

ALASKA LEGISLATURE COMMITTEE FILES 1981-1982 86/2

1268 SCRA SB 126 BACK UP - SB 127

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This is an option which was presented to the Gov. Blue Ribbon Commission in an effort to get them to deal with all of the problems attendant to the teacher bargaining law.

It is still viable as a substitute for 59 126.

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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.P.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 straightforward. 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 delimitation 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 legal and limited 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.

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 for 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.

Section	Section
70. Declaration of policy	190. Mediation
80. Rights of public employees	200. Arbitration
90. Collective bargaining unit	210. Agreement
100. Representatives and elections	215. Funding
110. Unfair labor practices	220. Labor or employee organization dues and employee benefits, deduction and authorization
120. Investigation and conciliation of complaints	230. Assistance by Department of Labor
130. Complaint and accusation	240. Effect on certain units, representatives and agreements
140. Orders and decisions	250. Definitions
150. Enforcement by injunction	260. Short title
160. Power to investigate and compel testimony	
170. Regulations	
180. Penalty for violation of order or decision	

Editor's note.—Section 4, ch. 113, S.L.A. 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. Declaration 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. 23.40.050. 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 S.L.A. 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 organization 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)

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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 Injunctions

.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, impartial, 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 teacher 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 *Hastling v. Inlandboatmen's Union*, Sup. Ct. Op. No. 1743 (File No. 3133), 585 P.2d 870 (1978).

Appropriate as is.

Sec. 23.10.230. 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. 23.10.240. 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. 23.10.250. 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.

What's New in Interest Arbitration

The quest for an answer to the nationwide concern for more effective and equitable methods of resolving public employee labor relations disputes has led employers, unions, legislatures and the public to take a new look at the conventional impasse solving procedures—mediation, factfinding and arbitration. While mediation and factfinding have been reasonably well accepted in most areas of government, mandatory interest arbitration remains controversial.

Some opponents view it with disfavor on the ground that it discourages collective bargaining. Others, generally spokesmen for government, maintain that arbitrators are too free with the public purse. Union spokesmen similarly argue that arbitrators overlook essential employee needs. From a constitutional point of view, arbitration is challenged as involving an illegal delegation of legislative authority or an interference with constitutional guarantees of home rule.

Notwithstanding all these objections, the use of mandated arbitration to resolve interest disputes is increasing. There is still a majority who feel that public employees should not be allowed to strike. This thinking almost reaches unanimity in the case of police and firefighters. Many observers of collective bargaining in the public sector conclude that in lieu of a right to strike, only arbitration will provide the finality and objectivity that is required by the process and will be acceptable to the parties.

Because of these varying views and the controversy swirling around this impasse procedure, the major portion of this issue of the *PERS Information Bulletin* will be devoted to a look at some of the new laws and the effect of existing laws on the bargaining process. Twenty-eight states, three counties, six municipalities and the District of Columbia now have laws of varying degrees affording some public employees the right to arbitration as the final step in negotiations. The laws vary widely in their approaches with a number providing this step for all public employees while others cover different groups of employees—police and firefighters, teachers, state employees, university employees, and others.

Many governments are experimenting with different types of arbitration—last best offer, issue by issue, conventional arbitration, three choice arbitration or a combination of the various methods. Recently passed legislation in Wisconsin, Massachusetts and New Jersey added new dimensions to these approaches. Brief descriptions of these follow.

New Laws Involving Interest Arbitration MASSACHUSETTS¹

In Massachusetts, in June 1977, the Legislature passed, over the Governor's veto, a two year extension of a revised version of the police-fire arbitration law. The slightly revised law expands the final offer choices as follows: (1) the parties by their own agreement may mutually waive the factfinding provisions; (2) if factfinding is not waived, the arbitrator may select the factfinder's recommendations instead of either side's final

offer; (3) the parties may choose a single arbitrator instead of a three person panel, and (4) the scope of issues was reduced by excluding appointments, promotions, most work assignments, most transfers, and minimum manning requirements on shifts. In addition, the arbitrators were directed to consider new "ability to pay" criteria in analyzing positions of unions and management.

Because of opposition to the idea of compulsory binding arbitration and the threat to place the final-offer question on the ballot, an addendum to the binding arbitration statute was signed by the Governor on November 16 establishing a joint labor management committee within the Department of Labor and Industries, but not subject to the Department's jurisdiction, which is "to have oversight responsibility for all collective bargaining negotiations involving municipal police officers or firefighters."

The committee consists of 12 members, including the chairman—six municipal employer representatives, six public safety employee representatives and an impartial chairman, all appointed by the Governor. The law specifies that the Committee "shall, at its discretion, have jurisdiction in any dispute over the negotiation of the terms of a collective bargaining agreement involving municipal firefighters or police officers. The committee or its representatives may meet with the parties to a dispute, conduct formal or informal conferences, and take other steps to encourage the parties to agree on the terms of a collective bargaining agreement or the procedures to resolve the dispute. The committee shall make every effort to encourage the parties to engage in good faith negotiations to reach settlement."

The committee, under the chairmanship of John T. Dunlop, former U.S. Secretary of Labor and now a professor at Harvard University, began operation on January 1, 1978. An assessment of the effectiveness of this procedure will have to wait until a body of experience has been established.

NEW JERSEY²

In 1977, New Jersey joined the growing ranks of states which enacted interest arbitration for police and firefighters.

Although legislation had been proposed for several years to provide interest arbitration for policemen and firefighters, as well as for other public employees, the impetus for the enactment of the law was the recommendation of a legislative Study Commission. That Study Commission had recommended in February 1976 that the Legislature enact a law that would provide for the submission of all public employee contract disputes to a form of binding arbitration known as "final offer arbitration". It was recommended that, unless the parties mutually agreed upon an alternative procedure, any unresolved dispute would be submitted to an arbitrator or a panel of arbitrators who would make an award binding on both parties by choosing between the final offers of the two parties (a) on economic issues as a single combined package and (b) on the non-economic issues on an issue-by-issue basis. The bill which was ultimately

¹Developed from state law and from Government Employee Relations Report

²Prepared by Jeffrey B. Tenc, Chairman, New Jersey Public Employment Relations Commission.

Updated Experience under Existing Laws

With increasing emphasis being placed on arbitration, PERS has asked states with arbitration laws to summarize experience to date with particular attention given to such areas as (a) the chilling effect on collective bargaining of interest arbitration; (b) the addictive effect; (c) overuse, and (d) failure to prevent strikes. Following are comments from some of the states.

HAWAII

By Mack Hamada, Chairman, Public Employment Relations Board

Interest arbitration in Hawaii is not mandatory. Under the statute, public employees have the right to strike and arbitration is invoked only upon the mutual request of the parties. Thus, if arbitration is rejected, the union has the right to strike upon compliance with certain strike prerequisites.

Because of the voluntary nature of the arbitration procedure, criticisms common to interest arbitration are not applicable. Experience with voluntary interest arbitration has been quite favorable. With the exception of a teachers' strike during April 1973, the seven years since the inception of the collective bargaining law have been relatively harmonious.

The State Legislature has taken a hard look at the merits of compulsory interest arbitration for employees with the legal right to strike but who are in effect prohibited from employing full strike rights due to statutory health and safety requirements. During the 1977 session, the Legislature passed a bill which would have provided mandatory arbitration for firefighters in the form of whole package, final offer arbitration for any dispute which continued after 15 days from the date of impasse. This bill was subsequently vetoed.

Police officers and other critical employees were excluded from coverage since it was felt that the acceptance of the procedure by the parties was critical to its success in resolving disputes and only the firefighters actively supported this bill. The State and the City were not opposed to compulsory arbitration, however, they strongly preferred conventional arbitration to whole package, final offer arbitration. In the future, I believe we can expect increasing interest in having mandatory interest arbitration for certain groups of employees.

IOWA

By Peter L. J. Pashler, Executive Director, Public Employment Relations Board

Bargaining experience under the first two years of the Iowa Act indicates that the existence of arbitration does not appear to have encouraged use of arbitration and discouraged bargaining. Arbitration has not been a substitute for meaningful hard bargaining. In 1975-76, 7.1 percent and in 1976-77, 6.1 percent of all contracts negotiated were settled in arbitration. This does not indicate a heavy reliance on arbitration.

A number of bargaining units have utilized some impasse procedures two years in a row. Twenty used fact-finding and/or arbitration and 6 used arbitration. These repeaters will be closely watched in 1977-78 with the hope that this pattern will not be repeated.

On the issue of over-use, research data indicates that the impasse steps have narrowed the number of issues disputed.

Prior to Mediation	11.19 issues (average)
Prior to Factfinding	4.6 issues (average)
Prior to Arbitration	3.5 issues (average)

This data supports two tentative conclusions—first, that these procedures have a telescoping effect on the number of issues, effectively reducing the number going to arbitration. Second, that there has not been over-use of arbitration. 3.5 issues is not too many for an arbitrator to respond to.

Positions on the Issues: I believe that factfinding forces the parties to posture a position further apart on a given issue than they were willing to take during mediation. This is due to anticipation by the bargainers that the factfinder will "split the difference." However, final offer arbitration does pressure the parties to make more reasonable offers. Consequently the sequence of mediation, factfinding and arbitration does not uniformly force negotiators closer to agreement on any given issue. Some backing off and posturing does occur prior to factfinding. I do not have any data to prove this, but most mediators I have dealt with are convinced that this happens.

Strikes: We have not had any strikes. Perhaps arbitration has been substituted as an acceptable dispute resolution process.

I would like to stress that conclusions based on this data are perilous. A number of factors not addressed might account for the significant success of the impasse procedures indicated in the first two years of bargaining. Two should be mentioned. Iowa's economy has not suffered the economic problems felt by other jurisdictions in the last six years. Comparatively we have been well off. Secondly, while prior to the passage of collective bargaining there was some meet and confer bargaining, the vast majority of units negotiated their first agreements since the law's passage. Consequently the chief bargaining agents have learned to bargain under this system.

MAINE

By Parker Denaco, Executive Director, Labor Relations Board

The first interest arbitration procedure in Maine was enacted in 1969 in the Municipal Public Employees Labor Relations Act. Similar provisions were enacted for state employees in 1974 and University of Maine employees in 1975. These three acts, collectively, include virtually all public employees in the state with the exception of county employees.

The arbitration procedure for state and university employees has not yet been employed. The procedures of the municipal act have been in use for some time and, since approximately 50 public sector factfinding cases are processed yearly, a respectable percentage of these cases which are not resolved subsequent to factfinding proceed to the arbitration level.

A concern often expressed is that the arbitrator or arbitration panel may only make recommendations with respect to issues concerning wages, pensions or insurance. Recommendations on all other matters are binding.

enacted first called for conventional arbitration but was amended to incorporate the impasse procedure recommendations of the Study Commission.

The law applies to agreements which became effective January 1, 1978. Arbitration is not available to the disputes for 1977 or prior years. The law provides that the Public Employment Relations Commission take such steps, including the assignment of a mediator, as it may deem expedient to effect a voluntary settlement of the impasse. If the dispute is not resolved by mediation, the Commission shall, at the request of either party, invoke factfinding with recommendations for settlement. Only those issues that are within the required scope of negotiations may be submitted to factfinding unless the parties mutually agree to the submission of non-economic issues. The costs of both mediation and factfinding are borne by the Commission.

In the event no agreement is reached 60 days before the employer's required budget submission date and regardless of whether or not mediation and factfinding have been completed, the parties are required to notify the Commission as to whether they have agreed upon their own terminal procedure for resolving the issues in dispute. The purpose of this provision is to encourage the parties mutually to agree upon a procedure for the resolution of their dispute. The law lists six different procedures which the parties might agree upon although they may agree to other procedures as well. Each such procedure is subject to the approval of PERC. These procedures include:

1. Conventional arbitration of all unsettled items.
2. The last offer of the employer or union as a single package.
3. The last offer of the employer or union on an issue-by-issue basis.
4. The last offer of the employer or union or factfinder's report as a single package.
5. The last offer of the employer or union or factfinder's report on an issue-by-issue basis.
6. On economic issues the last offer of the employer or union on a single package basis and non-economic issues on the last offer of the employer or union on issue-by-issue basis.

If the parties do not agree upon an approved terminal procedure, then the law imposes the following procedure: (a) on all economic issues in dispute the arbitrator must choose either the last offer of the employer or the last offer of the employee representative as a package and (b) on each non-economic issue in dispute, the arbitrator must choose between the positions of the two parties on an issue-by-issue basis.

An interesting feature of this mechanism relates to the submission of final offers and the role of the arbitrator. The statute calls for the submission of final offers by the parties prior to arbitration proceedings. It also authorizes the arbitrator to mediate throughout formal proceedings. The Commission's rules authorize the arbitrator, in his or her discretion, to "accept a revision of position by either party on any issue until a hearing is deemed closed, provided that the other party is given the opportunity to respond."

Economic issues which are referred to the arbitrator as a package are defined as including those items which have a direct relation to the employee's income including wages, salaries, hours in relation to earnings, other forms of compensation such as paid vacation, holidays, health and medical insurance, and other

Developed from state law and Labor Government Employee Relations Report

economic benefits to employees." However, the arbitrator may not render an award relating to any statutory pension or retirement plan nor regarding the duties or obligations of an employer who participates in the New Jersey Health Benefits Program.

It is too early to tell how this new procedure will work. It can be anticipated that there will be disputes over the constitutionality of the law, over what are "required" subjects of negotiations, over what are "economic" issues and what are "non-economic" issues, and over the application of the criteria that the arbitrators are to follow. The parties may come to rely upon arbitration rather than the good faith collective negotiations.

The Commission has developed rules which, hopefully, will minimize some of these problems and the Commission has been working with the parties and the arbitrators to help to explain the law and the rules prior to the commencement of arbitration.

Since November 15, 1977 when the 60 day notice period began for many public employers, over 125 petitions or notices requesting interest arbitration have been filed and 47 arbitrators have been appointed. Several cases have been settled during or prior to arbitration and only a few awards have been issued to date.

WISCONSIN³

Equally as provocative a procedure has been introduced in Wisconsin where for a three year trial period bargaining laws for municipal employees and teachers will provide mediation and "med arb" procedures to settle disputes and a limited right to strike in cases where both sides in the dispute decline to go to final offer binding arbitration or withdraw their final offers on the total contract package.

Major provisions of the law which went into effect on January 1, 1978 include:

- Mediation by the Wisconsin Employment Relations Commission if requested by either side or on agency's initiative.
- Either party or both jointly may petition Commission to initiate mediation arbitration.

* Within 10 days of appointment, mediator-arbitrator holds public hearing for both parties to explain positions and for public to offer comments and suggestions.

- Final offers of parties "shall serve as the initial basis for mediation and continued negotiations" and during this time the mediator-arbitrator "shall endeavor to mediate the dispute and encourage a voluntary settlement by the parties." During mediation and continued negotiations, either party with consent of the other may modify its final offer in writing.

- If both parties "withdraw their final offers and mutually agreed upon modifications, the labor organization, after giving 10 days' written advance notice to the municipal employer and the commission, may strike", unless both parties withdraw their final offers, the final offer of neither party shall be deemed withdrawn. The mediator-arbitrator then resolves dispute by final and binding arbitration.

A study of the effects of the law will be made by the Legislative Council with a final report to the Legislature by February 1, 1981.

MASSACHUSETTS

By Helaine Knickerbocker, Chairperson
Board of Conciliation and Arbitration

Massachusetts law was amended on July 1, 1974 to provide final offer arbitration for police and firefighters on a three year trial basis. The three years ended June 30, 1977 and this sparked the debate and eventual extension of the police-firefighter arbitration law (discussed earlier in the Bulletin).

Experience with final offer arbitration under the three year experiment has generally been successful and can not be seen as truly chilling if mediation and mediation during and after factfinding are counted as part of bargaining.

Settlements are reached, but at a later stage and sometimes a settlement is reached without a mediator at a later stage. In addition, a few settlements in final offer, hitherto unknown in the state, are being seen. Before, issues were merely narrowed once the parties were actually before the final offer panel. If, however, bargaining without neutrals is considered, there has been some chilling effect due in part to the economic situation, namely, unemployment and inflation.

With regard to the additive effect, there is some concern. Certain municipalities go to final offer in all units on every occasion. However, of all jurisdictions, Massachusetts has the smallest percent of awards to local bargaining units, so overuse is not a problem.

The Board of Conciliation and Arbitration cooperated in a study of final offer arbitration directed by David B. Lipsky, Associate Professor, New York State School of Industrial and Labor Relations, Cornell University, and Thomas A. Barocci, Assistant Professor of Industrial Relations, Alfred P. Sloan School of Management, Massachusetts Institute of Technology. Among findings of the study,⁴ the researchers found in analyzing the chilling effect of arbitration that:

- data did not indicate that final offer arbitration promoted settlement of police and fire disputes without use of third party neutrals
- the proportion of police and fire impasses increased from 28 percent in last pre-law year to over 53 percent in first year under final offer arbitration and that this dropped to 42 percent in second year. They cautioned, however, that a combination of tightening constraints on municipal finance, unemployment and inflation made negotiated settlements more difficult.
- that final offer may have led to greater reliance on impasse procedures in police and fire negotiations. 37 final offer awards were issued in the first two and a half years of the law, less than 9 percent in 1975 of the police/fire units involved in negotiations and less than 2 percent in 1976. In other words, 93 percent of municipalities negotiating new police/fire contracts over the first two years did so without relying on arbitration.

Another interesting conclusion of the Lipsky/Barocci study dealt with the effect of arbitration on salaries. The authors cited two other studies by Stern et al of the effect in Wisconsin, Michigan, and Pennsylvania and by Kochan et al of the experience of New York. (The results of the Kochan study are included in the discus-

sion of New York's arbitration experience later in this article.) The Stern study found that the "preponderance of evidence makes it reasonable to conclude that the institution of final offer arbitration tended to raise the salaries of the police and firefighters in Michigan and Wisconsin by more than 1 but less than 5 percent and that the additive effect was much smaller, if it was present at all in the subsequent year." The Study goes on to say, "This estimate must be accepted only cautiously because there is some evidence that final offer had no effect even in the initial year." The Kochan study found no significant increase in wages due to existence of arbitration.

In similar fashion, the authors said their study does not lend support to the notion that the addition of final offer arbitration to the array of impasse procedures available to Massachusetts public safety employees had a significantly positive effect on their salaries.

MICHIGAN

By Charles M. Rohmus, Chairman
Employment Relations Commission

The Michigan Police-Firefighter Arbitration Act, effective on October 1, 1969 and amended in 1972, specifically provides for last offer selection of economic issues item by item. The Act was amended further in 1975 to remain in effect indefinitely and again amended in 1976 to provide for Commission appointment of a permanent panel of arbitrators to serve in labor disputes involving public safety personnel and was expanded in scope to encompass emergency medical service personnel. In addition to the emergency medical service personnel, the Act defines public safety personnel as those employees engaged as policemen or in firefighting or subject to the hazards thereof.

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

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

The Institute of Labor and Industrial Relations, co-sponsored by the University of Michigan and Wayne State University, is conducting a statistical analysis of awards rendered under the final offer selection procedure. Professor Ernest Benjamin of Wayne State is

(continued on page 12)

⁴ This paper prepared for 20th annual meeting of the Industrial Relations Research Association, December 28, 1977. Full text to be published in proceedings of meeting.

(continued from page 6)

directing the research, which has been prompted, in part, by a report of the Michigan Municipal League that arbitration awards produce wage packages 1 or 2 percent higher than negotiated settlements. It is anticipated at this project will be completed by the spring of 1978.

NEBRASKA

By Janet Stewart Arnold, Clerk of the Court of Industrial Relations

The Nebraska statute provides that the Court of Industrial Relations establish or alter the wages, hours or conditions of employment or any one or more of the same. Effective since December 25, 1969, the statute covers all public employees including public utility employees but excludes the National Guard and State militia. Between June 30, 1970 and July 1, 1977, 85 interest arbitration cases were brought before the Court of Industrial Relations. Fifty-five involved public school teachers and the remainder were mainly police, fire and public utility employees. To date, the Court has not had an interest arbitration concerning state employees. It currently has its first two cases involving municipal civilian units.

Experience to date can be summarized as follows: There has not been much of a "chilling effect" on collective bargaining. This is because historically there has not been much collective bargaining in Nebraska. The parties generally are not experienced at bargaining and their negotiations are not that effective. The employees are generally reluctant to bargain, and the public sector unions are comparatively weak. A Court of Industrial Relations arbitration generally serves an educational function, and prepares the parties for future negotiations.

There is not much problem with an "addictive effect" or overuse because the Court process is quite expensive and time-consuming. Parties must be represented by attorneys and costs may range between \$4,000-10,000 per case per party. The average decision takes six months to resolution. In the past few years we have seen some overuse problems involving public school teacher units. Because of an arrangement with the Nebraska State Education Association, local units may bring their cases to the Court, subject to Nebraska State Education Association approval and the State association pays the fee. Due to the use of "in house" personnel, and a retained attorney the cost per case to the state organization may be kept down to around \$2,000. In some recent cases, the local associations have brought disputes involving a few thousands dollars to the Court which probably should have been settled.

The interest arbitration provision has been very effective to date in preventing strikes. There has been one illegal strike, which occurred due to the employees' confusion concerning the coverage of the Act. It is feared that as the Court caseload increases, if delays in determinations become longer, strikes may occur. The Court is attempting to expand its staff to reduce the delay in adjudication. Employers generally resent the Court's authority, having become accustomed in the past to establishing wages and terms and conditions of employment by fiat. Unions support the Court arbitration framework, but voice strong objections to the cost and

delay. Currently legislative amendments are being considered to speed up the Court of Industrial Relations process, such as providing for full-time judges; however, the legislative session did not convene until January 1978.

NEVADA

By Sally S. Davis, Commissioner, Local Government Employee-Management Relations Board

Interest arbitration for all local government employees, except firefighters, was established in 1971 and provisions for firefighters were added by the Legislature in 1977. In the statutes, the terms used are not interest arbitration, but, "binding factfinding" and "last best offer arbitration."

Prior to the 1971 amendment, jurisdiction over local government collective bargaining was vested primarily in the Local Government Employee-Management Relations Board, with the exception of the enforcement of the no-strike law which was and presently is vested in the Courts. The amendment brought a third party into the process—the Governor of Nevada.

The Governor's power is one of three alternative procedures parties may utilize in seeking a resolution of their collective bargaining disputes. First, at the request of either party, and without concurrence of the parties, any issue or issues may be submitted to advisory or non-binding factfinding. Second, upon agreement of the parties, any issue or issues may be submitted to binding factfinding. The third alternative is completely unique to Nevada, for it brings the Governor into the collective bargaining process by empowering him to submit selected issues to binding factfinding based on such criteria as ability to pay and the obligation of the local government to provide facilities and services guaranteeing the health, welfare and safety of its residents. Although there have been some variations in the time frame set forth in the statute, the power of the Governor remains substantially the same today as when first established in 1971.

The first year in which the new procedures could be utilized was 1972. In that year, 11 local government employee organizations requested the Governor to order binding factfinding. One or more issues in 7 of the requests were ordered to binding factfinding, one organization settled its dispute prior to the Governor's determination and withdrew the request. In 1973, requests almost doubled, to 21. 32 requested factfinding in 1974, in 1975 the figure rose to 41, and for the first time, requests were received from local government employers. In 1976, requests appeared to be leveling off at 42.

It is clear from reviewing the year to year statistics that this unique procedure has had a positive influence on the collective bargaining process in Nevada. The most obvious effect has been the absence of any public employee strikes in the state from 1969 through 1976. More subtle, however, is the impact the Governor's procedures have upon the process of collective bargaining. Throughout the process the Governor urges the parties to continue negotiations in an attempt to narrow the issues or resolve some or all of them. In each year since 1972, a large portion of the requests for binding factfinding have been withdrawn because the parties have settled. And, in every year, although they have not settled,

most requesting parties have resolved a large portion of the issues at impasse in the time period from the initial written request submitted to the Governor to the date of his determination on the request.

NEW YORK STATE

By Martin Barr, Counsel,
Public Employment Relations Board

Compulsory binding arbitration for police and firefighters was added to the Taylor Law for the first time in 1974 on a limited and experimental basis. The statute required mediation and factfinding prior to arbitration. If a factfinder's recommendations failed to settle the dispute, either party could petition PERB to refer the dispute to a tripartite arbitration panel.

With the arbitration procedure due to expire on July 1, 1977, PERB cooperated in a study conducted under the direction of Thomas A. Kochan, Professor at the New York State School of Industrial and Labor Relations at Cornell University. The study was based on several hundred interviews with parties, advocate members of arbitration panels and neutrals, Bargaining experiences, in over a hundred negotiations under the prior procedure were compared with over a hundred negotiations under arbitration. Some of the major findings of the Kochan study were as follows:

1. Bargaining was no more "chilled" under arbitration than under the prior procedure.

2. There was no significant increase in wages due to the existence of the arbitration statute.

3. There was no significant increase or decrease in wages due to going to arbitration as opposed to settling prior to the arbitration award. The average arbitration award closely approximated the average non-arbitrated settlement.

4. Since no strike occurred during the last round of negotiations prior to arbitration and none occurred during the period of study under arbitration, no conclusion could be drawn regarding the relative effectiveness of arbitration as a strike deterrent.

5. There was no deviation between factfinding recommendations and arbitration awards in 70 percent of the cases studied.

6. Sixty percent of the arbitration awards were unanimous.

7. The statutory criteria were not applied by the arbitration panels in any uniform or consistent manner.

The major recommendations of the Kochan study were:

1. Factfinding should be eliminated as a mandatory step in the impasse procedure prior to arbitration.

2. There should be increased flexibility in the administration of the preliminary steps in the impasse procedures by PERB, such as the ability to determine if a dispute be referred back to the parties for a limited period of time.

3. The parties should have the option of sending the dispute to any variety of final offer arbitration they wish to choose.

4. The parties should share equally the cost of the neutral arbitrator.

5. The scope of judicial review should be specified in the statute.

6. The training of mediators and arbitrators should be given greater emphasis.

In early December 1976, PERB sponsored a symposium on police and fire fighter arbitration which used the Kochan study as the focal point of the discussion. Over one hundred union and management representatives, neutrals, members of the press and other interested parties participated.

Thereafter, PERB concluded that, because of delays occasioned by court tests, the three years during which arbitration had been utilized was not a sufficient period of time within which to test the procedures. Other conclusions were that the system provided finality; arbitration awards were in line with negotiated agreements; there were no police or fire strikes, and the courts had upheld the constitutionality of arbitration and declared judicial review to be available. The Board's recommendation was that the experiment should be permitted to continue for a longer period in order to provide more representative experience.

On June 7, 1977, the Governor signed into law a bill which extended arbitration for police and firefighters for two years to June 30, 1979, with only the following changes:

1. Factfinding is eliminated as a required step of the impasse procedure. Either party may, after 15 days of mediation, petition PERB to refer the dispute to an arbitration panel.

2. The parties are to share equally the cost of the public member.

3. Upon request of either party, the panel shall provide that a full and complete record be kept of the hearing, the cost of the record to be shared equally by the parties.

4. The criteria governing the panel's consideration are made mandatory. In arriving at its determination, the panel is now required to take into consideration the statutory criteria and to specify the basis for its findings.

5. The statute now specifies that the determination of the panel shall be subject to judicial review "in the manner prescribed by law."

NEW YORK CITY

By Arvid Anderson, Chairman
Office of Collective Bargaining

All employees under the jurisdiction of the Office of Collective Bargaining (Mayoral Agencies) are covered by the finality provisions of the City's statute which became effective February 7, 1972. More than 400 contracts have been concluded since that time and impasse panel awards have been issued in only 32 cases as of mid-1976. The percentage of utilization to date is approximately 7 1/2% of all contracts negotiated. Only one strike has occurred during this period which can be attributable for failure to resolve a contract dispute. I refer to the five-and-one-half hour bus strike in the fall of 1973. That dispute was ultimately settled by arbitration.

To date, some 11 cases have been appealed to the Board of Collective Bargaining. In all instances the Board acted unanimously. In 9 cases the Board affirmed the impasse panel recommendations. In 2 cases the Board acted to reduce the award to conform to the guidelines of the Economic Financial Control Board.

There is no legislation pending to amend the existing finality procedures in New York City. An effort was made last year to amend the statute to specifically provide that ability to pay must be one of the criteria to guide the impasse panel. The City Council however declined to act on the legislation requested by the City because it considered such action unnecessary in view of the consistent determinations by impasse panels and by the Board of Collective Bargaining that the criteria of ability to pay was considered within the meaning of the standard "interest and welfare of the public" and because the matter had been thoroughly discussed and considered by every impasse panel where the issue of ability to pay was raised by the City.

There was some speculation raised by the City as a result of the Charter Revision Commission Study last year, but such report has never resulted in submission of legislation relating to arbitration.

The typical union reaction to the legislation has been that the finality procedures are acceptable as long as there is a legislated prohibition against the right to strike. This view frequently has been expressed by the Chief, the civil service weekly. Whether the experience to date with interest arbitration which can be categorized at least as satisfactory will continue to do so in the face of the persistent fiscal crisis, it's hard to tell.

EGON

By Melvin H. Cleveland, Chairman
Employment Relations Board

Oregon's mandatory interest arbitration statute became effective October 7, 1973 and covers police, firefighters and institutional guards or other employees when a strike is enjoined.

Experience to date indicates that arbitration has not been used to a great extent. Six jurisdictions are the most that went to arbitration in any one year. Cities in Oregon strongly oppose mandatory interest arbitration largely on the grounds that it gives a third party the authority to obligate expenditures of city funds. Most cities would rather permit a strike.

Primarily because of the arbitration provisions in the Collective Bargaining Act, the constitutionality of the law as it applies to Home Rule Cities and Counties has been challenged in the courts. Oregon's Court of Appeals found the law unconstitutional, but was reversed by the Supreme Court on procedural grounds. Two new cases are in the Court of Appeals.

WASHINGTON

By Marvin L. Schurke, Executive Director
Public Employment Relations Commission

A law was passed in 1973 and became effective on July 7, 1973. The covered employees are: (1) firefighters employed by any city or county; (2) police officers employed by any city having a population of

15,000 or more; and (3) police officers employed by King County (the only AA county in the state—that being where Seattle is located).

Although I was not here at the time, the reports which I have received indicate that there was the usual "new toy effect". Factfinding was included in the statute as a compromise (the unions wanted arbitration only, the cities wanted factfinding only, and the legislature gave them a little of each), and numerous parties marched straight through the procedure outlined in the statute. We do not have really good records concerning the number of cases handled prior to January 1, 1976, when PERC came into existence and took over the mediation and administration of the Act. PERC has placed a very heavy emphasis on mediation, and this has combined with the end of the new toy effect to reduce the number of cases going to interest arbitration. PERC must pay for the services of the factfinder and may also have to pay for interest arbitration, and we know from financial records that we spent in 1976 only about half as much as was spent in 1975.

The Commission has submitted a request for legislation to modify the impasse procedure in a number of significant ways. First, we have proposed to lengthen the period for bilateral negotiations from 45 days to 60 days. Second, we have proposed to delete the arbitrary 10-day period for mediation and to let the mediator call the shot as to when an impasse warrants arbitration. The third significant change is the deletion of the factfinding process altogether. Finally, the parties would be required to share the cost of interest arbitration.

There has been some concern that the present procedure undercuts collective bargaining. There has been serious concern and some evidence that the presence of the factfinding procedure undercuts the mediation process. We have had, and continue to have, cases in which the "free ride" nature of the procedure acts as a disincentive to bilateral or mediated settlements. That proposal did not get any attention in the last session of the legislature, but has been studied by the legislative committees between sessions. It has drawn the predictable objections from management about the evils of arbitration and from the unions about the costs which they would have to assume. So far, the Governor has not taken a strong stand on the legislation and it remains in doubt as to whether a legislative session will be convened in 1978. In the meantime, a number of parties have stipulated to use our proposed procedure. It is our impression that it has worked well.

WISCONSIN

By Morris Slavney, Chairman
Employment Relations Commission

Since the spring of 1972 Wisconsin has had two final and binding interest arbitration statutes, one involving the Police Department of the City of Milwaukee and one covering firefighter and law enforcement personnel in municipalities and counties except for the City of Milwaukee. The Milwaukee police arbitration statute can be described as "wide open or conventional" arbitration while in the other statute the arbitrator is limited to accepting the total final offer of one or the other party.

The Need for Compulsory Arbitration



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To many people collective bargaining is the cornerstone of the American economic system. There is no doubt that collective bargaining is the best means of resolving interest disputes between employer and employee. Unfortunately many of the bargaining sessions reach an impasse even though both parties are bargaining in good faith. This impasse generally leads to a strike because without the strike's economic pressure neither side has any incentive to compromise. This contest of economic power would be fine if only the combatants were involved. However, the public often suffers because its supply of the organization's products or services is curtailed. In certain key organizations this curtailment of production or services cannot be tolerated due to the impact on society as a whole. If impasses occur and strikes are intolerable, then some way must be found to resolve the disputes. One proposed method is voluntary arbitration. If the combatants

cannot agree to arbitrate, then the next step is compulsory arbitration. There are different types of compulsory arbitration, and each has its pros and cons. The premise of this paper is that compulsory arbitration is necessary in some areas and desirable in others.

The ideal method for settling disagreements is for the two parties to negotiate a settlement. In the give-and-take of collective bargaining, the two sides can trade off concessions in an effort to reach a compromise acceptable to both parties. Cullen [1] stated that "...the case for free collective bargaining is unassailable... In the abstract, no one is ever against liberty or for compulsion." In discussing possible antistrike legislation, Senator Wayne Morse [2] stated, "It is a situation that attacks, in my judgement, some basic foundations of economic freedom in this Republic." Senator Barry Goldwater [2] stated that "...if this is forced upon the American people, it can mean price control, wage control, quality control, and even place of employment control." But for collective bargaining to be effective, there must always be the threat of a strike. This weapon has been useful in the past, but in the highly interdependent society of today it could be losing its effectiveness. George Meany [3] asserted, "We are getting to the point where a strike doesn't make sense in many situations." He went on to state that employers and unions are now so strong that confrontations become Gargantuan struggles that hurt everybody. The Brotherhood of Railroad Trainmen [4] believes that the effectiveness of the strike is being lessened. Automation is curbing the ability of a strike to inflict economic losses on management. For these reasons it is believed that strikes will be utilized less often in the future than in the present.

The prevalent economic theory of today asserts that industry is created by our society and will be allowed to survive only as long as it contributes to the well-being of society. Therefore, when there is a threat to cut off society's supply of goods and services, the public welfare should receive first consideration. Cullen [1] argued that "in cases of doubt concerning the ultimate length and impact of a major strike, the doubt should be resolved in favor of protecting society as a whole." The general public seemed to agree with this argument, as shown by a Gallup poll after the 1959 steel strike which indicated that 59% of those surveyed were in favor of compulsory arbitration of all labor disputes that might result in nationwide strikes. Critics of strike controls point to the fact that a very small percentage of labor-management negotiations lead to strikes. Ruskin [5] pointed out that in 1961 and 1962 less time

was lost on strike than on coffee breaks. The fact that the great majority of negotiations are settled without strikes ignores the fact that among the major industries, national strikes occur all too often. Therefore, when the discussion is limited to the more critical industries of our nation, the low percentage argument loses much of its weight. Critics of strike controls also argue that the effects of national strikes on the public welfare are grossly exaggerated [1]. They further argue that governmental interference in collective bargaining will lead to a serious weakening of the process. Cullen [1] rebutted these assertions by pointing out that "the government has in fact intervened in most major strikes, thereby undermining the argument that we have seldom suffered emergencies from strikes in the past and also demonstrating that intervention is not a fatal blight upon collective bargaining." The arguments against strike controls were generally formulated during a period when management held the balance of power and society was much more loosely intertwined. In our present society the labor unions in the major industries are at least as powerful as management. Our society has become so interdependent that a bottleneck at one point may wreak havoc throughout the system. Ruskin [5] pointed out that "what has changed the arena of industrial conflict—and what demands a change in the ground rules governing that conflict—is the extent to which the community has become the victim in the crisis strikes. The squeeze is much less acute on the economic warriors than it is on the public."

When considering the public interest, it becomes difficult to distinguish between public services and critical industries. While the major industries are probably not as critical on a short-term basis as police and fire protection, they are probably as critical on a long-term basis as sanitation services. Therefore, many of the arguments for compulsory arbitration in the public sector apply equally well to the critical industries in the private sector.

There are many specific arguments for and against compulsory arbitration. Schwartz [6] lists four reasons why compulsory arbitration should not be instituted. His first reason was that compulsory arbitration is inconsistent with the democratic form of government. Seinsheimer [3] disagreed and asked:

... Is it democratic to permit a few public employees to subject the many citizens of a community or the nation to the perils and chaos of a strike of police or firemen, or the health hazards of a strike of sanitation department employees? ... In my opinion, the answer to this should be no if the arbitration process is mandatory on both parties to an interest dispute.

?? re. strike

Schwartz's second reason was that compulsory arbitration will minimize and eliminate free collective bargaining. Stevens [7] disagreed and commented that "... it seems quite possible that a threat to arbitrate, much like a threat to strike, might invoke the negotiatory processes of concession and compromise which are characteristic of normal collective bargaining." In addition, Stevens proposed an improvement in the compulsory arbitration process to stimulate bargaining between parties. This improvement is discussed later in this paper. Schwartz's third reason was that you cannot force workers to remain on an intolerable job. Seinsheimer [3] agreed and pointed out that laws prohibiting strikes have been almost impossible to enforce because authorities cannot jail several thousand people at a time. This argument against compulsory arbitration actually applies to all forms of strike prohibitions. But if the reader accepts the argument that certain strikes must be prohibited in the public interest, then compulsory arbitration is likely to be as effective as any other measure. It is the authors' opinion that, while compulsory arbitration will not bring an end to all strikes, it will lead to fewer strikes than we are presently experiencing. Schwartz's fourth argument was that awards would be affected by prevailing political moods. This argument was supported by the Brotherhood of Railroad Trainmen [4] who added that public relations campaigns and lobbying would also be a factor. However, these arguments apply equally well to the current strike controls. It is felt that compulsory arbitration would lead to greater equity than the current controls. This is because the compulsory arbitration system would be bound by rules and procedures, administered by professionals instead of politicians, and subject to appeal to the courts.

Schwartz was not the only writer to present arguments against compulsory arbitration. Denise [8] asserted that both parties in negotiations will hold back their final offer to give the arbitrator room to maneuver. This problem was also addressed by Stevens and will be discussed later. Cullen [1] discussed three methods by which labor and management can settle negotiations without strikes—voluntary arbitration, partial operation, and non-stoppage strike. Since none of the methods is presently experiencing widespread use, we must assume that labor and management will not institute them until given an incentive to do so. It is felt that the introduction of compulsory arbitration as a last step in negotiations might provide just such an incentive. Many strike control critics say that the public is adequately protected from

strikes by the present system. The Brotherhood of Railroad Trainmen [4] stated that "the present system of governmental intervention provides no guarantee for the public welfare in the case of a national emergency strike." Another criticism of compulsory arbitration is that the negotiators may use arbitration as a face-saving device. Lowenberg [9] supported this contention with case histories. No rebuttal is available for this argument and admittedly the case load of arbitrators may be increased because of this problem. Another argument against compulsory arbitration, contended the Brotherhood of Railroad Trainmen [4] is that "the arbitrator may or may not have the expert knowledge necessary to render an effective and equitable award." On this issue Cullen [1] commented that "to the charge that arbitrators have no firm guidelines by which to decide contract issues 'correctly,' the response is that this is true but neither have the parties, and an experienced neutral can usually spot several clues to a 'reasonable' settlement (such as the terms of other current settlements)." The above arguments clearly show that the experts are divided on the subject of compulsory arbitration, and none of them have an answer immune from attack.

Some of the more eloquent statements in favor of compulsory arbitration are quoted below. In the wake of the West Coast Longshoremen's strike, Raskin [5] stated:

The unblinkable lesson... is that the absence of an explicit legal foundation for government action to defend the public engenders a bargain-basement scramble for solutions that rarely solve anything. The frequency with which our national, state, and municipal officials are turned down or ignored when they plead for reasonableness and restraint to advance the common good is not only demeaning for them but destructive of respect for democratic government. Too often the upshot is capitulation to the stronger and more obstructive of feuding parties, with the public paying the bill for an exorbitant settlement after the rigors of a tie-up in which it has been the prime sufferer.

Lowenberg [9] studied the contract negotiations of police and fire fighters under a compulsory arbitration law. He found that "the availability of compulsory arbitration did not terminate collective bargaining activity among police and fire fighters in Pennsylvania." Two-thirds of the municipalities discussed in the article arrived at a negotiated settlement. In addition, he found that "evidence exists that arbitration was used at times as a tactical weapon by both sides, rather than as a court of last resort to resolve a deadlock in bargaining." He concluded that "despite

employer objections to arbitration awards and some employee unhappiness with particular awards, compulsory arbitration seemed to fulfill its major purpose in 1968, i.e., to provide an alternative to strike action as a terminal point in collective bargaining."

Having listed some arguments for and against compulsory arbitration in general, we discuss below the pros and cons of different types of compulsory arbitration, beginning with voluntary arbitration. The National Electrical Contractors Association and The International Brotherhood of Electrical Workers have a Council on Industrial Relations that serves as a court in labor-management disputes [10]. The twelve-man council has been in existence since 1920. About 90 per cent of the IBEW locals have a "council clause" in their contracts. Disputes that cannot be solved must be submitted to the council. Strikes and lockouts are barred. The electrical contracting business has experienced success with this system, but could it be successful in other industries? Probably not in its exact form unless conditions are similar to those in construction [10]. Bargaining in the construction industry is almost always limited to local contracts. Clashes generally involve local issues, personalities, and animosities. The council can smooth over these differences by establishing a common bargain that fits precedents [10]. "It would be hard to do this in mass production industries or... the transportation industry. National bargaining and national patterns are too pronounced [10]." Since we are concerned with public sector and critical industries, this type of voluntary arbitration would not serve our purpose.

Many of the drawbacks inherent in compulsory arbitration are circumvented in an ingenious arbitration procedure proposed by Stevens [7]. He proposed a "one-or-the-other" method by which the arbitrator would make his award. The arbitrator is required to choose the last offer of one or the other parties. This requirement would force both parties to compromise and concede points before making their last offer. This would be for fear that the arbitrator would choose the last offer of the opponent because it was more reasonable. Therefore, the "one-or-the-other" method of arbitration would generate the same uncertainties and fears of costs to the opponents that an impending strike does. This would lead to concessions and compromise and, therefore, maintain viable collective bargaining even under compulsory arbitration. The Stevens method should answer the criticism by Schwartz that compulsory arbitration would end all collective bargaining negotiations. A related argument by Denise, that the parties would hold back their

best offer, is also answered. Another complaint about compulsory arbitration is that it will lead to both parties making a large number of demands. Since the arbitrator is not intimately acquainted with the parties, they may present demands that an insider would consider ludicrous. The extra demands also leave the arbitrator with room to maneuver. This argument carries no weight under the "one-or-the-other" method because the parties would be very reluctant to include superfluous demands. The reason is that the superfluous demands might weigh down the final offer package and force the arbitrator to choose the final offer package from the other party. The "one-or-the-other" method proposed by Stevens is undoubtedly a major step toward a workable compulsory arbitration method.

Foster [11] has reservations about the Stevens method and pointed to several shortcomings. He answered the premise that the Stevens method introduces the uncertainty inherent in a possible strike. He says that the real danger is that it introduces an element of gamesmanship that may hinder the search for accommodation. The negotiator may consider the situation more of a challenge than a threat. In regard to the uncertainty factor, he believes that each of the negotiators will move toward a point that they feel the arbitrator will approve. If they both predict the same point, they may very well agree before arbitration. But if their predictions are different, they will probably stop before reaching agreement. The odds of this occurrence are greatest with vague criteria for arbitration decisions. Therefore, the criteria should be as explicit as possible. Another problem, he believes, is that strikes may occur even though they are illegal. If the management package is accepted as most reasonable, the arbitrator is bound by law not to add any labor "sweeteners." This could lead to strikes. While the inflexibility of the Stevens method is what invites bargaining, it also invites defiance if bargaining breaks down. Foster's arguments deserve serious consideration when searching for a viable compulsory arbitration method.

Garber [12] also feels there are drawbacks to the Stevens method. Due to the total-package concept, the arbitrator has too little flexibility. The arbitrator may be faced with a situation in which the overall package is more reasonable and yet contains one demand that is totally unreasonable. Garber proposed a five-step plan under which "the arbitration panel would be obligated to choose the 'most reasonable' of the parties' last offers for each disputed issue" [12]. The steps are:

1. The parties would choose an arbitration panel from a prescribed list. If unable to agree, a panel would be selected for them by the appeal board.
2. A preliminary hearing would be held to determine the issues to be discussed and the procedures to be employed.
3. The arbitration hearing would be held, during which, the parties would present their last offer for each disputed issue and their reasons for stating why the offers are reasonable. The panel would make its decision based on specified criteria and supply a defense of its decision.
4. Either of the parties would be allowed to appeal the decision to the appeal board. Appeal to the courts would be allowed under specified conditions.
5. The decisions of the panel, subject to appeals to the appeal board, would be implemented. Appeals to the courts would not block implementation.

Garber called his method "last-offer arbitration." He pointed out that his method gives the arbitrator more flexibility than the Stevens method while retaining the same amount of risk. However, he acknowledged that unlike the Stevens method under which the parties might forfeit their unimportant demands for fear of weighing down their packages, the last-offer procedure may encourage these unimportant issues to be tacked on. Garber feels that his proposed system will still lead to better results than the Stevens system despite this one drawback.

One criticism of compulsory arbitration is that it is virtually costless. Since the costs of the process will not tax either the union's or the company's treasury, both sides are willing to go to arbitration over even minor issues. Neal Chamberlain [1] proposed to charge the parties for the services of the arbitration machinery. The parties would be assessed a cost per day based on the number of members in the union or the assets of the company. This is an intriguing idea if a method can be worked out for deciding upon a fair assessment for the parties. Assessing labor and management the same costs probably would not work because three million dollars out of the United Steelworkers' treasury would probably do more damage than three million dollars out of U.S. Steel's treasury. If the cost were calculated based on what a strike would cost, then the question arises as to whether you assume the company has adequate inventory to coast through several months of strike without loss of revenue. If an equitable method could be developed for calculating these costs, then utilization of the

Chamberlain method might cut down on the arbitration load and lead to a more efficient system.

So far we have discussed the pros and cons of compulsory arbitration and several proposed methods. The majority of experts in labor relations, at first, dismissed the idea of compulsory arbitration without discussion. Stevens [7] presented the current status of compulsory arbitration very well:

In addition to these indications of a need for a thaw in heretofore frozen attitudes about compulsory arbitration, the increasing frequency of professional discussion of the issue suggests that the "law of the propagation of heretical doctrines" may be at work. If the initial proponents of such a doctrine (i.e., that resort to compulsory arbitration is not *prima facie* death knell for the free enterprise system) are not forthwith struck down by Jovian bolts, then other investigators may be inclined to give the matter serious attention.

Now that different types of compulsory arbitration have been discussed, a return will be made to the subject of compulsory arbitration in general. The case for compulsory arbitration is very simple. David Straus, former President of American Arbitration said, "If labor and management are incapable of reaching agreement through free collective bargaining in major negotiations which affect our economy, then in the end some collective bargaining will be called a failure, and some form of government controls will take over" [3]. Even those who propose methods of compulsory arbitration hope that management and labor will be able to reach agreement without governmental controls. A faint ray of hope in this area appeared during the 1967 contract negotiations in the steel industry. The top union leadership presented the top policy-making board of the United Steelworkers of America with a voluntary arbitration plan. The plan had emerged from a meeting between the union officers and the four-man steel industry bargaining team. The plan called for labor and management to bargain for approximately 60 days and then decide on which remaining issues would be submitted to binding arbitration. If the parties could not agree, the document called for all issues to be arbitrated while the parties surrendered the right to strike and lockout. The proposal had already been approved by management [13]. The union leaders were split over the proposal, and they later rejected it; however, I. W. Abel, President of the United Steelworkers said he did not close the door to possible future agreements of this kind [14]. The plan with modifications was later approved by the steel industry.

One of the prime arguments against compulsory arbitration is that

the British tried it and later abolished it. McKelvey [15] studied the British system and stated that one of the problems with the system was that the arbitration board did not explain its decisions. This led to uncertainty as to how future disputes should be treated. This problem is eliminated in the last offer method because of the requirement that the arbitration board must explain its decisions. An argument for compulsory arbitration is that the Australians use the system and their unions are stronger than American unions [4].

In conclusion, it is felt that some form of compulsory arbitration should be legislated as a last step in negotiations in the public and critical sectors. Our society can no longer tolerate work stoppages in critical industries such as steel and transportation. The losses in freedom for management and unions must be balanced against the increased freedom of our society to receive an uninterrupted supply of critical goods and services. There are drawbacks to every form of compulsory arbitration thus far proposed. Cullen [1] stated that "it must be clear that one of the easiest parlor games imaginable is puncturing other peoples' ideas for handling emergency strikes." It is the authors' opinion that the most viable compulsory arbitration procedure is the last-offer method of Garber. The procedure could possibly be improved by charging the parties for the arbitration process as proposed by Chamberlain. First, however, an equitable means must be found for assessing the costs. The major problem with any form of governmental control of strikes is compliance. Cullen [1] asserted that "the evidence is perfectly clear that American unions and employers will comply with most strike controls most of the time, but that every control will sooner or later be violated by someone." However, it is believed that compulsory arbitration in the public and critical sector will lead to less industrial strife than the present system.

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Mediation-arbitration
can promote settlement
of contract disputes;
factfinding can speed
handling of grievances

SAM KAGEL AND JOHN KAGEL

Using two new arbitration techniques

THE PUSH TO FIND some alternative to strikes, particularly in major labor-management disputes, still continues. Even so staunch a defender of the right to strike as AFL-CIO President George Meany said in a press interview: "Strikes are expensive. We'd like to see some mechanism that would eliminate strikes because we find that strikes are becoming more and more expensive not only to industry, but to those we represent."¹

What must be and has been sought is an incentive to encourage the parties to negotiate their own settlement in tough situations but with voluntarily agreed-to provisions for terminal settlement if they cannot reach agreement. The use of orthodox mediation is not always successful in such an effort.

Another difficulty for which labor and management seek solutions exists in the handling of grievance procedures, the most important failure of which is the slowness with which grievances are resolved. What is occurring is an increased awareness among labor and management of the corrosive effect of protracted consideration of the individual employee's problem. It is not so much a question of whether or not the grievance has merit, but whether the unions are learning that employees with unresolved grievances are dissatisfied members and whether management is becoming aware that such dissatisfaction represents a hidden payroll cost in terms of not achieving full productivity from that employee.

There are two evolving techniques in collective bargaining that have gained increasing acceptance as possible remedies for stalemated negotiations and protracted grievance procedures. These are mediation-arbitration, or "med-arb," as a method for settling the substantive terms of a collective bargaining agreement, and a contract provision for a factfinding

step early in the grievance procedure designed to make that procedure more effective.

Mediation-arbitration

The primary objective of labor and management in collective bargaining is to arrive at a substantive agreement on wages, hours, and other conditions of employment. To attain this objective, labor and management have developed and used a number of techniques which taken together add up to the collective bargaining process. Our purpose is briefly to note all of these techniques, paying particular attention to a new one which we have called mediation-arbitration.

The most frequently used technique is that of negotiation—direct discussions between the parties without outsiders participating—the use of advocacy and persuasion by each of the parties seeking to convince the other party as to the correctness and fairness of its position.

The mediation technique marks the entrance into negotiations of an outsider who seeks to aid the parties in reaching an agreement. The mediator has no authority to make decisions on disputed matters and thus cannot impose an agreement on the parties. He can only seek to guide the parties into an area where it may seem likely that the parties can then reach an agreement. But, he has no "muscle" by way of any grant of authority to make a final and binding decision.

In arbitration, on the other hand, a third party also enters the collective bargaining process. But, the arbitrator's position is significantly different from that of the mediator as he can impose a final and binding decision on the issues in dispute which is enforceable at law. His authority is a grant from the parties who agree in advance to accept his decision as final and binding. This technique has been seldom used, but its use is increasing, in arriving at the substantive terms of the agreement.

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Finally, there is the use of direct economic power—the strike and lockout. Contrary to statements that are often made, collective bargaining does not end when a strike or lockout begins. The purpose of either of these techniques is to bring about an agreement by using direct economic power to force the other party to accept certain terms of settlement.

Thus, negotiation, mediation, arbitration, and the use of direct economic power are the orthodox, accepted techniques which are used to achieve the objective of collective bargaining, namely, the settlement of the terms of the collective bargaining agreement. They are used individually or in combination, and one party's success, or lack of it, is determined by how well these techniques are used in the particular setting then existing, such as economic conditions, relative economic strength of the parties, the interest of government or the public, and so forth.

Over the years there has been a persistent clamor for compulsory arbitration in major labor disputes as an alternative to strikes or lockouts. This would have to be accomplished by legislation. Most of organized labor and a substantial portion of management in the private sector is not willing to accept compulsory arbitration. Public employers, particularly, have voiced objection to compulsory arbitration in the public sector.

A combination of mediation and arbitration, placing primary emphasis on negotiations, may be the type of approach to avoid the externally imposed settlement (compulsory arbitration) and heavy economic losses and disruption (strikes and lockouts in major industries). It must be agreed to voluntarily by the parties. Recourse to med-arb requires giving up the right to strike or to lockout.

In this process the mediator-arbiter has a dual role. When acting as a mediator he has in reserve the authority of an arbitrator. This gives the med-arbiter "muscle" which is not available to him if he acts solely as a mediator. It places the med-arbiter in a position where he does far more than transmit messages between labor and management. He, in effect, becomes a party to the negotiations in the sense that, while negotiating, each of the contending parties must necessarily seek to convince him that their position is reasonable and acceptable. In so doing, the parties no longer maintain the arm's length attitude normally assumed in orthodox mediation nor the semilegal stance assumed in an arbitration.

As one participant in a med-arb said, the process keeps both parties "honest." That is, each must

really seek a reasonable solution of the issues on the table. Each must disclose all of its respective positions and its reasoning and "evidence" to support them. Each party must face up to the merits of a particular issue under discussion because if either or both do not, the med-arbiter will make the decision. The incentive is for both parties to settle through negotiations rather than have the med-arbiter make the decision. The presence of the med-arbiter provides this incentive.

In short, the posture of the parties in the med-arb process changes from that normally assumed in either orthodox mediation or arbitration. The process encourages direct negotiation between the parties with supervision by the med-arbiter who, if he performs his job properly, will seek to emphasize the need for the parties to arrive at their own agreement. But he has available, if necessary, the authority to make a final decision on any points remaining in dispute.

Med-arb experiences

Will parties accept med-arb knowing that, in effect, they are agreeing to the possibility that a third party—the med-arbiter—may decide key issues in dispute? Our experience has included the use of med-arb in situations prior to strikes and in cases after strikes have occurred. Here are some instances:

In 1970, the agreements of the California Nurses' Association expired with three groups of hospitals. Four thousand nurses at 133 hospitals were involved in this case. The parties agreed to med-arb giving up the right to strike or lockout. Of 89 issues to be settled, 88 were agreed to through negotiations in the presence of the med-arbiter, and the latter had to decide only one issue, a procedural one, in his capacity as arbitrator.

When the 1971-72 Pacific Coast longshore strike ended, 13 issues were left over for med-arb. In two all-day sessions all 13 were settled by negotiation. The issues were important and complicated. There is no doubt that the presence of the med-arbiter was an incentive to the parties to assume reasonable positions and settle the issues directly.

In a med-arb case involving some 40 disputed hours between the restaurants and bartenders in Oakland, Calif., all issues were settled in 1 long day's session without the need of an arbitrator's decision. And after a wildcat strike at a major San Francisco public hospital, over 80 unsettled hours were

worked out through med-arb.

The med-arb technique was used in a case involving a major commercial printing company and the Pressman's Union. This resulted in 8 out of 9 issues being settled directly between the parties. Some of these issues involved difficult problems of manning on presses.

Recently a 6-month strike occurred in the San Francisco Bay Area soft drink industry involving six Teamster local unions. When the strikers returned to work, the parties agreed to med-arb. Some 17 common issues were culled out of the over 140 proposals made by the parties. Fifteen of those were settled through med-arb. They included provisions dealing with grievance procedures, sick leave, health and welfare trust, vacations, holidays, mergers, and so on. Many local issues were then considered and only nine remain for decision by arbitration.

The important fact in med-arb is that it is voluntarily accepted, even though in this two-level technique the parties agree to be bound by the med-arbiter's decision if a direct settlement is not made. This technique avoids legislative compulsion, generally abhorred by labor-management negotiators. The parties are not fooled by the fact that they know that the med-arbiter has the authority to make the decision if the parties fail to work out their own arrangement. It is precisely that knowledge, however, that is the incentive for the parties to reach their own agreement. It is that knowledge which is the incentive to reasonableness.

Public sector solution?

In the public sector med-arb would appear particularly appropriate. If strikes are to be outlawed, an alternative method of settling labor-management disputes must be provided. Med-arb would be a more viable technique than that of formal compulsory arbitration. The tradition of strikes in the public sector is not as entrenched as it is in the private sector. If an acceptable alternative to strikes in the public sector is offered, it is likely to gain approval.

It is not suggested that med-arb is the complete answer to those who insist that there be an absolute end to all strikes or lockouts. Such a condition will probably never be achieved regardless of what legislation might be passed for that purpose. Workers cannot be forced to work, and employers cannot be forced to offer employment. Techniques palatable to

both parties which encourage direct negotiations with some form of terminal settlement must be developed. Med-arb is one such technique.

The factfinding step

Too often facts essential to settle a grievance are not obtained until there is an arbitration hearing. Meanwhile, in the steps preceding the arbitration, the union and employer too often assume a litigious stance, with each adopting the view, "my man, right or wrong." The result are deadlocked grievances which should have been settled or withdrawn.

The factfinding step is designed to repair some of these defects. This step in the grievance procedure must be tailored to the requirements of the parties.

If the employee fails to settle the grievance directly with his supervisor and then files a written grievance, this act triggers the factfinding step. The following outlines the factfinding process as contained in an agreement made in the San Francisco Bay Area soft drink industry between the employers and six locals of the Teamster Union:

The factfinders shall be organized and function as follows:

(a) One factfinder shall be designated by the employer and one factfinder shall be designated by the union.

(b) The object of the factfinders is to thoroughly investigate the grievance so that their report could be the basis source of disputed facts concerning the grievance. Thus the factfinders shall mutually interview witnesses, including the grievant and the employer representative involved in the grievance, collect relevant written records, and carry out such other investigation as may be required by the specific grievance.

In the event an employee is appointed by the union as a factfinder, the employee shall perform his factfinding function with a minimum interruption of work. Except in discharge and suspension cases, the factfinding shall be performed on non-working time unless it is impracticable to do so.

(c) The factfinders shall put in writing all the facts upon which they agree and those which are considered disputed. If the factfinders cannot agree on certain facts, each factfinder's view of such disputed facts shall also be placed in the written report.

(d) Upon the conclusion of the factfinders' investigation and written stipulations they shall thereafter within 1 working day seek to settle the grievance and shall have the authority to do so.

(e) If the factfinders are unable to settle the grievance, they shall give to the manager of the plant and a designated person in the union a copy of their written report. The manager (or his representative)

and the union representative shall then within 2 working days thereafter meet for the purpose of seeking to resolve the grievance.

If the manager and the union representative fail to settle the grievance, the parties will then refer the grievance to the next steps provided in the collective bargaining agreement, including arbitration.

One value in the factfinding step is that it collects immediately the relevant facts. When the parties then seek to negotiate a settlement of the grievance, they address themselves to the stipulated facts, not to what "my man" said or did not say. The posture of the negotiators changes from that of advocates to that of jurors.

Of equal importance, a stipulation of the facts lessens the political aspects of the grievance by providing both union and management officials objective reasons for advising their respective constituents to either drop or settle disputes by pinpointing the operative facts involved.

Factfinding as a technique for resolving labor-management grievances grew out of a backlog of over 1,000 pending grievances involving Aerojet General Corp., a major aerospace company, and its employees. The application of joint factfinding to these grievances sharply reduced the number eventually submitted to arbitration.

The factfinding procedure has been adopted by the Space Division of the North American Rockwell Co. and the United Automobile Workers. Its use has reduced drastically the time within which grievances are settled. As a result of its use, only one grievance went to arbitration in 1971. By contrast, previously many cases went to arbitration and most of them were over 2 years old by the time they reached arbitration. Other industries that have adopted the procedure include companies in the pulp and paper

industry and various public agencies. So far, its adoption has led to an improvement in employee attitudes and grievance processing.

An additional improvement has resulted from relabeling a grievance, at least at the first step, a "mutual problem." It does not become a "grievance" until the union wishes to pursue the matter beyond factfinding. The net effect of this simple transformation has been to lessen tensions in the employee-supervisor one-on-one informal first step, and to make labor and management view employee complaints as a *mutual* problem to be resolved.

Attitudes play a significant role in the early resolution of grievances. Because of the change in name, a grievance does not automatically raise a red flag, causing instant argument regardless of its merits. While this is especially true in public employment where supervisory decisions are just beginning to be questioned, it is of equal effect in the private sector and undoubtedly has contributed to North American Rockwell Company's and the United Automobile Workers' success with the new procedures.

The time, expense, and emotions involved in the grievance procedure or their absence is within the control of the parties. Blaming arbitrators for these problems is misplaced criticism. With a proper appreciation of the role of the grievance procedure, the effect of unresolved grievances on individual employees, and with a cessation of the practice of copying grievance procedures rather than drafting them to suit local conditions, the adoption of the techniques outlined can meaningfully reduce the parties' own problems in this area of collective bargaining. □

—FOOTNOTE—

¹ AFL-CIO press release.

The negotiation and arbitration experience of six jurisdictions with different final-offer systems are analyzed and a final-offer arbitration procedure designed to increase incentives to negotiate is proposed. In his research, the author seeks to determine those conditions under which (a) rapid settlements are reached by the parties using as few steps as possible, (b) there are more negotiated agreements over time, and (c) there are smaller areas of disagreement when awards are made. Based on these findings, a procedure is developed that combines mediation with final-offer arbitration. This procedure is implemented immediately after a declaration of impasse, with the same person serving as mediator and arbitrator.

FINAL-OFFER ARBITRATION AND NEGOTIATING INCENTIVES

by Peter Feuille*

In the past decade final-offer arbitration has emerged first as an idea¹ and then as a process used to resolve bargaining impasses in several public and private jurisdictions. Hundreds of negotiations have occurred under these final-offer procedures, and dozens of impasses have been resolved by arbitration awards. These experiences, when compared to conventional arbitration experiences, have shown that final-offer arbitration does a reasonably good job of protecting the parties' incentives to negotiate but that it does not operate as effectively as its theoretical rationale suggests it should. The purpose of this paper is to use these final-offer experiences, supplemented with experimental bargaining and impasse resolution research, to see how more effective final-offer procedures might be designed.

Effectiveness Criteria

Before examining any data it is necessary to identify some effectiveness criteria, and the most useful criteria can be developed

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1. Carl M. Stevens, "Is Compulsory Arbitration Compatible with Bargaining?" *Industrial Relations*, Vol. 5, No. 2 (February 1966), pp. 38-52.

from the rationale for final-offer arbitration's existence. Final-offer arbitration has been offered as an antidote to the "chilling effect" upon the parties' incentives to negotiate their own agreements that is said to exist under conventional arbitration (which assumes, of course, that there is a perceived need for an impasse resolution procedure which will prevent strikes by imposing binding outcomes upon the parties).² This chilling effect allegedly exists because of the manner in which impasses will be resolved: the conventional arbitrator will issue an award which is a compromise or a split of the difference between the parties' positions, and hence each party has an incentive to maintain an extreme position in the hope of getting a more favorable split. There is no strike, and the parties can avoid the hard bargaining necessary to reach agreement.

In contrast, final-offer arbitration makes such behavior costly by eliminating arbitral discretion and requiring the arbitrator to select one or the other party's offer without modification. Because of the mutual fear that the arbitrator may select the other party's offer, both parties should develop ever more reasonable positions, and these mutual attempts to be reasonable should result in the parties being so close together they will create their own settlement. In other words, the possibility that either party may lose everything in arbitration will act as an incentive for them to seek security in their own agreement.³

As a result of this rationale, the most appropriate criterion used to evaluate final-offer procedures is "negotiating effectiveness," or the extent to which the procedures induce desired negotiating behavior among the parties. There are several specific dimensions along which the negotiating effectiveness of final-offer procedures may be measured. First, the most effective final-offer procedures are the ones which are invoked least, for their lack of use indicates that the parties are negotiating their own agreements.

2. Professor Roy Adams uses the Canadian public sector impasse experience to note that this strikes-are-inappropriate assumption may be more firmly held in the United States than in other countries.
3. This conceptual rationale is much more applicable to final-offer arbitration with entire package selection rather than issue-by-issue selection. For more detailed discussions of the final-offer concept, see Stevens *op. cit.*; Peter Feuille, *Final Offer Arbitration: Concepts, Developments, Techniques*, Public Employee Relations Library No. 50 (Chicago: International Personnel Management Association, 1975), pp. 12-14; and James L. Stern, Charles M. Rehmus, J. Joseph Loewenberg, Hirschel Kasper, and Barbara D. Dennis, *Final Offer Arbitration* (Lexington, Mass.: D. C. Heath, 1975), pp. 117-41.

Second, if a procedure is invoked, an important criterion is the extent to which the parties reach their own agreements prior to the issuance of awards, with a larger proportion of negotiated agreements indicating increased effectiveness. A third and closely-related criterion involves the proportion of impasse steps the parties utilize before reaching agreement, with increased effectiveness associated with agreements reached at early rather than later impasse steps. If an award is necessary, a fourth criterion is the extent to which the parties narrow their area of disagreement, either by reducing the number of disputed issues or by reducing the range of disagreement on the disputed issues (or both), with smaller areas of disagreement indicating increased effectiveness. A fifth criterion involves longitudinal measurements along the above dimensions, *e.g.*, an increasing proportion of negotiated agreements over time indicates increased effectiveness. These measurements usually are made against some comparison data, most frequently the negotiation and arbitration experiences under conventional arbitration procedures.⁴ It should be emphasized that these negotiating dimensions will be applicable only to the extent that their users prefer negotiated agreements over imposed awards. If this preference does not exist, the above criteria are meaningless.

Three other effectiveness criteria can be specified. One is "compliance effectiveness," or the extent to which the parties comply with the final-offer process and its outcomes. This criterion can be measured by the proportion of negotiations which involve refusals to participate in the process, refusals to implement awards, court appeals of awards, and post-award work stoppages, with the smaller the proportion of these kinds of behavior the more effective the final-offer process. A second and related criterion is "outcome effectiveness," or the manner in which final-offer outcomes impact upon the parties. This criterion can be measured along such dimension as the proportion of union (or management) arbitration victories (or losses), or the extent to which agreements negotiated prior to awards more closely resemble the unions' or managements' final positions. The more effective final-offer processes are those which yield the more equitable outcomes (which assumes, of course, that equitable outcomes can be defined and measured in a manner which satisfies the

4. For an excellent discussion of impasse resolution evaluation research, see Thomas A. Kochan, "Evaluating the Effectiveness of Impasse Procedures: Some Conceptual and Research Design Issues," paper presented at the 1975 annual meeting of the Society of Professionals in Dispute Resolution.

various negotiating perspectives). Compliance and outcome effectiveness may be related in that a party's compliance with the process may depend upon its perception of the equitableness of the outcomes.

A third and more subjective criterion is "political effectiveness," or the manner in which the final-offer process resolves competing interest group claims upon scarce resources. This criterion can be measured by the extent to which the final-offer process reduces bargaining conflict and hostility by providing for a determinate solution to these competing claims, by providing a third party who functions as a safety valve for the parties' dissatisfactions with the process or its outcomes, and by the establishment of beliefs among members of these competing groups that their legitimate interests have been adequately considered in the process. The more politically effective final-offer processes are those which do the best job of achieving these objectives, especially the third one.⁵

In the analysis that follows only the negotiating effectiveness criteria will be used, with the focus on longitudinal changes in the proportion of negotiated agreements in various jurisdictions. Since the primary (some might say only) reason for final-offer arbitration's existence is to induce (or scare) the parties into negotiating their own agreements, the effectiveness measures ought to focus on the extent to which this is accomplished.

Final-Offer Experiences

Three key methods to evaluate the negotiating effectiveness of final-offer procedures come readily to mind. One method is to compare final-offer negotiating and arbitration outcomes with pre-strike and post-strike negotiated settlements where the employees have the right to strike. If final-offer arbitration is an effective "strikelike" impasse resolution mechanism, the proportion of arbitration awards in final-offer jurisdictions should be similar to the proportion of strike-induced settlements in right-to-strike jurisdictions. Problems with these comparisons emerge, though, because it is common for different occupational groups to have the right to strike and to arbitrate, and because of the small number of jurisdictions with the right to strike.

A second evaluation method is to compare final offer with con-

5. For a more general discussion of the political nature of public sector impasse procedures, see George T. Sulzner, "The Political Functions of Impasse Procedures," *Industrial Relations*, forthcoming; and Raymond D. Horton, "Arbitration, Arbitrators and the Public Interest," *Industrial and Labor Relations Review*, Vol. 28, No. 4 (July 1975), pp. 497-507.

ventional arbitration experiences, either on a cross sectional or longitudinal basis, and the analyses that have done this generally show that arbitration award rates are proportionately lower in final offer than in conventional jurisdictions.⁶ Although most of these comparisons are rather primitive and do not control for environmental and situational variables which may affect the use of these procedures, and therefore it may be difficult to prove that these negotiation and arbitration differences are directly attributable to the different procedural designs, the direction of the differences is consistent with the predictions made on behalf of the final-offer concept. As a result, it seems fair to tentatively conclude that on the basis of the available evidence (which admittedly is incomplete) final-offer arbitration is more effective than conventional arbitration in inducing negotiated agreements.

A third evaluation method is to compare the negotiation and arbitration experiences under various final-offer systems with each other. This method will be used in this section, with special attention devoted to how the reliance on impasse procedures has changed over time in the six jurisdictions examined—five public and one private.

Eugene. The City of Eugene, Oregon and its unions have completed twelve sets of negotiations under a municipal final offer with package selection procedure.⁷ As Table 1 indicates, in nine cases the parties reached their own agreement on all issues, either prior to the invocation of the arbitration procedure (six times) or prior to the issuance of an award (three times). In two other cases agreement of the Eugene experience is the parties' decreasing reliance over time was reached on almost all the items, with only one issue in each instance taken to arbitration. Perhaps the most noteworthy aspect on arbitration awards, to the point that there have been no awards issued in any of the last six negotiations (three in 1974-75, three in 1975-76).

6. Peter Feuille, *op. cit.*, pp. 28-33; Peter Feuille "Final Offer Arbitration and the Chilling Effect," *Industrial Relations*, Vol. 14, No. 3 (October 1975), pp. 302-10; Stern, *et al.*, *op. cit.*; and Thomas A. Kochan, Ronald G. Zhrenberg, Jean Baderschneider, Todd Jick, and Mordehai Mironi, "An Evaluation of Impasse Procedures for Police and Firefighters in New York: An Interim Report," unpublished manuscript, New York State School of Industrial and Labor Relations, Cornell University, June 1976, pp. 5-6.

7. For a report on the early experience under this procedure, see Gary Long and Peter Feuille, "Final Offer Arbitration: 'Sudden Death' in Eugene," *Industrial and Labor Relations Review*, Vol. 27, No. 2 (January 1974), pp. 186-203.

TABLE I Eugene Negotiation-Arbitration Experience (1971-76)

<i>Employee Group</i>	<i>Arbitration Invoked?</i>	<i>Items Submitted to Arbitrators</i>	<i>Outcome</i>
1971-72 negotiations:			
Fire Fighters	Yes	Entire contractual package	City first offer selected
Police Patrolmen	Yes	Entire contractual package	Agreement negotiated during arbitration proceedings
AFSCME	Yes (binding fact-finding)*	Union security; all other items agreed to in negotiations	Union position (agency shop) selected
1972-73 negotiations:			
Fire Fighters	Yes	Longevity pay; all other items agreed to in negotiations	City alternate offer selected
Police Patrolmen	No	—	Negotiated agreement
AFSCME	Yes	Economic issues; noneconomic issues agreed to in negotiations	Agreement negotiated during arbitration proceedings
1974-75 negotiations:			
Fire Fighters	No	—	Negotiated agreement
Police Patrolmen	No	—	Negotiated agreement
AFSCME (salary reopener)	No	—	Negotiated agreement
1975-76 negotiations:			
Fire Fighters (salary reopener)	No	—	Negotiated agreement
Police Patrolmen (salary reopener)	No	—	Negotiated agreement
AFSCME	Yes	Entire contractual package	Agreement negotiated during arbitration proceedings

Source: Peter Feuille, *Final Offer Arbitration: Concepts, Development, Techniques*, Public Employee Relations Library, series no. 50 (Chicago: International Personnel Management Association, 1975), p. 17; and Gary Long, Personnel Director, City of Eugene, telephone conversation, October 11, 1976.

NOTE: *The two sides agreed to use the fact-finding services provided free by the state and to be bound by the fact-finder's decision.

The Eugene experience suggests that over time the city's procedure has become more rather than less effective in preserving the parties' incentives to reach their own agreements (at least prior to an award). It may be difficult to pinpoint the precise reasons for this result (and even more difficult to attach weights to them); they apparently include early union losses and a desire to avoid repetitions, a speedy arbitration timetable, the package selection requirement, the absence of impasse steps between negotiation and arbitration, arbitrator encouragement of negotiations after the procedure has been invoked, and an early final-offer submission deadline (five days prior to the commencement of the arbitration process).⁸ Whatever the exact reasons, the Eugene experience suggests that unions and managements operating under a final-offer procedure can reduce their use of the procedure as they become more familiar with its operation.

Baseball. The recent major league baseball collective bargaining agreement provided for final-offer arbitration to resolve salary disputes between players and club owners.⁹ As Table 2 indicates, the

TABLE 2
Baseball Salary Arbitration Experience

Year	Total Eligible	Arbitration Invoked	Settled Prior to Award	Arbitration Awards
1974	500 (approx.)	54 (11%) ^a	26 (5%) ^a	28 (5%) ^a
1975	500 (approx.)	38 (8%)	24 (5%)	14 (3%)
Totals	1,000 (approx.)	92 (9%)	50 (5%)	42 (4%)

Sources: James B. Dworkin, "The Impact of Final Offer Interest Arbitration on Bargaining: The Case of Major League Baseball," Purdue University, Krannert Graduate School of Industrial Administration, Working Paper No. 554, June 1976, p. 6 (to be published in the *Proceedings of the Twenty-Ninth Annual Winter Meeting of the Industrial Relations Research Assn.*).
Notes: ^aAll percentage figures are percent of total eligible.

procedure was used during 1974 and 1975 in about nine percent of the salary negotiations. The most noteworthy aspects of baseball's arbitration experience is that over half of the cases taken to arbitration were settled prior to an award and that the arbitration usage rate declined significantly from the first year to the second.

8. For the specific details of the Eugene and the other public sector procedures, see Bureau of National Affairs, *Government Employees Relations Report, Reference File*.
9. James B. Dworkin, "The Impact of Final Offer Interest Arbitration on Bargaining: The Case of Major League Baseball," Working Paper No. 554, Krannert Graduate School of Industrial Administration, Purdue University, 1976 (to be published in the *Proceedings of the Twenty-Ninth Annual Winter Meeting of the Industrial Relations Research Association*).

The baseball final-offer procedure is unique—it covers an unusual group of workers, is applied on an individual basis to a single issue, has a very speedy timetable, and prohibits explanatory opinions—and hence it is difficult to compare the negotiating experiences under it to those in various public sector jurisdictions. It is worth noting, though, that the baseball experience is similar to Eugene's in that over time the use of the procedure has decreased, which suggests again that it is possible for the contending parties to decrease their recourse to a final-offer procedure as they become more familiar with its operation.

Wisconsin. As Table 3 indicates, the Wisconsin experience shows

TABLE 3
Wisconsin Negotiation-Arbitration Experience

<i>Settlement Method</i>	<i>1968-71^a</i>		<i>1973-74</i>		<i>July 1974- June 1976</i>	
	<i>Fact-finding No.</i>	<i>Percent</i>	<i>Arbitration No.</i>	<i>Percent</i>	<i>Arbitration No.</i>	<i>Percent</i>
Total Public Safety Negotiations Settled in Direct Negotiations	427	100	320	100	260 ^b	100
Cases Going to Impasse	127	30	115	36	153	59
Settled in Mediation	102	24	79	25	89 ^d	34
Settled in Fact-finding ^c	24	6	—	—	—	—
Settled in Arbitration Prior to Award	—	—	n.a.	—	3	2
Settled by Arbitration Award	—	—	36	11	36 ^e	14
Cases Pending	—	—	—	—	25	9

SOURCE: For 1968-74, from James L. Stern, Charles M. Rehmus, J. Joseph Loewenberg, Hirschel Kasper, and Barbara D. Dennis, *Final Offer Arbitration* (Lexington, Mass.: D. C. Heath, 1975), pp. 88 and 90; for 1974-76 from the files of the Wisconsin Employment Relations Commission and supplied by Prof. Thomas Kochan, Cornell University.

NOTES: ^a1972 data have been omitted because both the fact-finding and arbitration statutes existed in that year; ^bPreliminary estimate of total negotiations. Final figure may be larger; ^cAll percent figures are percentages of total negotiations during relevant time period; ^dIncludes 35 cases settled by mediation after declaration of impasse, and 54 cases settled by mediation after petition for arbitration and prior to appointment of arbitrator; ^ePrior to 1972, fact-finding was the terminal step for public safety negotiations; in 1972 the fact-finding step was deleted and replaced by arbitration; and ^fThis figure will increase if some of the pending cases are resolved by arbitration awards.

an increasing proportion of public safety negotiations taken to impasse over the four year life of that state's final offer with package selection procedure (and compared to the previous fact-finding procedure). In addition, a larger proportion of cases are culminating in arbitration awards during the recent two years than during the first two years, and the proportion of arbitration awards is larger than the proportion of fact-finding reports during the years prior to the passage of the arbitration statute. It is also noteworthy that a majority of the recent cases taken to impasse are settled via mediation.

The Wisconsin data suggest that the parties are learning how to incorporate mediation and arbitration into their bargaining strategies, with the results that third-party intervention is increased. This increased use of the impasse procedure may reflect a more difficult economic environment for bargaining, or it may result from such procedural components as the ability to modify final offers within five days of the arbitration hearing (which means that the "final" final-offer submission deadline comes rather late in the process). Whatever the reasons, the Wisconsin impasse procedure has been receiving proportionately more use over time.

Massachusetts. The available Massachusetts data do not include the total number of public safety negotiations, and therefore it is not possible to compute the proportion of police and fire cases going to impasse or culminating in an arbitration award. However, Table 4 does contain some figures describing the number and disposition of impasses, and it is apparent that under the final-offer with package selection procedure the number (and presumably the proportion) of cases going to impasse increased substantially compared to the final year under the previous fact-finding procedure. In addition, it also is apparent that a smaller proportion of these cases are being settled at the formal mediation step, that a substantial number of cases get settled in fact-finding or in arbitration prior to an award, and that the arbitrator's award rate (19 percent as an outer limit, with the actual rate probably somewhat less) is consistent with the final-offer award rates in Eugene, Wisconsin, and Michigan.

An analysis of the first year under the Massachusetts procedure tentatively suggests that fact-finding may have diluted the negotiating pressures that the final-offer process seeks to place upon the parties.¹⁰ Since the arbitrator must consider the fact-finder's report as one of the

10. Lawrence T. Holden, Jr., "Final-Offer Arbitration in Massachusetts: One Year Later," *The Arbitration Journal*, Vol. 31, No. 1 (March 1976), pp. 26-35.

TABLE 4
Massachusetts Arbitration Experience

Settlement Method	Fiscal 1974:		Fiscal 1975:		Fiscal 1976:	
	Fact-finding No.	Percent	Arbitration No.	Percent	Arbitration No.	Percent
Number of Impasses	72	100	131	100	116	100
Settled in Mediation	39	54 ^a	5	28 ^a	31	27 ^a
Settled in Fact-finding Without Report	1	1	38	23	5	4
Settled in Fact-finding With Report	2	3	14	9	1	1
Settled in Arbitration Without Award	—	—	10	6	1	1
Settled by Arbitration Award	—	—	31	19	0	0
Impasses Pending at End of Fiscal Year	30	42	24	15	78	67

SOURCE: Collected from the files of the Massachusetts Board of Conciliation and Arbitration and supplied by Professor Thomas Keenan, Cornell University.

NOTE: ^aAll percent figures are percentages of cases that went to impasse during the relevant time period.

selection criteria, the parties typically attempt to make their final offers conform closely to what the fact-finder recommended. When used in this manner, the fact-finding step is similar to a conventional arbitration proceeding because the fact-finder is not limited to choosing between the parties' final positions, and the fact-finding results are reviewed at the binding final-offer step. To the extent the parties can anticipate such a review, they can use the fact-finder's report to create their own settlement and thus avoid the risk of an all or nothing selection decision.

One of the more noteworthy features of the Massachusetts' procedure in operation is that many impasses apparently drag on for a very long time. At the close of each fiscal year many cases are carried over to the next year, with the most glaring example being the two-thirds of all 1976 impasses listed as pending at the end of the fiscal year (though some of these cases may have been settled and not reported). This time lag may be attributable to the fact that the "final" final-offer submission deadline arrives very late in the process (at the end of the arbitration hearing), to the arbitration chairman's authority to remand the dispute back to the parties for additional bargaining, and to the time required to complete each of mediation, fact-finding, and arbitration steps. Whatever the reasons, it is ap-

parent that there are very few deadline pressures perceived by the parties in Massachusetts public safety negotiations, and the absence of these time pressures may contribute to the use of the impasse process.¹¹

Michigan. In contrast to the above procedures, Michigan's public safety final-offer statute provides for issue-by-issue selection on economic issues (and conventional arbitration on noneconomic issues), and as a result final-offer arbitration in that state has much less of an all or nothing flavor than in other jurisdictions. The total award experience in Michigan seems consistent with the experiences in other jurisdictions, as the award rate is estimated at about 16 percent between early 1973 and early 1976.¹² However, the award rate appears to be increasing over time, for during the first eighteen months under the final-offer procedure the award rate was about ten percent.¹³ Further, Table 5 indicates that a rather large number

TABLE 5
Michigan Negotiation-Arbitration Experience

	1973 - March 1975		1973 - June 1976	
	No.	Percent	No.	Percent
Cases Submitted to Arbitration	187	100	296	100
Settled During Arbitration Process	114	61*	147	50*
Awards Issued	37	20	103	35
Pending	36	19	46	15

Source: 1973-75 figures from Michigan Employment Relations Commission files supplied by Robert G. Howlett, former MERC Chairman; 1973-76 figures from MERC files supplied by Richard Seryak, MERC Administrative Aide.

Note: *All percent figures are percentages of cases submitted to arbitration during the relevant time period.

11. See Paul C. Somers, *An Evaluation of Final-Offer Arbitration in Massachusetts* (Boston: Massachusetts League of Cities and Towns, 1976) for a management-oriented analysis of the final offer system in the Bay State. Somers concludes, among other things, that the impasse declaration rate has increased under arbitration, that proportionately fewer cases are settled in mediation, that the fact-finding process operates as a *de facto* conventional arbitration step, and that impasses which require an award take a very long time (about a year) to get resolved. He also concludes that the arbitration outcomes unduly favor the unions because they have won twice as many awards as management.
12. This award rate was calculated on the basis of 88 actual awards emerging from an estimated 540 negotiations; Kochan, *et al.*, *op. cit.*, p. 5.
13. Charles M. Rehrman, "Legislated Interest Arbitration," *Proceedings of the Twenty-Seventh Annual Winter Meeting of the Industrial Relations Research Association* (Madison: IRRA, 1975), p. 310.

of all negotiations are submitted to arbitration (*i.e.*, involve a request for the appointment of an arbitrator), and that most of these cases are resolved prior to the issuance of an award. The data do not indicate precisely how this resolution is achieved, but many of these cases are settled through the mediatory efforts of arbitrators.¹⁴ Using the estimate of the total number of negotiations that produced the arbitration award rate (see fn. 11), the Table 5 data indicate that about half of all police and fire cases involve a request for arbitration, and the proportion of these requests has been increasing over time.

Michigan seems to be experiencing the same phenomenon observed in Wisconsin: the parties are increasing their use of the arbitration procedure over time. This increasing use has resulted in a larger proportion of awards and in increased reliance upon the arbitration procedure as a vehicle for continued negotiations. In addition, there appears to be an increasing amount of mediation performed by arbitrators. This increased use of the procedure may result from a more difficult economic environment for bargaining or from procedural reasons: the final-offer submission deadline comes late in the procedure (usually at or after the hearing, subject to the discretion of the arbitration panel), and the arbitration chairman has the authority to remand the dispute back to the parties for additional bargaining. Whatever the reasons, the parties in Michigan are becoming more willing to incorporate the arbitration procedure into their bargaining strategies.

Iowa. The Iowa statute is similar to the Eugene ordinance in that it applies to all employees in the jurisdiction (not just police and fire), and is similar to the Michigan statute in that it provides for issue-by-issue selection. Table 6 describes the 1975-76 Iowa impasse experience. As indicated, most negotiations involved a request for mediation, which is not surprising when considering that in most of these negotiations the parties were bargaining for the first time. Most of the impasses were settled at the mediation step, and relatively small proportions were carried to fact-finding or arbitration. In fact, the seven percent final-offer award rate to date is the lowest rate in all the public jurisdictions surveyed.

The Iowa statute is unusual in the extent to which it expressly permits the parties to negotiate their own impasse resolution procedures. As of March 1976, 141 such independent procedures had been negotiated, and in 63 instances the parties chose to exclude

14. Rehmus, *op. cit.*, p. 319; Stern, *et al.*, pp. 63-65.

TABLE 6
Iowa Negotiation-Arbitration Experience

	1975 - October 1976	
	No.	Percent
Recorded number of negotiations	372 ^a	100
Requests for impasse assistance	305	82 ^b
Cases assigned to mediation	255 ^c	69 ^c
Cases settled in mediation	185	50 ^c
Cases assigned to fact-finding	48	13
Cases settled in fact-finding	26	7
Arbitration awards	25	7

SOURCE: Figures from the Iowa Public Employment Relations Board supplied by Professor Richard Peggner, University of Iowa.

NOTES: ^a372 collective bargaining agreements are recorded with the Iowa PERB; additional contracts may have been negotiated but not recorded; ^bAll percent figures are percentages of recorded negotiations; and ^cDiscrepancies in these figures are due to the flexibility given the parties to negotiate modifications in the impasse procedure. Many such modifications have been implemented.

fact-finding (while retaining arbitration).¹⁵ As a result, it seems fair to conclude that the early experience in Iowa has involved a heavy use of mediation (in part to educate the parties about bargaining) but a fairly low rate of reliance on fact-finding and arbitration.

Procedural Implications

With the caveat that the arbitration data presented in the preceding section represents a very limited and incomplete description of the impasse experiences in those jurisdictions, four conclusions seem warranted. First, the Wisconsin, Massachusetts, and Michigan data suggest that over time there appears to be an increasing reliance by the parties upon their impasse procedures. This same result has been noted under impasse procedures culminating in conventional arbitration¹⁶ and in fact-finding.¹⁷ Thus, the final-offer experiences are similar to the experiences with other impasse procedures in that the parties tend to increase their use of or reliance upon these pro-

15. Iowa Public Employment Relations Board, *IPERB: Iowa Public Employment Relations Bulletin*, Vol. 1, No. 1 (Spring 1976), p. 3.

16. Kochan, *et al.*, *op. cit.*, p. 7; Feuille, *Final Offer Arbitration . . .*, *op. cit.*, pp. 28-33; John C. Anderson and Thomas A. Kochan, "An Examination of Dual Impasse Procedures in the Federal Public Service of Canada," unpublished manuscript, New York State School of Industrial and Labor Relations, Cornell University, April 1976.

17. David B. Lipsky and John E. Drotning, "The Relations Between Teacher Salaries and the Use of Impasse Procedures Under New York's Taylor Law," paper presented at the 1976 Annual Meeting of the Society of Professionals in Dispute Resolution; New York State Public Employment Relations Board, *PERB News*, Vol. 9, No. 3 (March 1976), p. 1.

cedures over time as they become more familiar with their operation. A second conclusion, however, is that the Eugene and baseball experiences indicate that there is no necessary reason why this increased reliance must occur. Third, the fact that the declaration of impasse rates are much larger than the arbitration award rates indicates that the parties are making increased use of the arbitration procedures as forums for continued negotiations. This result is consistent with the lack of risk associated with using the pre-arbitration impasse steps. Fourth, a substantial portion of these continued negotiations are resolved via the mediatory efforts of arbitrators (with Michigan being the best example).

Using these four conclusions, it is possible to propose a final-offer arbitration procedure that should increase the incentives to negotiate and apply these incentives equally to both sides. In those negotiating situations where a binding outcome is deemed necessary, the incentives to negotiate should be increased under a unified mediation and final-offer arbitration procedure with the same person serving as mediator and arbitrator and with an early last possible moment for final-offer submission. Such a procedure would require the parties to submit (to each other and the impasse agency) their final offers as soon as the impasse is declared. The intervenor, who will be the only person assigned to the impasse, shall attempt to mediate a settlement. If his mediatory efforts fail he shall serve as the final-offer arbitrator and shall make an entire package selection. A crucial requirement is that the selection decision shall be between the two final offers originally submitted and shall not be based on any movement that occurred during mediation. Once the impasse moves to arbitration the arbitrator shall have no authority to remand the dispute back to the parties for additional bargaining. The impasse timetable should be precise and concise (no more than three months from impasse declaration to award) and with the objective of achieving a speedy resolution of all impasses.¹⁰ There would be no other steps in this procedure.

Such a procedure should satisfy two conditions necessary for inducing negotiated settlements. First, it should apply in an even-handed manner to both sides. Second, it should increase the costs attached to the use of the procedure to such an extent that the

10. Bowers' examination of the conventional arbitration experience in Pennsylvania suggests that strict time limits will achieve a faster resolution of impasses than the more open-ended procedures that exist in most states. Mollie Bowers, "A Study of Legislated Arbitration and Collective Bargaining in the Public Safety Services in Michigan and Pennsylvania," unpublished Ph.D. dissertation, Cornell University, 1974, pp. 21²-13.

parties will prefer to negotiate their own agreements to a greater extent than is presently happening. This larger proportion of negotiated agreements should result from increases in the costs of remaining in disagreement and from the mediator's increased ability to induce concessions from each side.

Costs of Disagreement. Final-offer arbitration with package selection is premised upon risk: it will be risky to take a negotiating impasse to a third party process in which each side stands a fifty percent chance of being branded a loser. However, most final-offer procedures do not create this risk until reasonably late in the impasse chronology (i.e., during or after the arbitration hearing). In contrast, the procedure proposed here seeks to create a high degree of risk at the moment of impasse declaration. As a result, this procedure should increase each party's perceptions of the costs of remaining in disagreement beyond the impasse declaration point, as compared to the magnitude of such costs in the early stages of most impasse processes, because the parties will not be able to modify or amend their final offers at a later date. In other words, this procedure is riskier because the all or nothing pressures are created at the point of impasse, and hence the parties should have increased incentives to avoid impasses and negotiate their own agreements.

This requirement of an early submission of final offers should pose a meaningful deadline for reaching agreement prior to using the impasse process. As Stevens notes, deadline pressures tend to reduce the amount of bluffing in the negotiations and tend to alter the least favorable terms each side is willing to accept.¹⁹ These pressures are commonly associated with strike deadlines in many private sector negotiations, and several experimental negotiation studies have indicated that deadline pressures increase the likelihood of agreement by reducing bargaining demands, aspirations, and bluffing.²⁰ The deadline in this final-offer proposal should have a similar kind of impact because it increases the costs of declaring an impasse in a manner that most other final-offer procedures do not.²¹

19. Carl M. Stevens, *Strategy and Collective Bargaining Negotiations* (New York: McGraw-Hill, 1963), p. 100.

20. For a summary of these studies, see Jeffrey Z. Rubin and Bert R. Brown, *The Social Psychology of Bargaining and Negotiation* (New York: Academic Press, 1975), pp. 120-24.

21. As noted earlier, the Eugene procedure has a very early final-offer submission deadline (five days before the start of the arbitration process), and the offers submitted then are the ones from which the arbitrator will make a selection unless the parties reach agreement on all the disputed items. This requirement may be associated with the effectiveness of that city's procedure in inducing negotiated agreements over time.

Making Concessions. It would be foolish to insist that under such a procedure all bargaining would end in negotiated agreements prior to the point of impasse. Some cases, for a variety of political reasons on both sides of the table, will be taken to impasse, and this procedure should increase substantially the ability of the mediator to induce concessions from the two sides so that they may create their own settlement prior to arbitration.

Assuming that a preference for negotiated agreements exists among both contending parties and the mediator, the primary function of a mediator is to assist the two sides in fashioning their own agreement. Assuming that the parties' preferred positions are in excess of their resistance points (*i.e.*, the union will accept less than it is asking for, management will agree to more than it is offering), the mediator's job is to persuade each negotiator to make enough concessions so that an agreement is possible. Therefore, the most effective mediators and mediation procedures are those which do the best job of inducing enough concessionary behavior from the negotiators that agreements are negotiated.²² In negotiations, however, each negotiator usually is under the opposing pressures of reaching agreement (which means making concessions) and obtaining the best possible terms for his constituents (which means standing firm on a preferred position, or making no concessions). Hence, each negotiator may be caught between the need to concede in order to reach agreement and the need to be perceived as a tough bargainer in order to induce concessions from the other side to obtain favorable terms.

The mediator's job is to assist negotiators in escaping from this dilemma by simultaneously making it possible for them to concede and protecting them from the negative consequences of concessionary behavior. There are both experimental²³ and operational²⁴ data which indicate that mediators can be effective in pushing or pulling the parties together. Under most mediation procedures, however, mediators do not have very powerful tools to encourage and reward concessionary behavior and discourage and punish nonconcessionary be-

22. For an excellent conceptual and operational analysis of mediator and mediation effectiveness, see Thomas A. Kochan and Todd Jick, "A Theory and Empirical Examination of the Public Sector Mediation Process," paper presented at the 1974 Annual Meeting of the Society of Professionals in Dispute Resolution, October 1974.

23. Rubin and Brown, *op. cit.*, pp. 34-64.

24. Kochan and Jick, *op. cit.*; Sims, *et al.*, *op. cit.*, pp. 117-26.

havior.²³ Mediators may be very aggressive in pressuring the parties to move together, but if this convergent movement is not forthcoming mediators must eventually withdraw, leaving the dispute unsettled.

A key source of mediator effectiveness is the face-saving role played by the third party. Such a role increases the ability of negotiators to make concessions and then justify these concessions to their constituents as required by the mediator.²⁴ Under the proposed procedure the mediator can play a much larger face-saving role than under most mediation procedures because of his substantially increased ability to reward concessions and punish nonconcessions. The fact that the mediator will serve as the final-offer arbitrator will enable him to make authoritative suggestions to the parties about unacceptable positions and possible areas of agreement which the parties know he will be in a position to enforce if an award becomes necessary. Further, the parties should be inclined to use these suggestions to fashion their own agreement because of their inability to modify their final offers on a piecemeal basis. As a result, these final-offer mediators should be able to use their authority as potential arbitrators to induce enough concessionary behavior from the parties that negotiated agreements are reached in most impasses.

Shortcomings and Criticisms. There are some potential pitfalls in such a procedure. First, it would be unrealistic to expect that such a process will always produce negotiated agreements, for in some negotiations there may be inescapable political pressures on either side of the table which require a third party settlement. Second, the proportion of cases going to impasse may increase, even if the award rate decreases, as the negotiators attempt to use mediator-arbitrators to induce concessions from the other side. Third, such a process relies very heavily for its successful operation on the skills of individuals who must know how to be effective mediators and arbitrators. In particular, some arbitrators may be unaccustomed and/or unwilling

23. For a very interesting account of how several mediators attempt to fashion agreements, see Kenneth Kriest, *Labor Mediation: An Exploratory Survey* (Albany, New York: Association of Labor Mediation Agencies, 1971).

24. For a report of an experimental manipulation of this aspect of mediation, see Dean G. Pruitt and Douglas F. Johnson, "Mediation as an Aid to Face Saving in Negotiation," *Journal of Personality and Social Psychology*, Vol. 16, No. 3 (1970), pp. 277-86. More specifically, the mediators can work to protect the negotiator making a concession from "position loss," or the weakening of a negotiating position due to the common rule against withdrawing a concession once it has been made, and from "image loss," or weakening of a negotiator's image for having engaged in yielding behavior. See Dean G. Pruitt, "Indirect Communication and the Search for Agreement in Negotiation," *Journal of Applied Social Psychology*, Vol. 1, No. 3 (1971), pp. 285-39.

to play mediatory roles, and hence may engage in only perfunctory attempts to mediate settlement.

Perhaps the strongest criticism of this proposal will be aimed at the manner in which the proposed procedure may generate "inequitable," "unbalanced," or "low quality" arbitration awards as a result of the early final-offer submission deadline, the inability to modify submitted final offers, and the lack of arbitral remand authority. Two points may be noted in response. First, it is very difficult to objectively define what "inequitable" outcomes are in an adversarial interaction context. Second and more important, the above proposal seeks to increase the parties' negotiating incentives. If this is to be accomplished, the impasse process must be constructed in such a manner that the parties will want to avoid it, and the only feasible way for this to occur is for the parties to perceive that the impasse outcomes will be less desirable than negotiated outcomes. This is the premise upon which the final-offer arbitration concept (and this paper) is constructed, and the proposal outlined above seeks to apply this premise more forcefully (i.e., in a more "strut-like" manner) than is done in most existing final-offer procedures.²⁷

Conclusion

The final-offer procedures seem to be doing a reasonably good job of inducing negotiated agreements, either prior to impasse or during the impasse process. However, over time there seems to be a general tendency for the parties to increase their reliance upon the final-offer procedures, either as a forum for continued negotiations or as the source of an imposed settlement. This increased usage may be related to the lack of costs attached to declaring impasse and using the early steps of the impasse procedure. If so, the proposal made here—to implement mediation-final-offer arbitration immediately after the declaration of impasse, with the same person serving as the mediator and arbitrator—should provide a procedural mechanism which encourages the parties to reach their own agreements more quickly and to a greater extent than appears to happen under several of the existing public sector final-offer procedures. This increased incentive to negotiate should happen because of the increased all or nothing risk of declaring an impasse and because of the mediator's increased ability to manipulate the negotiators' willingness to make concessions if an impasse is declared.

27. For a viewpoint and procedural proposal based on a contrary premise, see Hoyt N. Wheeler, "Closed Offer: An Alternative to Final Offer Selection," *Industrial Relations*, forthcoming.



*Midwest Center for
Public Sector Labor Relations*

IMPASSE RESOLUTION
IN THE PUBLIC SECTOR:
NEW DIRECTIONS

A Practitioner's Guide



SCHOOL OF PUBLIC AND
ENVIRONMENTAL AFFAIRS

INDIANA UNIVERSITY, BLOOMINGTON

MEDIATION-ARBITRATION REDUCES MUNICIPAL STRIKES

The number of municipal employee strikes in Wisconsin has sharply declined since mediation-arbitration techniques were imposed in 1978. The procedure involves many steps leading toward impasse resolution with the object of voluntarily reaching settlement along the way. Its aim is to avoid arbitration. Only mandatory subjects of bargaining can be resolved by this procedure. It has promoted an equalization of wage schedules and contract terms from one municipality to another.

Wisconsin has had a collective bargaining law for the private sector since the 1930s. The Wisconsin Employment Relations Commission (WERC) has operated since the late 1930s under this law. In 1959, Wisconsin adopted its first collective bargaining law for public employees. Currently, there are five separate laws for Wisconsin's public employees.

The method of resolving impasses varies from one group to another. Under the plan pertaining to state employees, impasses are to be resolved by mediation and factfinding if mutually requested by both parties. Under a separate law applying only to the City of Milwaukee police force, impasses are to be resolved by wide-open interest arbitration. The arbitrator can select either of the party's offers or anything in between. Another law pertains only to the City of Milwaukee firefighters. The final step for resolving impasses among these firefighters is factfinding.

All other police and firefighters in the state of Wisconsin not employed by the City of Milwaukee are covered by final offer, total package, interest arbitration. This law has been on the books since 1971.

Strikes Spur Lawmakers

The fifth law covers municipal employees only. It has been in effect since 1959, but there have been many changes in the law over the last 20 years. Several strikes by municipal employees in the early and mid-1970s provided the impetus for legislators to change the law to provide mediation-arbitration as a technique for resolving impasses.

One strike which attracted national attention and emphasized the need for a new mode of impasse resolution involved the Hortonville School District. Negotiations became deadlocked. But mediation of the Hortonville dispute failed to reach a settlement, and the case went to factfinding. The teachers struck and all of them were fired. However, the Wisconsin Supreme Court declared that the teachers had been denied due process and ordered them to be reinstated. The school board appealed the ruling to the U.S. Supreme Court which overturned the State Court's ruling and declared that the teachers had not been denied due process.

Controversy over the Hortonville school strike led to the formation of a legislative study committee which was composed of representatives from the teachers and the school management as well as neutral individuals. After holding statewide hearings on the problem, the committee proposed the provisions of the present mediation-arbitration law.

In 1975, the Wisconsin Legislature did not pass the committee's proposal into law the first time it was introduced. Public sector strikes continued. Two were school district strikes involving major employers in Wisconsin. One strike lasted approximately seven weeks, and the other continued for 13 weeks. These strikes, along with the Hortonville controversy, spurred legislators to pass the amendments to the municipal employees law providing for mediation-arbitration. Legislators viewed mediation-arbitration as a way to end strikes and give an air of finality to the collective bargaining process. A sunset provision was added which calls for the reinstatement of the old law if the new legislation is not reenacted or amended by October 31, 1981. The old law provided factfinding as the final step of impasse resolution.

Law Includes Public

The 1978 amendments to the municipal employee law require that the parties notify the Commission that they are going to begin negotiations. They also must notify the news media that negotiations are going to begin. The parties must present the initial proposals and the rationale behind these proposals at open public meetings. After these initial meetings in public, it is presumed that all further negotiations will be conducted in private, unless both parties agree otherwise.

If the parties cannot reach agreement after a period of negotiations, the parties or the State Commission initiates mediation. WERC sends one of its staff members or one of the Commissioners to mediate the dispute.

Provides Mediation-Arbitration

If the dispute remains unresolved after mediation, one or both of the parties may petition for mediation-arbitration. In about 80% of the cases there usually has been some effort at mediation before the parties petition for mediation-arbitration.

After the petition is received by the State Commission the same person who mediated the impasse will investigate the situation. This investigator determines if there has been a reasonable period of negotiation between the parties as required by statute. The investigator tries again to mediate the dispute.

Parties Give Final Offers

If negotiations are still deadlocked after a reasonable period of time, each party must submit final offers to the investigator, stipulating which issues are not at an impasse. Each party has the right to read the other party's offer and, afterwards, to change its own offer.

The investigator will continue to accept offers and exchange them in this way as long as at least one party has indicated a willingness to proceed. The party which wants to change its offer submits its change to the other side. If that does not provoke the other side to make a change, the investigation is usually closed and each party is stuck with those offers as final.

Inspires Change

The usual result of such a method, however, is to inspire the parties to continue making offers after the initial exchange. The parties see more progress than they have seen before. Perhaps the parties realize that ultimately an arbitrator will have to deal with total packages and each side wants its package to be the most reasonable.

The investigation is not closed until both parties have seen one another's final offer and decided not to make any more changes. The statute is designed to avoid surprises, with the goal of voluntary settlements. Its aim is to avoid arbitration. In addition, the more each party finds out about the ultimate position that the other party is going to take, the more likely it is that people who are holding back on compromise will be weeded out. It is no longer in one's self interest to hold back because the object of mediation-arbitration is to make one's offer more reasonable than the other party's offer. There is always a possibility that what has been held back would have been the stroke necessary to create a reasonable package.

Either Party May Object

During this process, either party has the option of claiming that a certain proposal is not a mandatory subject of bargaining. Under the Wisconsin statute, only mandatory subjects of bargain-

proposal can be submitted to mediation-arbitration, and each party is given the right of claiming that a subject is permissive instead of mandatory. The challenged party has the opportunity to amend its proposal to make it a mandatory subject or to drop the item altogether.

If the parties disagree over whether the proposal is mandatory or permissive, either may petition the Commission to make a declaratory ruling. On the other hand, no disagreement may arise. If neither party raises any objection about the status of the proposals, it is presumed that every issue raised is mandatory.

Under the new Wisconsin law the parties take the following steps: negotiation, mediation, petition for mediation-arbitration, investigation, submitting final offers with a stipulation of issues agreed upon, and raising questions over mandatory versus permissive issues, if desired.

Parties Choose Arbitrator

Once the investigation is closed, the investigator reports to the Commission that each party is deadlocked. The Commission certifies the deadlock and provides the parties with a list of five neutral arbitrators. The parties alternately strike names until one neutral is left. This person is appointed as mediation-arbitrator, often called a med-arbitrator. The employer must post a notice that a med-arbitrator has been appointed. Moreover, the statute provides the public with the right to petition the Commission for a public hearing before the med-arbitrator begins mediation. The public has only made this demand, however, in about 10% of the cases in Wisconsin.

The law requires that the med-arbitrator mediate. After the Commission certifies that the parties are deadlocked, no final offers can be changed without the consent of both parties. Generally, unless both parties are able to make their positions a little more reasonable, those positions are frozen.

Stale Varies

During this process, everyone in the dispute is aware that the med-arbitrator must ultimately choose one of the final offers if the parties do not reach a mediated settlement. Some arbitrators don't like this because they prefer to fashion their own remedy. Each med-arbitrator has his or her own style. Some med-arbitrators are noncommittal, concerned about possibly prejudicing the case if it goes to arbitration. This type of med-arbitrator will ask the parties if they have any changes to make. If they say no, arbitration begins. Whereas, other med-arbitrators believe that the intent of the statute is to encourage voluntary settlements. These med-arbitrators first try to mediate.

Individuals vary in their techniques. Some med-arbitrators may even offer their own proposal if they feel there is a possibility of settlement. If no one accepts it, one of the final offers will be chosen. The med-arbitrator notifies the parties that a hearing will be held and that each party should be prepared to present evidence on its final offer. The med-arbitrator no longer acts as a mediator. He or she now becomes an arbitrator. And the parties split the costs of this med-arbitrator.

Parties Present Evidence

Each party presents its evidence, usually in the form of briefs. The med-arbitrator makes a decision on which package is more reasonable, using criteria set forth in the statute. The med-arbitrator must take into consideration:

- the lawful authority of the municipal employer,
- the stipulations of the parties,
- the financial ability of the government unit to meet the settlement costs,
- the interest and welfare of the public.

- wages, hours and conditions of employment of other municipal employees performing similar work in the same community or in private employment in the same or other communities,
- the consumer price index,
- overall compensation being received,
- changes in the foregoing during the proceedings, and
- all other factors normally and traditionally taken into consideration by factfinders and arbitrators.

The Wisconsin law is intended to encourage voluntary settlement, and procedures are built in all along the way to force the parties to do this. The arbitrator will generally devote one day to mediation and another day to an arbitration hearing. In many cases, the med-arbitrator will schedule these events on consecutive days. If the med-arbitrator fails at mediation, arbitration will occur on the following day.

Parties Can Stop Process

The filing of a prohibited practice complaint will not interrupt any med-arbitration process or delay the arbitration decision. The only way a party can stop mediation-arbitration is to question the status of a proposal. A party may raise the question whether an issue is mandatory, permissive, or illegal.

The investigation ceases until the Commission makes a decision about whether the issue is mandatory or not. If the subject is deemed mandatory the med-arbitrator proceeds with the case. If it is ruled permissive, the affected party may change its proposal into a mandatory subject. This may, in turn, provoke the other party to make a change, and the process continues. As stated earlier, the investigation is not closed until either or both parties indicate that they are not going to make any more changes.

Law Penalizes Strikers

Under Wisconsin law, strikes are illegal except in cases where both union and employer withdraw their final offers at the time the arbitration hearing is set. The union may then give a 10-day notice, after which it may legally strike. However, citizens may enjoin the strike if they can show that the strike is harmful to the public health and safety.

The 1978 amended statute sets forth specific penalties for illegal strikes, and for legal strikes which continue after being enjoined. These penalties are far more severe than they were in the previous law. If a strike continues after an injunction, the union automatically loses its fair share and checkoff rights for an entire year.

Each individual who strikes is penalized at the rate of \$10 per day for being on strike. The union is charged \$2 per day for each member on strike up to a maximum of \$10,000. Moreover, the court may impose additional penalties beyond the ones specified in the statute if the union is found in contempt of court. Prior to the 1978 amendments there was a \$250 limit on contempt fines. Such a limit no longer exists. If either of the parties fails to carry out an arbitration award, it must pay civil liability, attorney's fees, and any other costs that the court decides.

Commission Interprets Law

Since the amendments went into effect in 1978, the Wisconsin Employment Relations Commission has had to issue several decisions interpreting the law. One interesting case involved an

employer who wanted the med-arbitrator to choose from three alternative wage proposals instead of only one final offer. After hearing arguments from both sides, the Commission ordered the employer to make one single final offer as provided by the statute. The employer had argued that offering alternatives would allow greater innovation in negotiations. He claimed that innovative approaches to solutions are not possible under the conservative arbitration process.

In another case, an employer said he would not participate in mediation-arbitration until the union showed its final offer to its membership. The Wisconsin Employment Relations Commission ruled that the union was under no obligation to do this as a condition for mediation-arbitration.

The Commission recently ruled that mediation-arbitration must be used when there are impasses over successor agreements, initial agreements, reopener provisions, and multiple-year agreements with wage reopeners. However, the Commission ruled that mediation-arbitration does not apply to disputes over the interpretation of contract language during a contract period. Rather a grievance arbitrator should decide on such disputes.

Declaratory Rulings Increase

One of the most notable differences in public sector labor relations since the 1978 amendments is an increase in requests for declaratory rulings. Declaratory rulings indicate which subjects of bargaining are mandatory, an important distinction because only impasses over mandatory subjects can be submitted to mediation-arbitration.

In 1977 before the law was amended, there were six declaratory rulings; since 1978 there have been 29 such rulings. Each case may involve decisions on the status of many issues. An extreme example is a case in which a party requested a declaratory ruling on 126 different issues before it would continue to negotiate.

Law Discourages Arbitration

What have been the results of mediation-arbitration in resolving impasses in Wisconsin? From January 1, 1978, to September 28, 1979, WERC has received 517 petitions for mediation-arbitration. Of these, 162 are still pending and 355 have been settled.

Of the 355 settlements, 61% were dismissed prior to certification of impasse; that is, a petition for mediation-arbitration was filed, but one of WERC's investigators was able to resolve the dispute through mediation. Four cases were dismissed after the certification of an impasse but prior to appointment of a med-arbitrator. Forty cases were dismissed after the appointment of a med-arbitrator but prior to an award.

Therefore, an analysis of those 355 settlements shows that in only 93 cases was it necessary to carry out the entire process of mediation-arbitration in order to reach a settlement. And of these 93 awards, 24 were consent or split awards. This means that the parties to the dispute reached an agreement on the contract themselves but wanted it in the form of an award. It also might mean that the parties accepted the med-arbitrator's proposal instead of either one of their own final offers. The remaining 69 awards were decided as follows: 35 for the union and 31 for the employer. Seventy percent of the mediation-arbitration cases have dealt with school employees.

Extensive mediation has been carried out by WERC without any petitioning for mediation-arbitration. There were 230 mediation requests during this same time period which resulted in settlement.

In summary, the Wisconsin Employment Relations Commission has been involved with 747 cases since January 1978. Only 93 required a mediation-arbitration award, about 13%. Twenty-four of those decisions were consent or split awards. Therefore, the number of awards has been small in relation to the number of bargaining units in the state and to the number of petitions filed.

Med-Arbitration Alters Bargaining

This does not mean, however, that mediation-arbitration with the threat of binding arbitration has had no effect on collective bargaining in the public sector.

One apparent effect of the mediation-arbitration law has been to benefit weak unions and weak employers. Unions that have not had enough power to win certain provisions that may be standard in other contracts, such as a fair share or just cause clause, are winning these provisions now because many employers feel that they will be awarded anyway through arbitration.

Weak employers confronted with a strong union also benefit. Because only mandatory subjects may go to binding arbitration, these employers will not give in on permissive issues since there is a process to remove these issues from the arbitration process. Thus, the mediation-arbitration procedure provides a balancing of power.

Eliminates Extremes

In the long run, mediation-arbitration also may tend to equalize wage schedules so that extremes do not exist. It appears that one contract will look like all the others after a period of time. Obviously, the people who are on the top would not be compared to the people who are on the bottom during negotiations; the tendency is for people at the bottom to move up. It is difficult for employers to justify that their employees are at the bottom of the wage scale.

Mediation-arbitration also works against unique contracts. If a union has items in its contract that no other union in the state has, it is going to encounter difficulty in trying to retain these items when the employer argues that there is nothing comparable in the state.

Issues Remain the Same

The most common issues reaching mediation-arbitration have not changed. Wages are number one, followed by fair share provisions, and health insurance. The number of items going to arbitration has decreased, however. Approximately three-fourths of the arbitration decisions deal with five or fewer issues. This reduction in issues at impasse may be related to the desire of each party to present a more reasonable final offer than the other side. In coming up with a reasonable package, the more issues there are, the greater the chance of jeopardizing the whole package.

Another result of the newly amended law has been an increase in professional negotiators at the table, especially on the employer's side. Because the law requires many procedural steps and ultimately may result in arbitration, the parties are seeking more professional assistance. To a degree, this reliance on professionals has helped the parties avoid mediation-arbitration. If competent professionals who do their homework are negotiating on both sides of the table, they will have a good idea of the positions which can legitimately be maintained. This makes the parties gravitate towards a realistic position and after going through all the steps of mediation, a settlement is usually reached.

Takes Seven Months

Under the mediation-arbitration provision, it averages about seven months from the time a petition has been filed to the time an arbitration award is made. Unfortunately, this seven-month lag time has had two results. It has caused some parties to settle voluntarily because they dread taking so long to get to arbitration. On the other hand, it has caused other parties to file their petitions for mediation-arbitration prematurely in the hope that by the time they really reach an impasse they will have an investigator all ready to work on their case. Such a reaction may have a chilling effect on the other party which may have been willing to make some progress in negotiations. This desire rapidly disappears once a petition for mediation-arbitration has been filed by the other party. The party

decides instead to develop a position for arbitration, dropping any strategy for a voluntary settlement.

Law Meets Goal

However, one of the primary goals of the mediation-arbitration system in Wisconsin is to eliminate strikes. In the two years since enactment, Wisconsin has had three municipal employee strikes. One lasted only two hours, the time in between mediation sessions. Another strike by a group of six custodians lasted one day. The third strike involves a sewage commission in Milwaukee and has been going for about a month. It is apparent that the new law has met this goal. Strikes have been sharply reduced.



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SB 126

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

FROM: NEA-Alaska

MEMORANDUM OF SUPPORT

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

1. General Reasons to Change the Statute:

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

2. Positive Effect of the Proposed Changes:

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

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

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

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

4. Criticisms from Opponents:

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

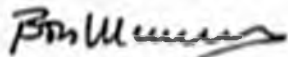
without the need for arbitration. Another argument put forward is that of resisting 'outside' intervention in the dispute. However, as was previously stated, "outsiders" acting as arbitrators are the very people who are effective in the grievance dispute settlement process. Further, school boards are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

5. Other Supportive Data and Information:

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

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

Respectfully submitted:



Robert Manners
Executive Secretary

SFB
127

COMMITTEE REPORT
SENATE

FURTHER: Finance

2/2/81

Date:

3/19/81

Mr. President:

The Committee on COMMUNITY & REG. AFFAIRS has had SB 127
making a special appropriation for a grant to the Interior Villages Assoc.

under consideration and (a majority of the committee) (the committee)
reports it back with the following recommendations:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for _____ same title
- new title
- and recommends _____
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

Robert J. ...

...

...

Colletta

MEMBERS HAVING
OTHER RECOMMENDATIONS:

...

CHAIRMAN

INTERIOR VILLAGE ASSOCIATION
DEVELOPMENT ALTERNATIVES PROGRAM

SCOPE OF WORK - Page 2

Investment evaluation and project financing techniques to participating ARCTA village corporations in Interior Alaska.

The program was developed on the basis of years of experience with the unique village corporation structure, and the fundamental problems which afflict the economic base of Alaska's very small rural communities. The program recognizes the unique role of the individual village corporation assigned by AIA as both a privately-held profit-making corporation and a major force for social improvement in its community.

In an effort to resolve the basic complementary functions of the village corporations, a major feature of the Development Alternatives Program is the concept of the Integrated Village Industry (I.V.I.). The concept will, during the course of the program, be adapted and refined for use by each village corporation in judging both the community value and profit-making potential of individual investment opportunities available to them.

Because of the public funds that are being requested for the program, the requirement that the general projects of the program be useful in dealing with a variety of statewide rural economic development problems and issues is well recognized and is of priority concern to Interior Village Association.

Program performance will be judged on the extent to which the following four general objectives are achieved. These are presented on the following pages, in priority order and with budget amounts for each component should full funding not be obtained.

IVA recognizes the need for this type of program to be implemented with the village corporation board. IVA is committed to the implementation of those objectives regardless of the availability of funds from any single funding source. Perhaps through a "patchwork" of funding, with participation of the village corporation themselves, with all actions their desired economic development goals become this program enabled them to:

- Establish some realistic goals for Development.
- Establish a framework for decision-making (to make the right decision and take the right action).
- Attract Personnel and Procedures as Guidelines.
- Know what resources have potential for Development.
- Create training opportunities for shareholders.
- Develop inter-relationships between villages and resources for joint ventures or better.
- Keep the lines of communication open to all shareholders.

LETTER ON VILLAGE ASSOCIATION
DEVELOPMENT ALTERNATIVES PROGRAM

SUBJECT SUMMARY

The Development Alternatives Program has been designed on two priority levels with separate budgets and scaled-down program components. The expenditures have been identified in this summary and on the attached detail pages, by appropriate letter, in several distinct classifications:

- (P) Personnel: To include wages and fringe benefits of IVA staff. Consultants will be used where staff is not available or does not have necessary expertise.
- (T) Travel: To include travel & per diem of IVA staff and consultants.
- (S) Training Space: For space required to conduct workshops in Fairbanks only.
- (C) Commodities: Any consumable supplies, books, subscriptions, photography expenses, printing costs, traveling materials, audio-visual materials, etc.
- Office Overhead: To include office rent, janitorial expenses, heat, light, telephone costs and long-distance calls, accounting, audit and limited clerical support (figured at 25% of direct expenses).

PRIORITY (A)

This approach would serve ten village corporations, with very limited resources (see explanation by village cooperation). The planning sessions with village corporation boards will be held in Fairbanks, unless travel expenses are picked up by corporations.

LINE ITEM:	I	II	III	IV	TOTAL
PERSONNEL:	9 70,000	931,000	100,000	100,000	1,101,000
TRAVEL:	3,000	3,000	1,000	2,000	9,000
TRAINING SPACE:	3,000	-	-	-	3,000
COMMODITIES:	7,000	3,000	6,000	11,000	37,000
SUB-TOTAL:	123,000	947,000	107,000	113,000	1,190,000
OFFICE OVERHEAD:	11,200	20,875	7,300	4,575	44,000
TOTAL:	134,200	967,875	114,300	117,575	1,234,000

PRIORITY (B)

This approach would serve 11,000 village corporations, with more complete resources available. The planning sessions will be done in the villages, with some travel to the villages throughout the program. The close contact to the villages and communication with the people will be an essential part of this program.

LINE ITEM:	I	II	III	IV	TOTAL
PERSONNEL:	100,000	100,000	103,000	104,000	407,000
TRAVEL:	20,000	3,000	1,000	3,000	27,000
COMMODITIES:	10,000	4,000	17,000	11,000	42,000
SUB-TOTAL:	130,000	107,000	121,000	128,000	586,000
OFFICE OVERHEAD:	11,200	11,375	11,000	14,200	47,775
TOTAL:	141,200	118,375	132,000	142,200	633,775

INTERIOR VILLAGE ASSOCIATION
DEVELOPMENT ALTERNATIVES PROGRAM

OBJECTIVE I AND PROGRAM BUDGET

	PRIORITY (a)	PRIORI (b)
OBJECTIVE I: To engage the village corporations of a selected region (a collection of village communities) into a development planning process.		
TIMING: 12 months		
A. TASKS:		
1. Adapt general training materials and develop planning session agendas to be used for all villages. (24/36 man-days)	\$0,000 P	\$9,0
2. Conduct a 3-5 day planning session with each participating village corporation. 10 villages, 3 day session in Fairbanks 15 villages, 5 day session in village Other expenses	\$5,000 P 3,000 C	\$25,0 15,0
3. Document results of each planning session into a Master Plan book for each corporation. 10 villages @ 3 days 15 villages @ 4 days	\$3,000 P	\$9,0
4. Conduct one 2- or 3-day sub-regional workshop in various areas of the interior, to seek concurrence by participating village corporations in findings and recommendations of the program, and to explore possible joint ventures of neighboring villages. 4 sub-regional meetings (3 days) 7 sub-regional meetings (3 days) Other expenses	\$4,000 P 2,000 T	\$7,00 5,00
B. PRODUCTS:		
1. Planning session training materials	2,000 C	\$,00
2. Audio-visual training materials (slide/tape presentations)	2,000 C	\$,00
3. Suggested policies and procedures for adoption by board/staff	2,000 C	\$,00
SUB-TOTAL	\$65,000	\$84,00
OFFICE OVERHEAD	11,275	21,30
TOTAL	\$76,275	\$107,30

INTERIOR VILLAGE ASSOCIATION
DEVELOPMENT ALTERNATIVES PROGRAM

OBJECTIVE II AND PROGRAM BUDGET

	PRIORITY (a)	PRIORITY (b)
OBJECTIVE II: To systematically study the biological and social surroundings of each community so as to reveal the complementarities (fact-finding and data gathering).		
TIMING: 6 months (months 11 through 18)		
A. TASKS:		
1. To research and provide socioeconomic resource information to each participating corporation. Materials will be prepared in advance of each planning session conducted under Objective I. 10 villages @ 3 man-days 15 villages @ 6 man-days	\$12,500 P	\$22,500 P
2. Identify resources on village or portion-owned land. 10 villages @ 10 man-days 15 villages @ 10 man-days Travel costs @ 1 trip	\$5,000 P 3,000 T	\$7,500 P 5,000 T
B. PRODUCTS:		
1. Economic resource material for each participating corporation	1,000 C	1,500 C
2. A preliminary village profile (maps & overlays) showing land resource information from Task 1) above. (cost of final printing will be requested from other sources)	2,000 C	3,000 C
SUB-TOTAL	\$43,500	\$60,500
OFFICE OVERHEAD	10,275	17,275
TOTAL	\$53,775	\$77,775

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INTERIOR VILLAGE ASSOCIATION
DEVELOPMENT ALTERNATIVES PROGRAM

OBJECTIVE III AND PROGRAM BUDGET

OBJECTIVE III: To describe and analyze the options that exist for import substitution components to the Integrated Village Industry structure.

TIMING: 8 months (months #5 through #12)

A. TASKS:

1. Inventory alternative technology and small industry studies performed by existing development agencies. 20/30 man-days Travel expenses	\$5,000 P 1,000 T	\$7.1 2.1
2. Review existing models for village development attempted in other locations with comparable resources. 20/30 man-days	5,000 P	7.1
3. Adapt research data to village costs and resource potential. 10 villages @ 3 man-days 15 villages @ 4 man-days Consultant fees	7,500 P	15.1 10.6
4. Further development of integrated village industry model to specific data. 10/20 man-days	2,300 P	5.6

B. PRODUCTS:

1. Village economic opportunity study completed and suitable for publication and public distribution.	3,000 C	4.8
2. Alternative development and appropriate technology resource publications accumulated and available for further research	5,000 C	8.6
3. Inventory of state and federal resource people for technical assistance	1,000 C	1.6
SUB-TOTAL	\$30,000	\$60.0
OFFICE OVERHEAD	<u>7,250</u>	<u>15.0</u>
TOTAL	37,250	75.0

INTERIOR VILLAGE ASSOCIATION
DEVELOPMENT ALTERNATIVES PROGRAM

OBJECTIVE IV AND PROGRAM BUDGET

OBJECTIVE IV: To begin implementation of the Integrated Village Industry model.

TIMING: 6 months (months #7 through #12)

A. TASKS:

1. Formulate Integrated Village Industries model for application to development projects proposed by participating villages. 10 corporations @ 2 man-days 15 corporations @ 4 man-days Travel expenses	\$5,000 P 2,000 T	\$15,000 P 4,000 T
2. Select one development project from each of one/two villages	500 P	1,000 P
3. Develop and complete feasibility and financing proposals for selected development projects and secure funding. (Covers IVA staff only--other funding will be secured for actual feasibility study work by consultants)	5,000 P	10,000 P
4. Develop intensive training and technical assistance program for village corporations' designated development managers. 10/20 man-days Travel expenses	2,500 P 500 T	5,000 P 1,000 T
5. Prepare a final report and evaluation of program. 0/12 man-days	2,000 P	3,000 P

B. PRODUCTS:

1. Technical paper suitable for journal publication on the I.V.I. model	5,000 P	8,000 P
2. Publication of a small-scale economic development alternatives handbook.	5,000 C	8,000 C
3. Training and technical assistance materials developed into a format suitable for publication and/or distribution.	5,000 C	8,000 C
4. Final report and evaluation	1,000 C	2,000 C
SUB-TOTAL	\$33,500	\$65,000
OFFICE OVERHEAD	<u>8,275</u>	<u>16,250</u>
TOTAL	41,775	81,250

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AUTHORITY TO ENTER CONTRACT NEGOTIATIONS

This form must be executed prior to entering negotiations regarding PROFESSIONAL SERVICE CONTRACTS when the contract amount is in excess of \$2,000 in an annual period. This includes the PROFESSIONAL SERVICES CONTRACTUAL RELATIONSHIP QUESTIONNAIRE on the back side of this form. Refer to Purchasing Regulations Manual, Chapter 5, for further instructions.

DEPARTMENT: Community & Regional Affairs DATE: July 25, 1980
 DIVISION: Community Planning AMOUNT OF CONTRACT: \$372,500
 PREPARED BY: L. H. Kimball, Jr. PERIOD COVERED FROM: 7/1/80
 TELEPHONE: 279-8636 TO: 9/30/81

Purpose(s) of contract:
To administer a legislative appropriation designed to inventory, analyze,
evaluate, and implement economic development alternatives for interior
communities of Alaska.

We intend to negotiate with the following persons or firms. Agencies SHOULD list at least three choices or explain why it is not possible.

<u>NAME</u>	<u>ADDRESS</u>	<u>ALASKA BUSINESS LICENSE</u>	
<u>Interior Villages Association (nonprofit)</u>		YES <u>N/A</u>	NO <u>N/A</u>
		YES _____	NO _____
		YES _____	NO _____

Budgetary Data:

BRU NAME _____ COMPONENT _____
 8 DIGIT CODE _____

The concurrence of the Department of Administration is sought so that we may proceed to negotiate the above contract.

FOR THE DEPARTMENT:

Marie Matsund
 DEPARTMENT HEAD OR AUTHORIZED REPRESENTATIVE
July 30, 1980
 DATE

CONCUR:
Kenneth R. Ryals
 DEPARTMENT OF ADMINISTRATION
Aug 5, 1980
 DATE

The proposed contract must be forwarded to the Department of Administration after contractor and Departmental signatures have been affixed but prior to execution or effective date, for final approval.

PROFESSIONAL SERVICES CONTRACTUAL RELATIONSHIP QUESTIONNAIRE

PROPOSED CONTRACTOR: Interior Villages Association

1. WILL THE CONTRACTOR BE SUBJECT TO SUPERVISION BY AGENTS, OFFICIALS, OR EMPLOYEES OF THE STATE? X
2. WILL THE STATE BE INVOLVED IN TRAINING THE CONTRACTOR AS TO THE METHODS AND/OR TECHNIQUES THAT ARE TO BE USED TO ACCOMPLISH THE WORK THAT IS TO BE DONE? X
3. WILL IT BE NECESSARY FOR THE CONTRACTOR TO RENDER THE SERVICES PERSONALLY? X
4. WILL THE CONTRACTOR BE HIRING/FIRING, SUPERVISING AND FINANCING PAYMENT OF NON-STATE EMPLOYEES IN CONNECTION WITH THE FULFILLMENT OF THE PROPOSED CONTRACT? X
5. WILL THE STATE RETAIN THE RIGHT TO SPECIFY THE HOURS (E.G., START/STOP TIMES, MINIMUM OR MAXIMUM HOURS, DAYS OF WEEK, ETC.) DURING WHICH THE CONTRACTOR IS TO ACCOMPLISH THE WORK REQUIRED BY THE AGREEMENT? IF SO, WHAT WILL BE THE NATURE OF THE SPECIFICATION? _____ X
6. WILL THE STATE RETAIN THE RIGHT TO SPECIFY THE LOCATION AT WHICH THE CONTRACTOR WILL PERFORM THE REQUIRED SERVICES? X
7. WILL THE STATE RETAIN THE RIGHT TO SPECIFY THE ORDER OR SEQUENCE IN WHICH THE TASKS INVOLVED WILL BE ACCOMPLISHED? X
8. WILL THE CONTRACTOR BE PAID BASED UPON TIME WORKED (E.G., HOURS, DAYS, MONTHS) (IN CONTRAST TO PAYMENT FOR COMPLETION OF A PRODUCT OR, IN THE CASE OF PROGRESS PAYMENTS, A SPECIFIED PORTION OF THE TOTAL PRODUCT)? X
9. WILL THE CONTRACTOR BE REIMBURSED FOR MISCELLANEOUS EXPENSES, SUCH AS TRAVEL, OVER AND ABOVE THE COMPENSATION AGREED UPON FOR THE SERVICES TO BE RENDERED? (CHECK "NOT APPLICABLE" IF NO MISCELLANEOUS EXPENSES, SUCH AS TRAVEL, WILL BE INVOLVED IN ACCOMPLISHING THE WORK TO BE DONE). X
10. WILL THE STATE SUPPLY TOOLS AND MATERIALS NECESSARY FOR THE CONTRACTOR TO ACCOMPLISH THE WORK TO BE DONE? (CHECK "NOT APPLICABLE" COLUMN IF NO TOOLS AND/OR MATERIALS ARE INVOLVED IN THE WORK TO BE DONE). X
11. WILL THE CONTRACTOR BE EXPOSED TO THE RISK OF A FINANCIAL LOSS UNDER THE TERMS OF THE PROPOSED AGREEMENT? X
12. WILL THE CONTRACTOR BE AFFORDED LIABILITY PROTECTION UNDER STATE PURCHASED INSURANCE POLICIES? IF SO, WHAT TYPE OF COVERAGE? _____ X
13. IS THE CONTRACTOR CURRENTLY A PARTY TO AGREEMENTS FOR THE PROVISION OF SIMILAR SERVICES TO NON-STATE ENTITIES? X
14. DOES THE CONTRACTOR MAKE HIS/HER SERVICES AVAILABLE TO THE GENERAL PUBLIC (I.E., MAINTAIN AN OFFICE IN A PUBLIC PLACE, ADVERTISE IN YELLOW PAGES, TRADE JOURNALS, ETC.)? X
15. WILL THE STATE BE SUPPLYING OFFICE OR OTHER WORK SPACE FOR THE USE OF THE CONTRACTOR? (CHECK "NOT APPLICABLE" IF WORK SPACE IS ONLY INCIDENTAL IN PROVIDING THE REQUIRED SERVICES). X
16. WILL THE STATE BE ABLE TO DISMISSE THE CONTRACTOR PRIOR TO COMPLETION OF CONTRACT FOR REASONS OTHER THAN FAILURE TO PERFORM AS SPECIFIED BY THE AGREEMENT OR THE UNAVAILABILITY OF APPROPRIATED FUNDS? X
17. WILL THE AGREEMENT MAKE THE CONTRACTING PARTY LIABLE FOR PAYMENT OF DAMAGES ARISING OUT OF THE FAILURE TO PERFORM? X
18. WILL THE STATE HAVE THE RIGHT OF FIRST CALL ON THE SERVICES OF THE CONTRACTOR? X
19. WILL THE CONTRACTOR BE BOUND TO COMPLY WITH THE GENERAL POLICIES AND PROCEDURES GOVERNING THE CONDUCT OF STATE EMPLOYEES BY THE PROPOSED AGREEMENT? X
20. WHY IS IT DEEMED PREFERABLE TO CONTRACT FOR THE REQUIRED SERVICES INSTEAD OF HIRING AN EMPLOYEE TO PROVIDE THEM?

YES	NO
	X
	X
X	
X	
	X
	X
	X
	X
X	
	X
X	
	X
	X
X	
	X
	X

This short term project does not warrant development of new staff within a State agency. It was not the legislature's intent to do so.

THE ABOVE STATEMENTS ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

Lawrence H. Amiball, Jr.
SIGNATURE

Director
TITLE

7/25/80
DATE

OTHER COMMENTS OR THE ABOVE FIGURES MAY BE APPENDED.

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UACN TSS Tue Aug 05 1980 13:18 Channel 4410 36 Users

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Mail

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TO LYNN VEGENER, DIRECTOR, DIV. ADMIN SVCS
AUGUST 5, 1980 FROM LAURENCE H. KIMBALL, JR. *W.C. for LNK, Jr.*
DIRECTOR, DIV. COMMUNITY PLANNING

SUBJECT: JUSTIFICATION FOR CONTRACTING WITH
INTERIOR VILLAGES ASSOCIATION

AS A FOLLOU UP TO MATERIALS ALREADY SUBMITTED ON THIS
ISSUE I OFFER THIS ADDITIONAL INFORMATION.

The project envisioned in FCCHD-60 IS REFERRED TO AS
"development alternatives program of the interior villages
association." the original concept for such a project de-
veloped from previous program experience of iva working
jointly with the Alaska Renewable Resource Corporation
(ARRC). THE PROGRAM IS DESIGNED TO SUPPLEMENT THE EXISTING
FUNCTION OF IVA AN D TO PROVIDE MANAGERIAL SUPPORT TO RURAL
ENTITIES HAVING ECONOMIC DEVELOPMENT POTENTIAL.

IVA IS IN A UNIQUE SITUATION IN THAT NO OTHER REGION OF RURAL
ALASKA HAS AN ORGANIZATION ESTABLISHED AS A NONPROFIT TO PROVIDE
LAND MANAGEMENT AND ECONOMIC DEVELOPMENT ASSISTANCE TO RURAL
COMMUNITIES AND VILLAGE CORPORATIONS. IN THIS PARTICULAR CASE
IVA REPRESENTS THE VEHICLE WHICH ACTS AS MANAGEMENT STAFF AND
LIAISON BETWEEN POTENTIAL ECONOMIC DEVELOPMENT GROUPS (VILLAGE
CORPORATIONS) AND SUPPORT GROUPS SUCH AS ARRC.

ARRC HAS WORKED WITH IVA ON THIS PROGRAM AND HAS PROPOSED TO
CONTINUE ITS INVOLVEMENT AS PARTY TO A MANAGEMENT TEAM THAT WILL
PROVIDE DIRECTION AND MANAGEMENT LEADERSHIP TO THE PROJECT. THE
MANAGEMENT TEAM WILL CONSIST OF REPRESENTATIVES FROM DCRA, ARRC, AND
IVA. THE MANAGEMENT GROUP WILL REVIEW AND APPROVE WORK PROGRAM(S)
ASSOCIATED WITH THE CONTRACT, ADVISE AND APPROVE ON STAFF QUALIFICATIONS
FOR THE PROJECT AND STAFF HIRED, AND WILL MONITOR AND ADVISE ON THE
PROGRESS OF WORK THROUGH REGULARLY SCHEDULED MEETINGS.

IVA WAS ESTABLISHED IN 1976 UNDER A SET OF BASIC GOALS DESIGNED TO
CONTRIBUTE TO THE IMPLEMENTATION OF THE ALASKA NATIVE CLAIMS SETTLEMENT
ACT THROUGH THE PROVISION OF SUPPORT SERVICES. A GREAT DEAL OF EMPHASIS
HAS BEEN PLACED ON THE DEVELOPMENT OF ECONOMIC STABILITY WITHIN THE
VILLAGE CORPORATIONS CREATED BY ANCSA. THIS OBJECTIVE COMPLEMENTS THE

Justification for Contracting with
Interior Villages Association

The Eleventh Legislature - Second Session - appropriated, via FCCSHB 60, the sum of \$372,500.00 to be used to further enhance ongoing economic development activities in Interior Alaska. The intended recipient of said funds is Interior Villages Association, Inc., a nonprofit organization serving communities of the Interior Region.

In 1979 Interior Villages Association, with assistance from the Alaska Renewable Resources Corporation, developed the framework for a pilot project that is designed to inventory, analyze, and evaluate economic development potentials for predominantly rural communities within the interior. The project addresses new techniques in project financing for rural business ventures and recognizes, to a great extent, the potential role of village corporations formed under the Alaska Native Claims Settlement Act.

Publications, training materials, and economic models produced by this project will be available and applicable to communities and economic development interests throughout the State.

Interior Villages Association is best qualified to carry out the program for the following reasons:

1. Initial development of the program originated in Interior Villages Association and a working relationship has already been established between the Association and the Alaska Renewable Resources Corporation.
2. The proposed program complements existing functions currently carried out by Interior Villages Association and basic staff requirements along with the administrative structure for such a program are already in place.
3. Success of the project relies on the continued availability of technical assistance. Interior Villages Association is the recognized organization that provides such planning and management technical assistance to communities and village corporations of Interior Alaska. Coordination of travel, training sessions, and staff availability connected with the administration of existing programs will enhance this project and undoubtedly decrease overall costs.

by Larry Kimball



CORPORATE DEVELOPMENT AND
TECHNICAL SERVICES FOR
VILLAGE BUSINESS CORPORATIONS

127½ MINNIE STREET
FAIRBANKS, ALASKA 99701
TELEPHONE: (907) 452-1601

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THE DEVELOPMENT ALTERNATIVES PROGRAM
MANAGEMENT, STAFFING, BUDGET, AND CONTRACT

FINAL DRAFT

Introduction

The Development Alternatives Program of the Interior Village Association (IVA) is designed as an intensive 15 month program to provide managerial support, "hands on" technical assistance, and a system of economic development methodology, investment evaluation, and project financing techniques to participating ANCSA village corporations in the Doyon Region of interior Alaska.

The program was developed on the basis of years of experience by IVA and others with the unique village corporation structure, and the fundamental problems which afflict the economic base of Alaska's very small rural communities. The program recognizes the unique role of the individual village corporation assigned by ANCSA as both a privately held profit making corporation and a major force for social improvement in its community.

This recognition is fundamental. In an effort to resolve these often confusing, though basically complementary functions of the village corporations, a major feature of the Development Alternatives Program is the concept of Integrated Village Industry (I.V.I.). The concept, rooted in regional economic development theories of the economic base and export and import substitution, will, during the course of the program, be adapted and refined for use by each village corporation in judging both the community value and profit-making potential of individual investment opportunities available to them.

Because of the public funds in the program, the requirement that the several products of the program be useful in dealing with a variety of statewide rural economic development problems and issues is well recognized and is of priority concern to Interior Village Association.

These products will include:

1. Publication of an Economic Development Handbook for ANCSA village corporations.

2. A standardized policy and procedures manual for use by village corporations suitable for publication.
3. An inventory of local and regional development programs, case studies, and projects in rural areas.
4. A resource and economic opportunity study for interior village corporations, suitable for publication.
5. A series of economic resource information packets for participating village corporations.
6. Training and technical assistance materials compiled into a manual suitable for public use.
7. A technical paper suitable for publication in a professional journal describing the development and application by means of a case study of the Integrated Village Industry model.

Management

The program will be intensive and fast paced in order to achieve its objectives within the 15 month time frame. IVA personnel, the program staff, and associated technical consultants must be fully alert to the ever changing economic, social and political dynamics of the Interior, and ready at all times to provide support and assistance to village corporation boards and management as they deal with increasingly complex and numerous investment opportunities.

The management structure for the program will be rigorous in its imposition of timely performance requirements on its staff and associated consultants, tight fiscal controls, and monthly reports on expenditures of the public funds which finance the program. Such rigor is essential in order to provide the flexibility necessary for response to unanticipated development opportunities as they emerge in participating rural communities.

The program will be under way during the period August 1, 1980, through November 1, 1981. Management oversight and control of program performance will be accomplished through a management by objectives process based on the four primary objectives presented in IVA's proposal for financing.

Interior Village Association anticipates that the following interior village corporations are most likely, possible, and not likely to agree to participate in the program:

<u>Most Likely</u>	<u>Possible</u>	<u>Not Likely</u>
Beaver	Anvik	Arctic Village
Chalkyitsik	Birch Creek	Minto
Circle	Dot Lake	Nenana
Evansville	Eagle	Venetie
Fort Yukon	Healy Lake	Tetlin
Grayling	Holy Cross	
Manley	Rampart	
Northway	Ruby	
Shageluk	Tanacross	
Stevens Village	MTNT	
Tanana	Gana-s'Yoo	
K'oyitl'ots'ina		

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In order to manage the Development Alternatives program, IVA has created the following temporary staff positions. When filled, personnel in these positions will be assigned full-time for 15 months to the program, and will be answerable directly to the IVA President:

1. Program Director
2. Research and Information Officer
3. Publications Assistant and Program Secretary

Current IVA personnel will be invited and encouraged to apply for these positions. Regular IVA staff members may be assigned direct program responsibilities at the request of the Program Director with the concurrence of the IVA President, or on assignment by the President. Time spent by IVA staff on the program will be charged as appropriate to the program on the basis of standard IVA billing procedures, fees and rates.

IVA will seek the concurrence of the State of Alaska in the selection of a Program Director. Because of the pioneering and innovative nature of the Development Alternatives Program, and because IVA has committed itself to finding the "state of the art" in small scale development methods and techniques, technical experts will be solicited world-wide and will be used extensively to work on certain program tasks. Areas of such expertise will likely include:

1. Small and cottage industry development
2. Entrepreneurial development
3. Regional economic development
4. Regional and community planning
5. Renewable resource processing and development
6. International marketing
7. Development financing
8. Management methods and training

Advertisement and solicitation for technical experts in these areas will begin, following the development by IVA of a standard procedure for developing R.F.P.'s, advertising, evaluating, and selecting bids.

Overall budget for the program is as follows:

Personnel:	\$144,726	(38% of total)
Contract Services:	76,518	(21% of total)
Travel per diem:	55,374	(15% of total)
Space & Equipment:	58,394	(16% of total)
Other direct costs:	<u>37,502</u>	(10% of total)
	\$372,514	*(100% of total)

*error due to rounding.

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Program performance will be judged on the extent to which the four general objectives are achieved. These are presented on the following pages and constitute the scope of work for the Development Alternatives Program.

OBJECTIVE I: To engage the citizens of a selected region (a collective of village communities) into a development planning process.

Timing: 12 months - Aug. 1, 1980 to Aug. 1, 1981

Task 1: To conduct a 3-5 day planning session with each participating village corporation. Depending on the number of participating village corporations, as many as four sessions may be required in certain months.

Task 2: To conduct one 2 or 3 day sub-regional workshop in each of the Interior's seven sub-regions to seek concurrence by participating village corporations in findings and recommendations of the program, and to explore possible joint ventures.

- Products:
1. Sample planning session materials.
 2. Audio-visual training materials.
 3. Standard policy and procedure manual for village corporations.

Tentative budget allocation: \$90,612.00

Objective II: To systematically study the biological and social surroundings of each community so as to reveal the complementarities. (Fact-finding and data gathering.)

Timing: 5 months - Aug. 1, 1980 to January 1, 1981.

Tasks: To develop and provide economic resource materials to each participating village corporation. Materials will be prepared in advance of each planning session conducted under Objective I.

- Products:
1. Economic resource materials for each participating village.
 2. Land resource materials for each participating village.
 3. Social characteristics for each participating village.

Tentative budget allocation: \$37,756.00

OBJECTIVE III: To describe and analyze the options that exist for import substitution components to the Integrated Village Industry structure.

Timing: 8 months - Aug. 1, 1980 to March 31, 1981.

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Task 1: Develop economic data base by November 30, 1980.

Task 2: Develop an economic study, resource study and village corporation economic opportunity study by March 31, 1981.

- Products:
1. Economic data base study suitable for publication and public distribution.
 2. Economic study suitable for publication and public distribution.
 3. Resource study suitable for publication and public distribution.
 4. Village corporation economic opportunity study suitable for publication and public distribution.

Tentative budget allocation: \$60,408.00

OBJECTIVE IV: To begin implementation of the Integrated Village Industry model.

Timing: 12 months - Nov. 1, 1980 to Nov. 1, 1981.

Tasks: Formulate Integrated Village Industries model for application to development projects proposed by participating village corporations.

Task: Select one development project in each of two villages.

Task: Develop and complete feasibility and financing proposals for selected development projects, and secure development financing.

Task: Develop intensive training and technical assistance program for village corporations' designated project development managers.

Task: To prepare a final report and evaluation of the program.

- Products:
1. Technical paper suitable for journal publication on the Integrated Village Industry model.
 2. Publication of economic development handbook.
 3. Sample training and technical assistance materials compiled into a manual suitable for publication.
 4. Final report and evaluation.

Tentative budget allocation: \$90,612.00

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THE PUBLIC NATURE OF ANCSA VILLAGE CORPORATIONS

There appears to be a question of legality, of whether public monies can be spent to provide assistance to private, for-profit corporations, such as the ANCSA village corporations in the Interior, as proposed by Interior Village Association. The following are questions being asked of IVA:

- How does this proposal serve the public interest?
- How does technical assistance to private profit corporations serve the public interest?

Prior to answering these questions, there are several terms which need to be defined, and some current trends in public policy to be examined. First, the nature of ANCSA village corporations needs to be examined, from the perspective of ANCSA, the State of Alaska, and from the articles of incorporation of the village corporations themselves. Second, the current attitude of public agencies toward private development activities needs to be examined in light of new legislation and current programs as well as recent recommendations of the Joint Federal-State Land Use Planning Commission. Third, the program of Interior Village Association should be examined as an effort by the village corporations themselves to unify their efforts in implementing a very complex piece of Indian Legislation.

I. Village Corporations. What are they and how are they different from other for-profit business corporations?

In the past, the Federal land settlements with American Indians generally have been administered by tribal governments. Very often these tribal governments have had the dual responsibility of managing the monetary and/or land assets of the tribe and also of providing government services. The tribal governments have a special trust relationship with the Federal government, who oversees the activities of the tribe.]

ANCSA provides a totally new structure for Native claims settlements. To carry out the purposes of the Act, ANCSA called for the creation of Regional Corporations and Village Corporations. The Regional Corporations, of which there were twelve, must be incorporated as Alaska business for profit corporations, and the shareholders of a particular Regional Corporation are the Natives of that region. The corporate form was apparently chosen because of its permanency and its utility in encouraging economic growth. 2

Each Native enrollee had the choice of also enrolling to a village corporation, or becoming an "At-Large" regional corporations shareholder. Most eligible Natives enrolled to both the Regional Corporation and to a village corporation, but a sizeable number of Natives felt they no longer had ties to a village and chose the "At-Large" status which increased their direct monetary benefits from the Act, but left them owning stock in just a regional corporation.

Village corporations had the option (under Section 8 of ANCSA) to become either profit corporations or non-profit corporations (an option not given to the regions). Every village corporation in the State chose to be profit-making in nature, because profit-making corporations can make individual cash distributions to shareholders whereas, non-profit corporations cannot make such distributio to members. Thus, although

it is the opinion of many that many of the village corporations may not be able to make profit because of their limited capital base, it was beneficial to those corporations to retain a profit-making structure so that they can distribute payment to individual village members if they so desire. 3

ANCSA places certain restrictions on village corporations that are not usually found on other for-profit corporations. Sections 3(b) and (c) define who shall be the shareholders of these corporations. Section 5(b) determines how these shareholders will be enrolled and to which corporation (although this was not always followed). Section 7(1) limits the use of Village Corporation funds received under ANCSA until a satisfactory plan for its use is submitted to the regional corporation. Section 8 deals fully with village corporations, subjects their budgets to review and approval by the regions for the first five years, and applies the same stock alienation, stock transfer and annual audit provisions as required of the Regional Corporations under Section 7. Village Corporations shares of stock cannot be sold until 1991, and can only be voted if owned by Alaska Natives as defined in the Act. There are many other generic problems with ANCSA, too numerous to enumerate here, that further limit the ability of the village corporations to achieve the intent of ANCSA, that [Section 2(b)] "the settlement should be accomplished rapidly, with certainty, in conformity with the real economic and social needs of Natives, without litigation, with maximum participation by Natives in decisions affecting their rights and property..."

Although the Settlement Act does not state a reason for having two levels of corporate entities, the obvious function of the Village Corporations is to insure that a portion of the settlement funds reaches the local level. Assuming this to be the goal of the Village Corporations, there is practically no guidance in the Settlement Act as to how the Village Corporations are to fulfill it. 4

"The final feature of the Reg. Corporations distinguishing them from other Alaska business corporations will be their lack of business background or purpose. Most corporations are formed either after the business is a going concern or when there is at least a contemplation of particular business ventures. The ... Corporations, by contrast, will have to develop their business orientation after the fact. A possible effect of this is that a great deal of money may be wasted in the early life of the ... Corporations through poor management and hastily conceived endeavors." 5
The foregoing was actually written about Regional Corporations, who have all the benefits of size. The problems of smaller village corporations can make the negative factors increase exponentially.

The Articles of Incorporation of every village corporation in the Doyon Region contain the following statements of purpose:

1. To act as a Village Corporation under the provisions of ANCSA for the village of _____, as defined in sections 3(c) and 8 of ANCSA.
2. To engage in any activity lawful to a business corporation under the Act, ... so long as such activity is not prohibited by, or inconsistent with, the provisions of ANCSA relating to the powers functions and operations of Village Corporations.
3. To promote the economic, social, cultural, and personal well-being of all Natives ... enrolled to the Native Village of _____, and to engage in any and all lawful activities in furtherance of such purpose. (Emphasis added.)