; but does not mean the general policies describing the function and purposes of a public employer. (§ 2 ch 113 SLA 1972)

Sec. 23.10.260. Short title. Sections 70—260 of this chapter may be cited as the Public Employment Relations Act. (§ 2 ch 113 SLA 1972)

.250 - Definitions

Regarding # 1 and 2 - Appropriate as is.

Regarding #3 - "Labor Relations Agency" shall mean a three-person Board, of which at least the Chairperson shall be a full-time employee of the State of Alaska.

Regarding #4 - Appropriate as is.

Regarding #5 - "Public employee" means any employee of a public employer, whether or not in the classified service of the public employer, except elected or appointed officials.

Regarding # 6 and 7 - Appropriate as is.

Regarding #8 - Regarding sub-section 190 - Mediation - "Reasonable Period" means the Labor Relations Board shall consider the academic year, calendar year, fiscal year, and budget making process in determining the appropriateness of intervention by mediation into a potential collective bargaining dispute.

Regarding Scope of Negotiations or Negotiability:

It is our feeling and recommendation that such determinations are more appropriately a matter for the Labor Relations Board using criteria, guidelines and case law such as had evolved from the National Labor Relations Board.

MINORITY REPORT PRESENTED BY
THE ASSOCIATION OF ALASKA SCHOOL BOARDS AND
THE ALASKA COUNCIL OF SCHOOL ADMINISTRATORS

MINORITY REPORT PRESENTED BY AASB AND
ALASKA COUNCIL OF SCHOOL ADMINISTRATORS

ASSOCIATION OF ALASKA SCHOOL BOARDS
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RECOMMENDATIONS MADE BY THE ASSOCIATION OF ALASKA SCHOOL BOARDS REGARDING AMENDING ALASKA'S TEACHER BARGAINING LAW

Herewith are submitted recommendations made by the Association of Alaska School Boards as a member participating in the deliberations conducted by the Governor's Blue Ribbon Commission dealing with this topic. The Association's concerns and sentiments parallel to some degree those submitted by the parent delegation to the Commission. They are:

PUBLIC EDUCATION

AASB is concerned about the pressures currently being placed upon the public educational system in the State of Alaska and feel that school boards across the State want to be able to respond to these pressures in a positive manner. School boards feel that while there is a need for the collective bargaining process in the public education system, this process should not be allowed to impact the rights of students and the public to an orderly, uninterrupted and quality educational program. School boards should not be placed in a position whereby the collective bargaining process has an impact upon the daily education of children.

WORK STOPPAGES

Alaska's elected school boards universally would agree with the parent members of the Commission that work stoppages relating to the collective bargaining process have a negative impact upon the educational process for children of the State, and that this negative impact carries on long after the settlement of the labor dispute. While AASB shares this concern, our position on dealing with the matter and considering the fact that work stoppages are principally a labor strategy limited to the more urban areas of the State,

is somewhat in variance with the position taken by the parent group. AASB's position is that there should be a prohibition of work stoppages and job actions of any kind and that the remedy for disputes lies in a more defined and structured process for negotiations. AASB is unalterably opposed to third party intervention on a mandatory basis.

AMENDING ARTICLE 6

AASB is totally supportive of the parent group in their recommendation that any modification of our teacher bargaining statute should be in the form of modifications to the existing statutes (Article 6) as opposed to any effort to modify the Alaska Public Employees Relations Act (PERA).

ATTACHMENT

AMENDMENT 1

AASB agrees with the parent group that there should be included in Article 6 a statement of legislative intent. AASB concurs with the parent-recommended content with some additional clarifying language included. AASB proposes legislative intent should include:

1. That it is the policy intent of the Legislature to promote harmonious and cooperative relations between city, borough and regional school boards and their certificated employees.

2. Recognize that it is the legislative intent to protect the interests of the students and the public as represented by the duly elected school boards of the respective areas by assuring orderly, effective and uninterrupted operation of the public education program for the children of the State.

3. Recognize the rights of employees to organize for the purpose of collective bargaining.

4. Employee organizations have the right to negotiate with and enter into written agreements with employers on matters of wages, hours, time off, fringe benefits and other matters of economic benefit.

5. That the best agreement is one reached by the parties involved in negotiations without outside interference or assistance.

AMENDMENT 2

AASB concurs with the parent group in the inclusion of an employee rights provision in Article 6 and herewith proposes the parent-proposed language with clarifying modifications. AASB proposes a provision to include:

1. Employees shall have the right to form, join or assist, or refrain from joining, forming or assisting, employee organizations.

2. Employee organizations have the right to participate in collective bargaining with boards of education through representatives of their own choosing.

3. Employees have the right to bargain for the purpose of negotiating for wages, hours, time off, and other terms affecting their economic benefit.

AMENDMENT 3

AASB feels that the language proposed by the parent group, while substantially in accord with the position of AASB, is not specific enough to protect management rights. AASB therefore suggests legislative language which is verbatim from the Iowa State Statutes dealing with teacher negotiations. AASB proposes language which would include:

This right of the school board to include, but not be limited to:

School boards shall have, in addition to all powers, duties, and rights established by constitutional provision, statute, ordinance, to:

1. Direct the work of its certificated employees.

2. Hire, promote, demote, transfer, assign, and retain certificated employees within the school district.

3. Suspend or discharge certificated employees for proper cause.

4. Maintain the efficiency of the operation of the school district.

5. Relieve certificated employees from employment because of lack of enrollment, loss of revenue, discontinuance of a job function, or other legitimate reason.

6. Determine and implement methods, means, assignments, and personnel by which the school board shall conduct the district operations.

7. Take such actions as may be necessary to carry out the mission of the school district.

8. Initiate, prepare, certify, and administer the school district budget.

9. Exercise all powers and duties granted to the school board by law.

AMENDMENT 4

AASB is in accord with the position taken by the parent group regarding a proposal to change Article 6. AASB proposes language which is essentially the same as the parent group but has some modifications which are of a technical nature. AASB proposes language in Article 6 which would include:

The Alaskan public includes:

1. Students who are required by law to attend school.

2. Alaskan citizens who are required to monetarily support the public schools.

Therefore, the Alaskan public has a right to orderly and uninterrupted operation and functioning of the public schools. To protect this right, work stoppages or job actions of any kind shall be prohibited under this law.

AMENDMENT 5

Alaska school boards generally support the Blue Ribbon parent group regarding the creation of an Educational Employee Relations Commission under the Office of the Governor. AASB is in concurrence with the parent group in their recommendation as to the makeup and appointment procedures.

AASB agrees with the parent group in that the function of the Commission should be to administer the statute. AASB, in that light, herewith submits proposed language which differs from the parent group only to the extent that AASB emphasizes the adminstration of the statute when it addresses the duties and functions of the EERC Commission proposed. AASB proposes language that would include:

1. Act as an appeal board in disputes arising from certification of employee organizations as bargaining agents.

2. Interpret Alaska Statute (Article 6) to determine the occurrence of and remedy for unfair labor practices.

3. Interpret the statute to determine the extent of negotiable and non-negotiable items when disputes arise.

4. Maintain a current file of mediators.

5. Provide statistical data relating to salaries, wages, benefits, and other matters of economic benefit to the negotiating parties, mediators, fact-finders and other interested parties of interest, including members of the public.

6. Conduct hearings and inquiries as are deemed necessary to carry out the function of the Commission.

7. The Commission shall promulgate rules and regulations necessary to effectively carry out the purposes of this chapter.

AMENDMENT 6

AASB is in complete agreement with the parent group on initial time lines for negotiations, and see this as one step that would facilitate the collective bargaining process and potentially eliminate ultimate impasse problems usually encountered under the present statute every fall.

AMENDMENT 7

AASB is in complete agreement with the parent group on the provision for mediation, if a negotiated settlement is not reached prior to January 15 of the negotiation's year.

AMENDMENT 8

AASB is only in partial agreement with the recommendation of the parent group in a proposed Step 3, and only to the extent that AASB cannot support an involuntary use of an outside third party intervening decision-maker. AASB does support third party intervention if that third party intervener is a local legislative body, and if the issues presented to that body are strictly financial in nature, and the obligation to fund the decision is also passed on to the third party intervener.

AASB proposes a modified Amendment 8 which would include:

The mediator in the negotiations shall become a fact-finder with both parties sharing the cost. A period of 15 days shall be allowed for fact-finding, and a written report must be given to both parties within 10 days of the end of the fact-finding period. If agreement is not reached within 15 days after receipt of the fact-finder's report, a public hearing shall be conducted under the auspices of the PERC. No later than May 15, the parties shall determine final step procedures which may be either Step 4 Optional or Step 4 Mandatory.

Step 4 Optional

The parties of interest may voluntarily agree to third party intervention in a form acceptable to the parties.

The options available to the parties under this section would include, but not be limited to:

1. Last Best Offer

    a. Issue by issue
    b. Package
    c. Fact-finder's recommendation

2. Separation of economic items from non-economic items in the manner in which they are handled.

3. Public Referendum

4. Utilize local legislative body as third party intervener.

Step 4 Mandatory

The EERC will provide mediation service with special authority for the mediator to convene the parties, determine the manner in which the negotiations are to be conducted, and have authority to require intensive bargaining until such time as an agreement is reached. If a negotiated settlement is not reached under these provisions before June 15, further negotiations shall be limited exclusively to salary and fringe benefit items which were included in the fact-finder's report.

As a final item, AASB is in support of the parent group recommendation for a sunset provision in the proposed Article 6 revision providing for an automatic review of these provisions in 5 years.

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

March 2, 1981

AASB'S POSITION PAPER ON BINDING ARBITRATION

Following are comments and concerns of the ASSOCIATION OF ALASKA SCHOOL BOARDS relative to binding arbitration as contained in S.B. 126.

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

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

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

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

   Many states who have adopted binding arbitration have recognized the need for penalties for going to binding arbitration in an effort to minimize its use. The feeling is that if there is nothing in the form of a penalty, if the parties do not have to give up anything in order to utilize this process, then they will use it as a means to "get a little more."

AASB feels that the use of binding arbitration should be limited to salary and fringe benefits only. This procedure would be an incentive for both parties to settle prior to the arbitration proceedings.

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

3. There needs to be a "Sunset provision" in the binding arbitration law to insure that the law is reviewed sometime in the future to determine if it is solving the problems it was designed to solve, or if it created more problems. Other states have done this with success. AASB recommends that a Sunset provision be attached to this bill making it automatic that the law would have to be re-enacted in three years in order that it could be modified as needed with new conditions unforeseen today.

4. Of major concern to AASB is the lack of any provision in this bill for an employee rights section. We feel that, in addition to spelling out the rights of employees to organize and to bargain collectively, the bill should provide for the rights of individual employees NOT to join or assist employee organizations by means of agency shop provisions. Again, the Iowa law clearly makes this provision.

5. If binding arbitration is to become a reality in Alaska, then school boards need one of two options available to them. They must either:

   A. Have binding arbitration settlements tied in some fashion to the appropriate funding agency in order to insure that the decision can be funded, or;

   B. The Alaska Teacher Tenure Law must be changed in order to allow school boards to release tenured teachers due to a lack of money.

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

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

6. AASB feels that there needs to be a complete set of time lines in any revision of the bargaining law as lack of such time lines are probably more conducive to extended bargaining than any differences at the bargaining table. Presently, the bill only speaks to mediation and arbitration.

7. The present bill, as amended, only makes a provision for prohibiting strikes. Nothing in the bill enforces the no-strike provision. AASB strongly recommends that an enforcement provision be included requiring that engaging in a strike constitutes grounds for loss of tenure. Strong financial penalties must also be included against employee organizations involved in strike activities. Without these strike penalties, the no-strike provision in the law is meaningless.

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

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

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

8. The present bill does not encompass intermediate bargaining processes which are commonly used in other states which have sophisticated bargaining laws. FACT FINDING is one process which should be included in such a process and defined in law. This process is a means of reducing the items at impasse during the bargaining process midway through and is a means by which public opinion can have an influence on the parties.

9. If binding arbitration is to become law in Alaska, then it should be on a last best offer of the TOTAL PACKAGE and not on an item-by-item basis. AASB's position is that unions can generate countless items to be negotiated, hoping to settle for only a fraction of those items. Boards, on the other hand, can only bargain from a position of where they currently are. The inevitable splitting of the items can only lead to sensational gains both monetarily and in the policy area by unions. Forcing an arbitration panel to decide on the most appropriate total package would put the parties on a more even basis.

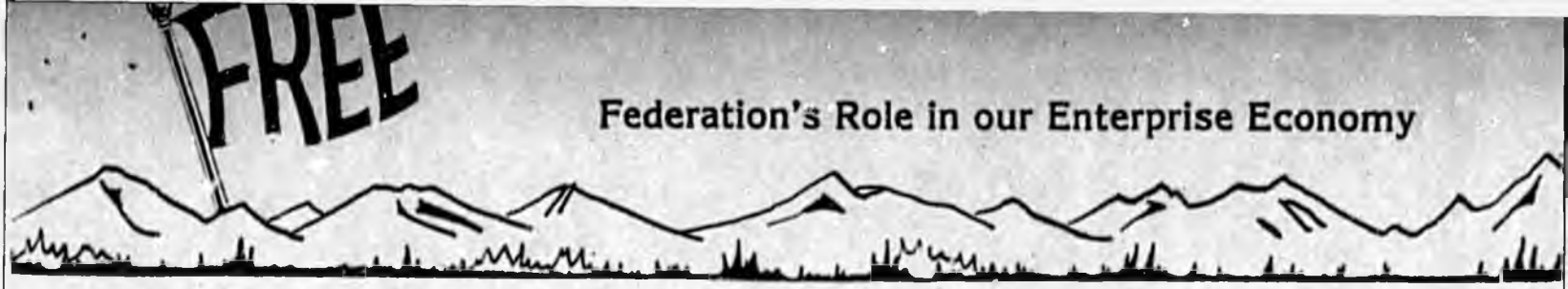
10. Research in Alaska indicates that most of the districts and their employee organizations bargain collectively in a most cordial atmosphere. Only a select few are bargaining in an adversarial position. Research also tells us that there is a direct relationship between the size of the district and the adversarial relationship. The suggestion that there is a need for binding arbitration for all school districts in Alaska is a little like fixing something that is not broken.

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

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

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

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



BINDING ARBITRATION IN SCHOOL LABOR DISPUTES

Sen. Gilman

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

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

Our elected representatives, the school board, make decisions and form policies that affect all of us. They are held accountable and responsible to us for those decisions. If we disagree with those decisions, we have the right to replace them in the next election.

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

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

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

On the surface, binding arbitration seems rational and reasonable. Third party arbitration has frequently been used in settling private enterprise disputes. However, public sector bargaining is different from the private sector. For example, in the private sector, management can reduce the work force. This option is not available in the public sector. In teacher/school board disputes, the school board represents the taxpayers. In asking that a third party be empowered to set terms of a contract, the union is in effect demanding that taxes be set by that party. The taxpayers will be taxed by someone whom they did not elect. To do so is tantamount to taxation without representation.

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

What can we do to provide our public employees a means to air their grievances and yet maintain representative control of government?

First of all, we feel finality steps should be defined to shorten the length of negotiations and eliminate uncertainty. Perhaps 60 days should be allowed to reach agreement. However, the definition of non-negotiable items must be determined to prevent these from being used to

lengthen the session. If after that time no agreement is reached and all impasse procedures are exhausted, continued negotiations should become a matter of public record.

Or since negotiations directly affect each citizen, perhaps all sessions should be open to the public. It is misleading to guarantee that union demands will not cost the taxpayer more. Over 80% of the school budget is for teacher salaries and related benefits and any increase in this area will either mean an increase in taxes or a decrease in the funds available for other areas. This could mean reductions in sports, textbooks, music, maintenance etc. With all demands public, we could then cast a vote as to how we wish the budget divided.

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

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

Collective bargaining has established the framework for employers and their employees to find solutions to their own problems. This procedure should continue and we should not dilute it with binding arbitration. The Alaska Statutes clearly give the board the bargaining responsibility: (1) Each city, borough and regional school board shall negotiate with its certificated employees in good faith on matters pertaining to their employment and the fulfillment of their professional duties." (A.S. 14.20. 550.). (2) Nothing in sections 550-600 of this chapter may be construed as an abrogation or delegation of the Legal Responsibilities, Powers, and Duties of the School Board including its right to make final decisions on policies." (A.S.14.20.610).

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

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

We are opposed to all ~~forms~~ bills addressing binding arbitration. We can't see how anyone who believes in our representative form of government can vote for binding arbitration.

Sincerely,

Barbara Chapman

Barbara Baxter

P.O. Box 4-2955 • Anchorage, Alaska 99509 E. Chan.

A committee of the GFWC Anchorage Woman's Club

GALENA CITY SCHOOL DISTRICT

GALENA, ALASKA 99741
PHONE (907) 656-1247 1205

SUPERINTENDENT'S
OFFICE

April 15, 1981

The Honorable John Gilman
Alaska Senate
Pouch V
State Capitol
Juneau, Alaska 99811

RE: Senate Bill #126

Dear Senator Gilman:

Thank you for taking time to read this letter.

After spending nine (9) years as a Chief Negotiator for teachers in the State of Michigan and representing a number of school boards in the State of Alaska for the past six years, it is my opinion that the passage of Senate Bill 126 will be a step backward for our great State.

The passage of this bill will cost the state a tremendous amount. As an example, how much will it cost to provide housing for teachers in the bush?

This state has been in the forefront on the issue of schools having local control. With the advent of binding arbitration, local control will be lost as an outside arbitrator, who knows nothing about the community, will be making decisions which may very well be in total opposition to the community.

School Board authority under state statutes has been eroded by both the state and federal government to the point where if this bill is signed into law, there will be less need for the local school board.

It would seem that the current law could be much more specific as to what can be negotiated under law. This would eliminate many items coming to the bargaining table.

The argument that binding arbitration is needed because of all the districts that are at impass. The question that needs to be asked/answered is why are there so many cases of impass? Is it possible that the more cases of impass, the better chance of the legislature enacting a binding arbitration bill?

Before you vote on this bill, please research the issue and determine if it works in other states and decide if you want to continue to erode the board's power.

I am against binding arbitration in any form. It would be far better to allow strikes for 10 days without having to make up the days on strike. This would pu equal pressure on the union and the board.

Thank you for reading my letter.

Sincerely,

Harry E. Purdy

Harry E. Purdy, Superintendent

HEP/cmj

Petersburg Public Schools
D. W. Schultz, Superintendent

P.O. BOX 289
PETERSBURG, ALASKA 99833

April 16, 1981

Senator Don Gilman
Pouch V
Juneau, Alaska 99811

Re: SB 126

Dear Senator Gilman:

Do you really think it is of benefit to the students of the state for teachers to strike? Do you believe in the concept of the authority of local school boards to administer their schools?

I urge your opposition to SB 126.

Very truly yours,

L. S. Wright, Principal

LSW:ms

P. O. Box 195
Eagle River, Alaska 99577
April 8, 1981

Senator Don E. Gilman
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Dear Senator Gilman:

If it is not too late, please vote NO on SB 12 which deals with binding arbitration for teachers and school districts.

Binding arbitration is a poor substitute for the freedom of negotiation that is the bulwark of American management and labor.

Many educators and the public think that binding arbitration is a panacea for the problems that sometimes beset school districts. Such is not the case or the cure.

Educators look at binding arbitration as job security. This is a bad attitude and has nothing to do with real negotiations issues that usually precede good faith bargaining.

The idea of the "last best offer" is a paltry manner by which to solve any legitimate problem in a given school district. This idea brings out the worst in negotiations packages and may end up not representing either side.

My experience for this feeling is based on 22 years as an educator, 18 of which have been in the Anchorage School District.

When SB 126 comes up for vote on the floor, please vote NO. Let the economy and negotiations evolve and adjust naturally as they should in a democracy.

Sincerely yours,

Bill Lyford

W. G. Lyford

Introduced by: Mayor
Date: April 7, 1981
Vote: Unanimous
Action: Adopted

KENAI PENINSULA BOROUGH

RESOLUTION 81-59

EXPRESSES THE ASSEMBLY'S OPPOSITION TO BINDING ARBITRATION IN LABOR RELATIONS INVOLVING TEACHERS AND SCHOOL DISTRICTS.

WHEREAS, proposed legislation in Senate Bill No. 126 and Senate Bill No. 99 has been introduced for consideration of the Twelfth Legislature; and

WHEREAS, these legislative proposals would authorize and establish binding arbitration to resolve labor relations disputes involving teachers and school districts; and

WHEREAS, this proposed legislation would overturn the long standing practice which permits mediation and non-binding arbitration; and

WHEREAS, the Assembly concurs with the school board that binding arbitration delegates the decision making function to a third party arbitrator;

NOW THEREFORE, BE IT RESOLVED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

Section 1. That the Assembly expresses its objection to the institution of binding arbitration in labor relations matters involving teachers and school districts and requests the Twelfth Legislature of the State of Alaska to defeat any proposed measures which would overturn the present method of non-arbitration or mediation.

Section 2. That the Clerk shall serve a copy of this resolution upon the Honorable Jay S. Hammond, Governor of the State of Alaska, the Honorable Jalmar Kerttula, President of the State Senate, the Honorable James Duncan, Speaker of the State House, the Honorable Donald E. Gilman, State Senator, and the Honorables Bette Cato, Hugh Malone, and Pat O'Connell, State Representatives.

Section 3. This this resolution takes effect immediately upon its adoption.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH ON THIS 7th DAY OF April, 1981.

Paul Fischer
Assembly President

ATTEST:

Frances Bergman
Borough Clerk

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

RESOLVING IMPASSES

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

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

Mediation

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Factfinding

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

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

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

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

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

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

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

The criteria generally relied on by factfinders are these:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Arbitration

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

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

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

Compulsory arbitration of the disputes of other public employees is not common. One notable exception is the City of New York. In an effort to reduce disruptions of public services that have at times approached crisis proportion, the city in 1972 adopted amendments to its bargaining law requiring final binding determination of bargaining impasses [N. Y. ¶25,030 et seq.]. Eugene, Ore. also has an ordinance requiring city employees to arbitrate impasse disputes [Ore. ¶25,071].

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Strikes

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

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

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

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

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

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

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

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

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

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

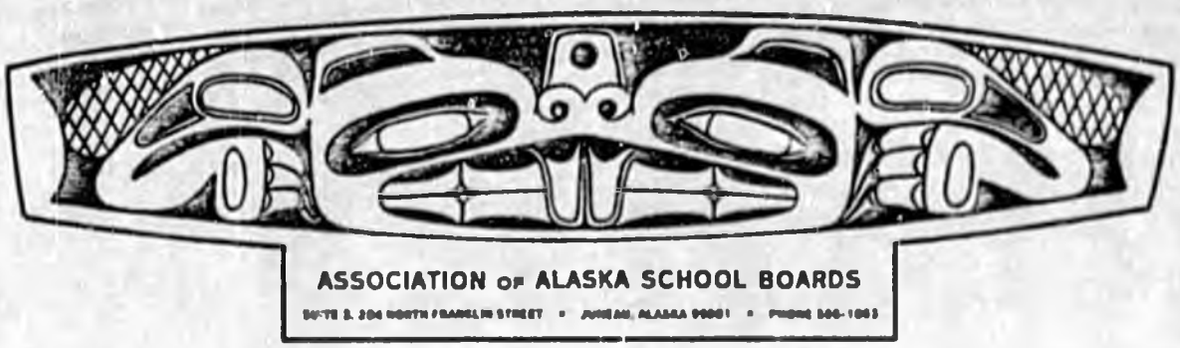
Reappraisals. These considerations have made a small but growing number of policy-makers conclude that blanket strike bans are not justified (permissive laws in Alaska, Hawaii, Pennsylvania, Vermont illustrate this). Moreover, they don't work. Public employees have not abandoned and are not likely to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

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

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

MINORITY REPORT PRESENTED BY
THE ASSOCIATION OF ALASKA SCHOOL BOARDS AND
THE ALASKA COUNCIL OF SCHOOL ADMINISTRATORS

MINORITY REPORT PRESENTED BY AASB AND
ALASKA COUNCIL OF SCHOOL ADMINISTRATORS



RECOMMENDATIONS MADE BY THE ASSOCIATION OF ALASKA SCHOOL BOARDS REGARDING AMENDING ALASKA'S TEACHER BARGAINING LAW

Herewith are submitted recommendations made by the Association of Alaska School Boards as a member participating in the deliberations conducted by the Governor's Blue Ribbon Commission dealing with this topic. The Association's concerns and sentiments parallel to some degree those submitted by the parent delegation to the Commission. They are:

PUBLIC EDUCATION

AASB is concerned about the pressures currently being placed upon the public educational system in the State of Alaska and feel that school boards across the State want to be able to respond to these pressures in a positive manner. School boards feel that while there is a need for the collective bargaining process in the public education system, this process should not be allowed to impact the rights of students and the public to an orderly, uninterrupted and quality educational program. School boards should not be placed in a position whereby the collective bargaining process has an impact upon the daily education of children.

WORK STOPPAGES

Alaska's elected school boards universally would agree with the parent members of the Commission that work stoppages relating to the collective bargaining process have a negative impact upon the educational process for children of the State, and that this negative impact carries on long after the settlement of the labor dispute. While AASB shares this concern, our position on dealing with the matter and considering the fact that work stoppages are principally a labor strategy limited to the more urban areas of the State,

is somewhat in variance with the position taken by the parent group. AASB's position is that there should be a prohibition of work stoppages and job actions of any kind and that the remedy for disputes lies in a more defined and structured process for negotiations. AASB is unalterably opposed to third party intervention on a mandatory basis.

AMENDING ARTICLE 6

AASB is totally supportive of the parent group in their recommendation that any modification of our teacher bargaining statute should be in the form of modifications to the existing statutes (Article 6) as opposed to any effort to modify the Alaska Public Employees Relations Act (PERA).

ATTACHMENT

AMENDMENT 1

AASB agrees with the parent group that there should be included in Article 6 a statement of legislative intent. AASB concurs with the parent-recommended content with some additional clarifying language included. AASB proposes legislative intent should include:

1. That it is the policy intent of the Legislature to promote harmonious and cooperative relations between city, borough and regional school boards and their certificated employees.

2. Recognize that it is the legislative intent to protect the interests of the students and the public as represented by the duly elected school boards of the respective areas by assuring orderly, effective and uninterrupted operation of the public education program for the children of the State.

3. Recognize the rights of employees to organize for the purpose of collective bargaining.

4. Employee organizations have the right to negotiate with and enter into written agreements with employers on matters of wages, hours, time off, fringe benefits and other matters of economic benefit.

5. That the best agreement is one reached by the parties involved in negotiations without outside interference or assistance.

AMENDMENT 2

AASB concurs with the parent group in the inclusion of an employee rights provision in Article 6 and herewith proposes the parent-proposed language with clarifying modifications. AASB proposes a provision to include:

1. Employees shall have the right to form, join or assist, or refrain from joining, forming or assisting, employee organizations.

2. Employee organizations have the right to participate in collective bargaining with boards of education through representatives of their own choosing.

3. Employees have the right to bargain for the purpose of negotiating for wages, hours, time off, and other terms affecting their economic benefit.

AMENDMENT 3

AASB feels that the language proposed by the parent group, while substantially in accord with the position of AASB, is not specific enough to protect management rights. AASB therefore suggests legislative language which is verbatim from the Iowa State Statutes dealing with teacher negotiations. AASB proposes language which would include:

This right of the school board to include, but not be limited to:

School boards shall have, in addition to all powers, duties, and rights established by constitutional provision, statute, ordinance, to:

1. Direct the work of its certificated employees.

2. Hire, promote, demote, transfer, assign, and retain certificated employees within the school district.

3. Suspend or discharge certificated employees for proper cause.

4. Maintain the efficiency of the operation of the school district.

5. Relieve certificated employees from employment because of lack of enrollment, loss of revenue, discontinuance of a job function, or other legitimate reason.

6. Determine and implement methods, means, assignments, and personnel by which the school board shall conduct the district operations.

7. Take such actions as may be necessary to carry out the mission of the school district.

8. Initiate, prepare, certify, and administer the school district budget.

9. Exercise all powers and duties granted to the school board by law.

AMENDMENT 4

AASB is in accord with the position taken by the parent group regarding a proposal to change Article 6. AASB proposes language which is essentially the same as the parent group but has some modifications which are of a technical nature. AASB proposes language in Article 6 which would include:

The Alaskan public includes:

1. Students who are required by law to attend school.

2. Alaskan citizens who are required to monetarily support the public schools.

Therefore, the Alaskan public has a right to orderly and uninterrupted operation and functioning of the public schools. To protect this right, work stoppages or job actions of any kind shall be prohibited under this law.

AMENDMENT 5

Alaska school boards generally support the Blue Ribbon parent group regarding the creation of an Educational Employee Relations Commission under the Office of the Governor. AASB is in concurrence with the parent group in their recommendation as to the makeup and appointment procedures.

AASB agrees with the parent group in that the function of the Commission should be to administer the statute. AASB, in that light, herewith submits proposed language which differs from the parent group only to the extent that AASB emphasizes the adminstration of the statute when it addresses the duties and functions of the EERC Commission proposed. AASB proposes language that would include:

1. Act as an appeal board in disputes arising from certification of employee organizations as bargaining agents.

2. Interpret Alaska Statute (Article 6) to determine the occurrence of and remedy for unfair labor practices.

3. Interpret the statute to determine the extent of negotiable and non-negotiable items when disputes arise.

4. Maintain a current file of mediators.

5. Provide statistical data relating to salaries, wages, benefits, and other matters of economic benefit to the negotiating parties, mediators, fact-finders and other interested parties of interest, including members of the public.

6. Conduct hearings and inquiries as are deemed necessary to carry out the function of the Commission.

7. The Commission shall promulgate rules and regulations necessary to effectively carry out the purposes of this chapter.

AMENDMENT 6

AASB is in complete agreement with the parent group on initial time lines for negotiations, and see this as one step that would facilitate the collective bargaining process and potentially eliminate ultimate impasse problems usually encountered under the present statute every fall.

AMENDMENT 7

AASB is in complete agreement with the parent group on the provision for mediation, if a negotiated settlement is not reached prior to January 15 of the negotiation's year.

AMENDMENT 8

AASB is only in partial agreement with the recommendation of the parent group in a proposed Step 3, and only to the extent that AASB cannot support an involuntary use of an outside third party intervening decision-maker. AASB does support third party intervention if that third party intervener is a local legislative body, and if the issues presented to that body are strictly financial in nature, and the obligation to fund the decision is also passed on to the third party intervener.

AASB proposes a modified Amendment 8 which would include:

The mediator in the negotiations shall become a fact-finder with both parties sharing the cost. A period of 15 days shall be allowed for fact-finding, and a written report must be given to both parties within 10 days of the end of the fact-finding period. If agreement is not reached within 15 days after receipt of the fact-finder's report, a public hearing shall be conducted under the auspices of the PERC. No later than May 15, the parties shall determine final step procedures which may be either Step 4 Optional or Step 4 Mandatory.

Step 4 Optional

The parties of interest may voluntarily agree to third party intervention in a form acceptable to the parties.

The options available to the parties under this section would include, but not be limited to:

1. Last Best Offer

    a. Issue by issue
    b. Package
    c. Fact-finder's recommendation

2. Separation of economic items from non-economic items in the manner in which they are handled.

3. Public Referendum

4. Utilize local legislative body as third party intervener.

Step 4 Mandatory

The EERC will provide mediation service with special authority for the mediator to convene the parties, determine the manner in which the negotiations are to be conducted, and have authority to require intensive bargaining until such time as an agreement is reached. If a negotiated settlement is not reached under these provisions before June 15, further negotiations shall be limited exclusively to salary and fringe benefit items which were included in the fact-finder's report.

As a final item, AASB is in support of the parent group recommendation for a sunset provision in the proposed Article 6 revision providing for an automatic review of these provisions in 5 years.

FLORIDA SCHOOL BOARDS ASSOCIATION, INC.

203 South Monroe Street, Tallahassee, Florida 32301 • Phone 904/224-1374

February 10, 1981

Mr. Robert C. Greene
Executive Secretary
Association of Alaska
School Boards
204 North Franklin Street
Juneau, Alaska 98801

Dear Bob:

Enclosed is the statute you requested. This has now been fully implemented and so far 21% of the teacher applicants have failed all or part of the exam, thus preventing them from receiving a Florida Certificate.

I hope this will help you. Please feel free to call if we can be of further assistance.

Sincerely,

Wayne Blanton
Associate Director

WB/mfs
Enclosure

tem and who are not employed in the educational system of the state or any district therein.

(2) Members shall serve for 3-year overlapping terms and shall be entitled to reimbursement for expenses of attending meetings of the council. Reimbursement for such expenses shall be made by the State Treasurer from funds appropriated for the State Department of Education, on warrants drawn by the State Comptroller upon requisitions approved by the Department of Education.

(3) The council, by majority vote of all its members, shall elect its own chairman from among its members and adopt bylaws for its own governance.

(4) If a member is absent from any four regularly scheduled meetings in any calendar year his office as a member of the council shall be deemed vacant.

(5) The council shall report to the Commissioner of Education and shall have the following duties:

(a) Make recommendations for desirable standards relating to programs and policies for the development, certification, improvement, and maintenance of competencies of educational personnel;

(b) Aid in planning and conducting an annual review of manpower studies regarding teaching personnel and report findings to the Commissioner of Education;

(c) Make recommendations for objective, independently verifiable standards of measurement and evaluation of teaching competence; and

(d) Make recommendations to the Commissioner of Education for alternative ways to demonstrate qualifications for certification which insure fairness and flexibility while protecting against incompetence.

(6) The council shall invite the public, the teaching profession, and interested professional groups and associations to appear before it and submit proposals for council action and to assist it in accomplishing its duties.

(7) The council shall present its recommendations to the Commissioner of Education on or before January 1 of each y.

History.—s. 510, ch. 19355, 19... CGL 1940 Supp. 692.114; s. 15, ch. 23726, 1947; s. 48, ch. 29764, 1955; s. 1, ch. 59-317; s. 1, ch. 63-520; s. 3, ch. 67-387; ss. 15, 35, ch. 69-106; s. 1, ch. 69-309; ss. 1-6, ch. 72-141; s. 3, ch. 76-168; s. 1, ch. 76-230; s. 1, ch. 77-457; s. 4, ch. 78-323.

[1]Note.—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date. Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]231.14 **Certificate required.**—No person shall be employed to serve in an instructional capacity as a regular or part-time teacher in the public schools of the state who does not hold a valid certificate to teach in Florida, granted or recognized pursuant to law under regulations of the state board; nor shall any school board employ, contract with, or pay any person a salary for instructional services who does not hold such a valid certificate, except for employment pursuant to s. 231.15 and under emergency conditions as provided in s. 236.0711. Previous residence in Florida shall not be required as a prerequisite for any person holding a valid Florida certificate to serve in an instructional capacity in schools of the state.

History.—s. 510, ch. 19355, 1939; CGL 1940 Supp. 692.114; s. 15, ch. 23726, 1947; s. 1, ch. 67-387; s. 1, ch. 69-1; s. 1, ch. 69-309; s. 78, ch. 72-221; s. 76, ch. 73-333; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]231.141 **Teacher aides.**—School boards are encouraged to appoint teacher aides to members of the instructional staff in the primary grades, kindergarten, and grades one through three, in order to increase the number of personnel assisting in the classroom and to aid members of the instructional staff in such grades in carrying out their instructional and professional duties and responsibilities. The school board may appoint teacher aides to assist members of the instructional staff in other grades. A teacher aide shall not be required to hold a teaching certificate, but shall be required to attend the training program developed pursuant to subsection 230.2311(6). A teacher aide, while rendering services under the supervision of a certificated teacher, shall be accorded the same protection of laws as that accorded the certified teacher. Paid teacher aides employed by a school board shall be entitled to the same rights accorded noninstructional employees of the board.

History.—s. 18, ch. 69-402; s. 5, ch. 75-284; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

cf.—s. 228.041 Teacher aide defined.

[1]231.15 **Positions for which certificates required.**—The State Board of Education shall have authority to classify school services and to prescribe regulations in accordance with which certificates shall be issued by the Department of Education to school employees who meet the standards prescribed by such regulations for their class of service. Each person employed or occupying a position as school supervisor, helping teacher, principal, teacher, school librarian or other position in which the employee serves in an instructional capacity in any public school of any district of this state shall hold the certificate required by law and by regulations of the state board in fulfilling the requirements of the law for the type of service rendered. However, the state board shall adopt regulations authorizing school boards to employ selected noncertificated personnel to provide instructional services in the individual's field of speciality or to assist instructional staff members as teacher aides. Each person employed as a school nurse shall hold a license to practice nursing in the state, and each person employed as a school physician shall hold a license to practice medicine in the state.

History.—s. 513, ch. 19355, 1939; CGL 1940 Supp. 692.119; s. 8, ch. 57-268; s. 8, ch. 63-376; s. 58, ch. 65-238; s. 4, ch. 67-387; ss. 15, 35, ch. 69-106; s. 1, ch. 69-309; s. 80, ch. 72-221; s. 6, ch. 73-284; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]231.17 **Certificates granted on application to those meeting prescribed requirements.**—

(1) The Department of Education shall issue a certificate covering the appropriate subject or field to any person possessing the qualifications for such a certificate as prescribed herein and by rules of the state board, who pays the required fee, makes application in writing on the form prescribed by the department, submits satisfactory evidence that he possesses said qualifications, and meets the other re-

quirements of law. Each applicant for certification shall meet the following requirements:

(a) File a written statement under oath that he subscribes to and will uphold the principles incorporated in the Constitutions of the United States and of the State of Florida;

(b) Be at least 18 years of age or have received a bachelor's degree from an accredited institution of higher learning;

(c) Meet such academic and professional requirements based on credentials certified to by standard teacher-training institutions of higher learning, including any institutions of higher learning in this state which are accredited by an accrediting association which is a member of the Council on Postsecondary Accreditation, as may be prescribed by the state board;

(d) Be competent and capable of performing the duties, functions, and responsibilities of a teacher; and

(e) Be of good moral character.

[1](2)(a) Beginning July 1, 1980, each certificate issued shall be valid for a period not to exceed 5 years, and each applicant for initial certification shall demonstrate, on a comprehensive written examination and through such other procedures as may be specified by the state board, mastery of those minimum essential generic and specialization competencies and other criteria as shall be adopted into rules by the state board, including, but not limited to, the following:

1. The ability to write in a logical and understandable style with appropriate grammar and sentence structure;

2. The ability to comprehend and interpret a message after listening;

3. The ability to read, comprehend, and interpret orally and in writing, professional and other written material;

4. The ability to comprehend and work with fundamental mathematical concepts; and

5. The ability to comprehend patterns of physical, social, and academic development in students and to counsel students concerning their needs in these areas.

(b) The commissioner may, with the approval of the state board, assign to a university in the state system the responsibility for printing, administering, scoring, and providing appropriate analysis of the written tests required.

[1](3) Beginning July 1, 1981, no individual shall be issued a regular certificate until he has completed 3 school years of satisfactory teaching pursuant to law and such other criteria as the state board shall require by rule, or a year-long internship approved by the state board. The department, in conjunction with teacher education centers and colleges of education, shall provide for model satisfactory teaching and internship programs to be implemented in selected districts. The models shall be evaluated by the department, and the specifications for such programs shall be selected for implementation in all districts by July 1, 1981.

[1](4) The state board shall have authority to prescribe rules under which certificates may be issued to noncitizens who may be needed to teach or who may be assigned to teach in the state on an exchange basis; provided, that the filing of a written oath to uphold the principles of the Constitutions of the United States and of the State of Florida referred to above shall not apply to individuals assigned to teach on an exchange basis.

(5) No certificate shall be issued to a citizen of a nation controlled by forces which are antagonistic to democratic forms of government, except to an individual classified as a refugee from another country or as a resident alien from Cuba, who has been legally admitted to the United States through the immigration and naturalization service.

(6)(a) The Department of Education is authorized to deny an applicant a certificate if it possesses evidence satisfactory to it that the applicant has committed an act or acts or that a situation exists for which the department would be authorized to revoke a teaching certificate.

(b) The decision of the Department of Education is subject to review by the State Board of Education upon the filing of a written request from the applicant within 20 days from receipt of the notice of denial.

(7) New rules adopted by the state board in regard to certification at any time shall not become effective to the exclusion of prior rules for a period of 1 year.

History.—s. 517, ch. 19355, 1939; CGL 1940 Supp. 802(121); s. 2, ch. 21969, 1943; s. 19, ch. 23726, 1947; s. 1, ch. 26896, 1951; s. 5, ch. 29754, 1955; s. 10, ch. 57-249; s. 6, ch. 59-371; s. 10, ch. 63-376; s. 2, ch. 65-144; s. 59, ch. 65-239; s. 5, ch. 67-387; ss. 15, 35, ch. 69-106; s. 18, ch. 69-353; s. 1, ch. 70-36; s. 1, ch. 71-177; s. 3, ch. 76-168; s. 1, ch. 77-116; s. 10, ch. 77-121; s. 1, ch. 77-129; s. 1, ch. 77-457; s. 3, ch. 78-423; ss. 110, 119, ch. 79-222.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[2]Note.—Section 119, ch. 79-222, provides that, if chapter 231 is repealed in accordance with the intent expressed in the Regulatory Reform Act of 1976, as amended by ch. 77-457, or as subsequently amended, it is the intent of the Legislature that s. 110 of ch. 79-222 shall also be repealed on the same date as is therein provided.

[1]**231.24 Extension of certificates.**—Effective July 1, 1979, all certificates issued under the provisions of the Florida Statutes, shall be extendible for successive periods not to exceed 5 years under rules of the state board prescribing such additional training, experience, and competencies, as may be deemed necessary for said extension; provided, that any training or experience claimed shall be either college course credit or inservice training, provided that at least one-half of any college course credit or inservice training claimed by instructional personnel shall be in the field or fields in which said individual is assigned or certified or will seek assignment or certification and further provided that any remaining college course credit or inservice training shall be in either administration, guidance, exceptional education, or basic skills education. However, when any person holding a valid Florida teacher's certificate is called into or volunteers for actual wartime service or required peacetime military service training, his certificate shall be extended for a period of time equal to the time he spends in military service, provided such person makes proper application and presents substantiating evidence to the De-