ALASKA LEGISLATURE COMMITTEE FILES 1981-1982 8672

1472 SHESS SB 126

bargaining agency and the school board shall jointly request the American Arbitration Association or another recognized arbitration association to name an arbitrator.

(c) A mediator designated under (b) of this section shall chair all meetings between the employee bargaining agency and the school board. He shall attempt to resolve the differences between the disputing parties and reach common acceptance of terms and conditions or other items in dispute whenever possible.

(d) The mediator shall have 30 days from his first meeting with the disputing parties to secure agreement between the parties and to reduce the agreed terms, conditions, and other items to a written contract. The employee bargaining agency and the school board may agree to extend the period during which the mediator may secure agreement and reduce the agreed terms, conditions, and other items to a written contract.

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

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

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

Sec. 14.20.574. ARBITRATION. Items at impasse shall be submitted to an arbitrator under this section if the employee bargaining agency and the school board are unable to reach agreement by the 30th day following the first meeting between the employee bargaining agency and the school board with a mediator appointed under AS 14.20.570(c), except that, if the parties mutually agree to extend the period during which the mediator may secure agreement as provided by AS 14.20.570(d),

the extension date agreed to by the parties shall be the date applicable under this section to determine whether arbitration is required.

Sec. 14.20.578. APPOINTMENT OF ARBITRATOR. The mediator appointed under AS 14.20.570 shall serve as arbitrator. However, if the mediator is unable to serve as arbitrator, the employee bargaining agency and the school board shall, within 24 hours of the expiration of the period specified in AS 14.20.574, ask the American Arbitration Association or other recognized arbitration association to name an arbitrator.

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

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

(b) Submission of items to the arbitrator shall be by each party separately. Each submission shall state the final offer on each of the items at impasse, and only on those items, and shall be certified by the authorized representative of the employee bargaining agency or of the school board. The arbitrator shall select on an "item by item" basis the offer which he judges to be the most reasonable and equitable, and shall issue an award incorporating the selected offers without modification. The award of the arbitrator is final and binding on both parties.

(c) The arbitrator may not make an award which will require a municipality to increase its local tax rate to meet the cost of an award.

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

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

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

(2) on grounds specified in AS 09.43.120.

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

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

Sec. 14.20.595. STRIKES. A teacher [may] SHALL not engage in a strike. Upon a showing by a school board or the Department of Education that teachers 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.

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

(b) A school board [may] SHALL not engage in a lockout of its teachers. Upon a showing by an employee bargaining agency that a school board is engaging or about to engage in a lockout, 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 lockout is occurring or is about to occur.

* Sec. 6. AS 14.20.580 is repealed.

* Sec. 7. A right or liability of an employee bargaining agency or a school district arising out of an agreement entered into under AS 14.20.570 - 14.20.580 as these provisions read before their amendment and repeal by this Act is not affected by the enactment of this Act.

* Sec. 8. This Act takes effect immediately in accordance with AS 01.10.-070(c).

Senate Hess Committee members — Please let me know if any problems with this — if none, I'll have put in final form. C. Charlie Parr

Chenoweth -

Original sponsors: Parr, Fischer, Rodey and Stimson

IN THE SENATE

BY THE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

CS FOR SENATE BILL NO. 126 (HESS)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWELFTH LEGISLATURE - FIRST SESSION

A BILL

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

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

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

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

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

(2) may begin at any time before March 1

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

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

(b) When mediation is required or requested under (a) of this section, the employee bargaining agency and the school board shall choose a mediator. If the employee bargaining agency and the school board are unable to agree upon a mediator, they shall jointly request the United States Federal Mediation and Conciliation Service to provide mediation services. If the United States Federal Mediation and Conciliation Service is unable to provide mediation services, the employee

bargaining agency and the school board shall jointly request the American Arbitration Association or another recognized arbitration association to name an arbitrator.

(c) A mediator designated under (b) of this section shall chair all meetings between the employee bargaining agency and the school board. He shall attempt to resolve the differences between the disputing parties and reach common acceptance of terms and conditions or other items in dispute whenever possible.

(d) The mediator shall have 30 days from his first meeting with the disputing parties to secure agreement between the parties and to reduce the agreed terms, conditions, and other items to a written contract. The employee bargaining agency and the school board may agree to extend the period during which the mediator may secure agreement and reduce the agreed terms, conditions, and other items to a written contract.

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

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

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

Sec. 14.20.574. ARBITRATION. Items at impasse shall be submitted to an arbitrator under this section if the employee bargaining agency and the school board are unable to reach agreement by the 30th day following the first meeting between the employee bargaining agency and the school board with a mediator appointed under AS 14.20.570(c), except that, if the parties mutually agree to extend the period during which the mediator may secure agreement as provided by AS 14.20.570(d),

who determines

the extension date agreed to by the parties shall be the date applicable under this section to determine whether arbitration is required.

Sec. 14.20.578. APPOINTMENT OF ARBITRATOR. The mediator appointed under AS 14.20.570 shall serve as arbitrator. However, if the mediator is unable to serve as arbitrator, the employee bargaining agency and the school board shall, within 24 hours of the expiration of the period specified in AS 14.20.574, ask the American Arbitration Association or other recognized arbitration association to name an arbitrator.

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

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

(b) Submission of items to the arbitrator shall be by each party separately. Each submission shall state the final offer on each of the items at impasse, and only on those items, and shall be certified by the authorized representative of the employee bargaining agency or of the school board. The arbitrator shall select on an "item by item" basis the offer which he judges to be the most reasonable and equitable, and shall issue an award incorporating the selected offers without modification. The award of the arbitrator is final and binding on both parties.

(c) The arbitrator may not make an award which will require a municipality to increase its local tax rate to meet the cost of an award.

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

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

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

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

(b) A school board may not engage in a lockout of its teachers. Upon a showing by an employee bargaining agency that a school board is engaging or about to engage in a lockout, 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 lockout is occurring or is about to occur.

* Sec. 6. AS 14.20.580 is repealed.

* Sec. 7. A right or liability of an employee bargaining agency or a school district arising out of an agreement entered into under AS 14.20.570 - 14.20.580 as these provisions read before their amendment and repeal by this Act is not affected by the enactment of this Act.

* Sec. 8. This Act takes effect immediately in accordance with AS 01.10.070(c).

(Does this exist? For by one of made teachers?)

Chenoweth

Original sponsors: Parr, Fischer, Rodey and Stimson

IN THE SENATE

BY THE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

CS FOR SENATE BILL NO. 126 (HESS)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWELFTH LEGISLATURE - FIRST SESSION

A BILL

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

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(2) may begin at any time before March 1

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

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

(b) When mediation is required or requested under (a) of this section, the employee bargaining agency and the school board shall choose a mediator. If the employee bargaining agency and the school board are unable to agree upon a mediator, they shall jointly request the United States Federal Mediation and Conciliation Service to provide mediation services. If the United States Federal Mediation and Conciliation Service is unable to provide mediation services, the employee

w/ in 7 days

X # of days to name the mediator

bargaining agency and the school board shall jointly request the American Arbitration Association or another recognized arbitration association to name an arbitrator.

(c) A mediator designated under (b) of this section shall chair all meetings between the employee bargaining agency and the school board. He shall attempt to resolve the differences between the disputing parties and reach common acceptance of terms and conditions or other items in dispute whenever possible.

(d) The mediator shall have 30 days from his first meeting with the disputing parties to secure agreement between the parties and to reduce the agreed terms, conditions, and other items to a written contract. The employee bargaining agency and the school board may agree to extend the period during which the mediator may secure agreement and reduce the agreed terms, conditions, and other items to a written contract.

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

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(b) A school board may not engage in a lockout of its teachers. Upon a showing by an employee bargaining agency that a school board is engaging or about to engage in a lockout, 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 lockout is occurring or is about to occur.

* Sec. 6. AS 14.20.580 is repealed.

* Sec. 7. A right or liability of an employee bargaining agency or a school district arising out of an agreement entered into under AS 14.20.570 - 14.20.580 as these provisions read before their amendment and repeal by this Act is not affected by the enactment of this Act.

* Sec. 8. This Act takes effect immediately in accordance with AS 01.10.070(c).

Introduced: 1/30/81
Referred: Health, Education & Social Services and Commmunity & Regional Affairs

IN THE SENATE BY PARR, FISCHER AND RODEY

SENATE BILL NO. 126

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWELFTH LEGI LATURE - FIRST SESSION

A BILL

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

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

(b) When mediation is required or requested under (a) of this section, and the employee bargaining agency and the school board cannot agree upon a private mediator, they shall request the United States Federal Mediation and Conciliation Service to serve as the mediator to resolve the dispute.

(c) The mediator so designated by ~~the United States Federal Mediation and Conciliation Service under (b) of this section~~ subject to (b) above shall chair all meetings between the employee bargaining agency and the school board.

He shall attempt to resolve the differences between the disputing parties and reach common acceptance of terms and conditions or other items in dispute whenever possible.

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specified in AS 14.20.574, ask the American Arbitration Association or other recognized arbitration association to name an arbitrator.

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* Sec. 4. A right or liability of an employee bargaining agency or a school district arising out of an agreement entered into under AS 14.20.570 - 14.20.580 as these provisions read before their amendment and repeal by this Act is not affected by the enactment of this Act.

* Sec. 5. This Act takes effect immediately in accordance with AS 01.10.-070(c).

Hold for bonding and bill to be introduced

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M January 28, 1981

SUBJECT: Mediation/arbitration in teachers negotiations (Work Order Number 12-0409)

TO: Senator Charles H. Parr

FROM: John B. Chenoweth
Legislative Counsel

In providing this second draft, I took your blue pencilled instructions as changes to the first draft. Points which appeared in the first draft not specifically addressed by you in your note are retained in this draft rather than deleted.

I am still troubled by one point which I raised in the memo accompanying the first effort. AS 14.20.582(c) and (d) of this version describe standards for the award which an arbitrator is to meet. These are retained from the first draft, for you gave no specific instruction to delete. The reasons or grounds for vacating or reversing an arbitrator's decision are limited to specific provisions in AS 09.43.120 and AS 09.43.130. The "standards" provision of AS 14.20.582(c) and (d) and the limitations imposed by AS 09.43.120 - 09.43.130 are not wholly complimentary, and I am still concerned that the award of an arbitrator which demonstrably fails to meet the standards provision cannot be reversed because of the limitations in AS 09.43. Please review these yourself and see whether you concur. The problem might be overcome by rewriting AS 14.20.586, added by this draft, to read:

"(a) The award of an arbitrator under AS 14.20.574 - 14.20.582 may be vacated by a court

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

(2) only on grounds specified in AS 09.43.120.

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

JBC:ljb

Enclosure

(my bill)

NEA - ALASKA

AFFILIATED WITH THE NATIONAL EDUCATION ASSOCIATION

JUNEAU OFFICE
147 SOUTH FRANKLIN #207
JUNEAU, ALASKA 99801
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ANCHORAGE REGIONAL OFFICE
1411 WEST 33rd
ANCHORAGE, ALASKA 99503
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825 COLLEGE ROAD
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Robert C. Manners
Executive Secretary
Juneau Office

Robert C. Cooksey
Deputy Executive Secretary
Juneau Office

James D. Alter
Field Staff
Juneau Office

Charles L. O'Connell
Deputy Executive Secretary
Anchorage Office

Dianne Anderson
Field Staff
Anchorage Office

Steve Pulkkinen
Field Staff
Anchorage Office

Mary Ann Elninger
Deputy Executive Secretary
Fairbanks Office

TO: Charlie Parr

FROM: NEA/Alaska

SUBJECT: Arbitration, NEA/Alaska Draft

These are some minor changes which may make the arbitration bill more precise. All number references are to the four page draft copy which you and I discussed on Friday.

Page 1 - Rewrite lines 12-20:
Sect. 14.20.570 MEDIATION (a) The employee bargaining agency and the school board may mutually agree to request mediation at any time the two parties wish the assistance of a third party to resolve their differences in negotiations. However, (b) upon certification by either party to the other that good faith negotiations have resulted in an impasse, and upon certification by either party to the other that they cannot agree upon an independent mediator, the following occurs:
(1) Within seven (7) days of the certification, the parties shall jointly the United States Federal . . . . . .

Page 1 - line 28: change (c) to (4)
Page 2 - line 2: change (d) to (5)
Page 2 - line 5: change (e) to (6)
Page 2 - line 13: change "their" to "its"

Respectfully Submitted,

Bob

Bob Manners
Executive Secretary
January 26, 1981

file w/ SB 126 (my bill)

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM January 21, 1981

SUBJECT: Mediation and arbitration in school matters (Work Order No. 12-0409)

TO: Senator Charles H. Parr

FROM: John B. Chenoweth
Legislative Counsel

I apologize for the draft. The model which I was asked to follow was one of the more confusing ones it has ever been my pleasure to have to rely on. I respectfully suggest that we spend some time polishing the draft to do what you want to do rather than merely offering the bill and relying on the committee process.

I think the use of "mediation/arbitration" and "mediator/arbitrator" in the model is indicative of fuzzy thinking regarding the relative roles to be played, and I have endeavored to separate these processes in the draft. The model says that certification of impasse must occur; I have tried to indicate that the certification should go to the commissioner of education so that he could request services of a mediator. Provision for designation of a mediator was not made in the model; I chose to include the commissioner of education as a neutral party, principally because of the likelihood that the mediator will serve also as an arbitrator. If only the requesting party could specify mediation and secure the services of a mediator, there would be a much reduced likelihood of neutrality in mediation or subsequent arbitration.

The arbitration provisions of the bill model make certain assumptions that are not at all necessarily going to occur. Again, I tried to try to fill gaps. I hope that AS 14.20.574 and AS 14.20.578, as appearing in the bill draft, accomplish this purpose. Even so, these provisions are internally inconsistent with the method used to select a mediator in AS 14.20.570. In sec. 570, the commissioner is asked to request the services of a mediator; in sec. 578, we rely on the parties to jointly designate a neutral arbitration

association to settle on a (binding) arbitrator. We do not provide against the possibility that the bargaining agency and the school board cannot agree on selection of an arbitration association. At that point, I assume the matter stalls.

The bill model slipped in a reference to "the economic package . . ." What economic package? The term was not defined. I have ignored the provision for want of knowing what to do with it.

The criteria for arbitration provision of the bill model [subsection (c) on page 2 of that model] are carried forward. There is a conflict here, I think, with another provision borrowed from the model limiting the reasons for vacating, modifying or correcting the arbitration decision. If the arbitrator demonstrably fails to abide by the criteria which are to be the basis of award, still the courts cannot review and revise or reverse because of the limitations of AS 09.-43.120 and 09.43.130. I would think that the "criteria" provision and the judicial review provision might be better related one to the other.

These are the principal problems and concerns I have with the bill as drafted. In all other respects, changes between the model and the draft as presented reflect use of particular points of drafting by the division.

I have included *Sec. 4 principally to protect those who, at the time the bill becomes law, are engaged in mediation and advisory arbitration under current provisions of law.

JBC:jdn

Enclosure

2-16-81

WITNESSES FOR
SENATE H.E.S.S. MEETINGS SB 41
& SB 126

Name	Address/Phone	Representing
Dean Tirador	Panel H-01	HESS
Bob Mannews	NEA/AIC	Juneau - SB 126
Bob Greene	AASB	JUNEAU SB 126

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CA ITOL
JUNEAU ALASKA 9811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM February 23, 1981

SUBJECT: Labor relations between teachers and school boards (CSSB 126)

TO: Senator Charles H. Parr, Chairman
Senate Health, Education and Social Services Committee

FROM: John B. Chenoweth
Legislative Counsel

With reference to the attached committee substitute, I am scratching my head as to the applicablity of the "no lock-out" provision, AS 14.20.610(b), added in * Sec. 5 of the bill. In other provisions, it is fairly clear that, where teachers and school boards are unable to reach agreement on a contract, an agreement will be reached for them and imposed on them. It is reasonable to assume that, if the bill is adopted, teachers will never again be without some sort of contract with their school boards. What, then, is the premium for a school board "locking out" teachers whom they employ (and, presumably, pay a wage fixed on the basis of days of service)?

Just thought I would raise the question because it puzzled me. There is no legal impediment presented by inclusion of the provision.

JBC:ljb

Enclosure

Official Business

Alaska State Legislature

Senate

Committee on

Health, Education & Social Services

Charlie Parr, Chairman
Terry Stimson, Vice-Chairman
Vic Fischer
Tim Kelly
Mike Colletta

Pouch V
State Capitol
Juneau, Alaska 99811

465-4907
465-4908

MEMORANDUM

TO: Senate HESS Committee Members

FROM: Rocky

DATE: February 18, 1981

RE: SB 126 - Binding Arbitration

During the hearing on SB 126, a question was raised as to the amount of time spent by the Federal Mediation Service and their fee for that time.

I telephoned Gene Roehe, the Alaska Commissioner for the Federal Mediation Service. He said his agency spends as little time as possible when handling "public sector" cases, which includes teachers. He explained that his agency is under no legal obligation to participate, but they do reluctantly. Also, there is no fee charged by the Federal Mediation Service.

SB 126 file

STATE OF ALASKA
THE LEGISLATURE

POUCH V - STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM May 26, 1981

SUBJECT: Arbitration of labor disputes involving employees of school districts (Work Order Number 12-1784)

TO: Senator Richard I. Eliason

FROM: Tamara Brandt Cook
Legislative Counsel TBC

You have asked for an analysis of the current law dealing with arbitration of labor disputes involving employees of school districts.

The assembly or council of a municipality does not have statutory authority to require binding arbitration of lab disputes involving employees of school districts. AS 14.-08.091(4) and AS 14.14.060(g) grant authority to school boards to "appoint, compensate, and otherwise control all school employess and administration officers". This authority is somewhat circumscribed by AS 14.20.550, requiring each school board to negotiate on matters involving the employment and professional duties of certificated employees. The Supreme Court has construed this provision to include the following items which must be negotiated: (1) salaries, (2) fringe benefits, (3) the number of hours worked, and (4) the amount of leave time. Other items such as class size, pupil-teacher ratio, selection of instructional materials, have been held not to be negotiable. Kenai Peninsula Borough School District v. Kenai Peninsula Educ. Ass'n., 572 P.2d 416 (Alaksa 1977).

If negotiations are not successful, the employee bargaining agency or a school board may request mediation, however the mediation report may be accepted or rejected by either party. If the final mediation report is rejected the governor may appoint an arbitrator under AS 14.20.580(c), but the arbitrator may only make recommendations. This procedure

does not require binding arbitration at all, although a school board under its general authority to control school employees is not precluded from entering into an agreement with an employee bargaining agency which includes a provision for binding arbitration.

The only statute which mandates binding arbitration in disputes involving employees of school districts is AS 14.-20.590. Negotiations agreements are required to provide for grievance procedures for certificated staff which include binding arbitration as the final step. However, "grievances" are to be defined by the agreements themselves, so school districts retain considerable control over the types of situations which will ultimately lead to binding arbitration. For example, under one grievance procedure agreement, "grievance" was defined in a way which excluded termination of employment, so nontenured teachers could not use the procedure to challenge their nonretention. Van Gorder v. Matanuska-Susitna Borough Sch. Dist., 513 P.2d 1094 (Alaska 1973).

TBC:ljb

NEA - ALASKA

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February 16, 1981

The Honorable Charlie Parr
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Dear Senator Parr:

The attached is a summary of the perspective of NEA-Alaska relative to the teacher bargaining law, and specifically SB 126.

We hope that it will provide useful background information for members of the HESS Committee.

Thank you for this consideration.

Sincerely,

Robert Manners
Executive Secretary

RM:jw

Attachment

SB 125, (cont'd)

Provides Act takes effect immediately.

Introduced January 30 and referred to Finance.

Labor Relations (teachers & sch. dists.)

SENATE BILL NO. 126, by Senators Parr, Fischer and Rodey. Relates to labor relations involving teachers and school districts. Repeals and reenacts AS 14.20.570 (Teachers and School Officials. Mediation) by stating that mediation between employee bargaining agency and the school shall begin if the parties have failed to negotiate a collective bargaining agreement before March 1, and that they may begin at any time before March 1 if the employee bargaining agency and the school board mutually agree or if the agency and board certifies to the other party that, in its opinion, good faith negotiations between the parties are at an impasse and the services of a mediator are necessary to resolve the dispute. (section referred to presently has no set date for beginning of negotiations). Provides that agency and board shall request the services of the United States Federal Mediation and Conciliation Service to act as mediator to resolve the dispute, and that mediator shall have 30 days from his first meeting with disputing parties to secure agreement and a written contract. Provides for extension of mediation period if mutually agreed to by both parties involved.

New sections added to AS 14.20 relating to arbitration, stating that items at impasse shall be submitted to an arbitrator if the agency and board are unable to reach an agreement by the 30th day of negotiations or by the end of the extension period mutually agreed upon. States that mediator appointed by the U.S. Federal Mediation and Conciliation Service shall serve as arbitrator, or if unable, the agency and board shall ask the American Arbitration Association or another recognized arbitration association to name an arbitrator. Provides arbitrator shall make one good faith effort to secure negotiated agreement between parties, and if he cannot he shall select on an "item by item" basis the offer which he judges to be the most reasonable and equitable, and shall issue an award incorporating the selected offers without modification. States that the award of the arbitrator is final and binding on both parties. Provides arbitrator may not make an award which will require a municipality to increase its local tax rate to meet the cost of an award. Provides for court review of award. Repeals AS 14.20.580, The mediation report. States "A right of liability of an employee bargaining agency of a school district arising out of an agreement entered into under AS 14.20.570 - 14.20.580 as these provisions read before their amendment and repeal by this Act is not affected by the enactment of this Act. Provides Act takes effect immediately.

Introduced January 30 and referred to HESS, then to Community & Regional Affairs.

SB 126

board or its representatives within 20 days after receiving a written request. The school board and the employee organization may not select more than five representatives each to negotiate for them.

(e) The negotiating meeting may be held in executive session upon mutual agreement of both parties, but all final agreements shall be made at a public meeting of the school board.

(f) Nothing in this section shall be construed to prevent certificated administrative personnel groups, including principals and assistant principals, from having the right to negotiate independently of the other certificated personnel if they choose to do so as the result of a secret ballot. (§ 1 ch 18 SLA 1970; am § 1 ch 43 SLA 1971)

Effect of amendment. — The 1971 amendment added subsection (f).

Repealed

Sec. 14.20.570. Mediation. (a) Upon the written request for mediation by an employee bargaining agency or a school board, and upon certification by the requesting party that the parties cannot agree on an independent private mediator and that good faith negotiations have terminated in an impasse, the following occurs:

(1) Within seven days of the certification the requesting party shall ask the United States Federal Mediation and Conciliation Service to serve as the agency to resolve the dispute.

(2) The mediator shall chair all mediation meetings between the disputing parties and attempt to resolve the differences between the disputing parties and reach common acceptance of terms and conditions or other items in dispute wherever possible.

(3) Within 30 days of the initial meeting of the parties to the dispute the mediator shall have reduced all the agreed terms, conditions and other items to a written contract. If mutually agreed the period for reporting the contract to both parties may be extended.

(4) Each party to the dispute may select a team of not more than five persons to present the evidence, thinking and position of the group they represent, to the mediator.

(b) If the mediation meetings are held during the school day, teachers representing an employee bargaining agency shall be released from classroom or other assigned duties without penalty or loss of pay. (§ 1 ch 18 SLA 1970; am § 1 ch 201 SLA 1975)

Effect of amendment. — The 1975 amendment, effective July 1, 1975, rewrote this section.

Repealed

Sec. 14.20.580. The mediation report. (a) Within 10 days each party to the dispute shall accept or reject in total the mediation report.

(b) If rejected by either party, the mediator shall have an additional five days to review the objections and prepare a final report.

(c) If the final report is rejected by either side, the governor may appoint an advisory arbitrator to review the issues and make recommendations for solution. (§ 1 ch 18 SLA 1970; am § 2 ch 201 SLA 1975)

Effect of amendment. — The 1975 amendment, effective July 1, 1975, rewrote this section.

Sec. 14.20.590. Grievance procedures. Negotiations agreements executed after the effective date of this Act shall define "grievances" and provide for grievance procedures for the certificated staff. The grievance procedures shall provide that the final step in the procedure shall be binding arbitration. The negotiations agreement shall provide a method for the selection of an arbitrator. (§ 1 ch 18 SLA 1970; am § 8 ch 201 SLA 1975)

Effect of amendment. — The 1975 amendment, effective July 1, 1975, inserted "executed after the effective date of this Act" and "define 'grievances' and" in the first sentence and added the second and third sentences.

Sec. 14.20.600. Individual cases. Nothing in §§ 550 — 590 of this chapter prohibits an employee from addressing a school board, as an individual, through the regular procedures of the school board for hearing individual cases. (§ 1 ch 18 SLA 1970)

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

Article 7. Interstate Agreement on Qualification of Educational Personnel.

Section
620. Entry into agreement
630. Terms and provisions of agreement
640. Designated state official to make contracts
650. Filing and publishing of contracts

Sec. 14.20.620. Entry into agreement. The Interstate Agreement on Qualification of Educational Personnel is enacted into law and entered into in behalf of the State of Alaska with all other states and jurisdictions legally joining in it in a form substantially as contained in § 630 of this chapter. (§ 1 ch 83 SLA 1970)

Revisor's note (1970). — In ch. 83, SLA 1970, AS 14.20.620, 14.20.630, 14.20.640 and 14.20.650 were incorrectly designated AS 14.20.630, 14.20.630, 14.20.640 and 14.20.650, respectively, and Article 7 was designated Article 6.

(This material furnished by
(Bob Green, Assn. of Alaska
(School Boards.

EMPLOYEE RELATIONS GUIDE

Section 1

IOWA PUBLIC EMPLOYMENT RELATIONS ACT

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. SB 126
Title Relating to labor relations involving teachers & school districts.
Requested by Parr, Fischer and Rodey Date

II. FISCAL DETAIL
Agency Affected Department of Education
Program Category Affected N/A
BRU, Program, or Subprogram(s) Affected N/A
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL						

FUNDING (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

This bill has no fiscal impact.

IV. DATE 2/18/81 PREPARED BY Steve Hole
AGENCY Department of Education
PHONE 465-2800

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

JAY S. HAMMOND
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

Rock - hold for binding arbitration bill - c

January 20, 1981

The Honorable Charles H. Parr
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Senator Parr:

In response to concerns expressed regarding the adequacy of the collective bargaining law for certificated employees of school districts, Governor Hammond established, by Administrative Order dated April 10, 1980, a Blue Ribbon Commission to find alternatives to impasse in certified staff-school board negotiations.

The Commission was unable to reach a consensus on specific matters, but did agree on some general points. Enclosed for your information are the majority and minority reports of the Commission.

If you have any questions regarding the Commission or its report, please direct them to Carole Burger, Governor Hammond's Special Assistant for Human Services.

Sincerely,

Keith W. Specking

Keith W. Specking
Legislative Assistant
to the Governor

SUMMARY OF FINDINGS AND RECOMMENDATIONS

Findings

1. It was generally agreed that the collective bargaining process, as it is currently designed in the statute that provides for negotiations between certificated employees and school administrations, is too long.

2. Article 6 (Sec. 14.20.550-610) Negotiations and Mediations, is vague and ambiguous.

3. Article 6, as currently written, does not address this policy question of how the negotiations process should affect the student and the general public.

Recommendations

1. The Teacher Bargaining Law should include the following: A Policy Statement, Employees' Rights Statement, and a Management Rights Statement.

2. The Teacher Bargaining Law should provide for an Administrative Agency to assist in the implementation of the statute.

3. The Teacher Bargaining Law should identify the steps in the negotiations process and provide clear time lines to guide the negotiations process.

4. The Teacher Bargaining Law should provide for finality on matters of salary and benefits.

5. The Teacher Bargaining Law should address strikes and lock-outs as they relate to the collective bargaining process at the elementary and secondary school levels.

PREFACE

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

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

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

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

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

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

BACKGROUND

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

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

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

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

COMMISSION ACTIVITIES

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

Survey Questionnaire

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

Parent Members Conduct Interviews

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

Presentations by Individuals Involved in the Labor Relations Process

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

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

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

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

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

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

Review of Statutes and Documents from other Jurisdictions

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

FINDINGS

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

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

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

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

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

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

RECOMMENDATIONS

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

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

   a. The legislative intent of the law.

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

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

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

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

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

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

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

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

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

   a. Determine standards of educational services.

   b. Select employees.

   c. Direct the work of its employees.

   d. Take disciplinary action.

   e. Discharge employees as provided by law.

f. Determine the programs in the district.

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

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

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

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

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

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

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

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

The Need for Compulsory Arbitration

DR. M. J. FOX, JR., P.E.
Associate Professor
of Industrial Engineering
Texas A&M University

DR. L. B. MC DONALD
Human Factors Specialist
Midwest Research Institute
Kansas City, Mo.

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 69% 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. Raskin [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. Raskin [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 . as 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.

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 [illegible]. 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 exhorbitant 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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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 add new dimensions to these approaches. Brief descriptions of these follow.

New Laws Involving Interest Arbitration

MASSACHUSETTS[1]

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 and firefighters."

The committee consists of 13 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 JERSEY[2]

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

[1]Developed from state law and from Government Employee Relations Report.

[2]Prepared by Jeffrey B. Tener, Chairman, New Jersey Public Employment Relations Commission.

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 resolve 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 permissive 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 to be submitted to the arbitrator as a package are defined as including "those items which have a direct relation to employee income including wages, salaries, hours in relation to earnings, other forms of compensation such as paid vacation, holidays, health and medical insurance, and other 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 true 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.

WISCONSIN[3]

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.

[3]Developed from state law and from Government Employee Relations Report.

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 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 unique offer provision 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.

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 addictive 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 total 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. L[illegible] Associate Professor, New York State School of I[illegible]al and Labor Relations, Cornell University, and Th[illegible]as A. Barocci, Assistant Professor of Industrial Relations, Alfred P. Sloan School of Management, Massachusetts Int[illegible]te 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 finances, 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 deals with the effect of arbitration on salaries. The authors cited two other studies by Stern *et al* of the ex[illegible]e in Wisconsin, Michigan, and Pennsylvania and L[illegible]han *et al* of the experience of New York. (The results of the Kochan study are included in the discussion 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 positive 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. Rehmus, 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 the employees engaged as policemen or in firefighting or subject to the awards 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, "addictive effect" the statute might be having, though it is probably present in some large cities.

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

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] From paper prepared for 30th annual meeting of the Industrial Relations Research Association, December 28, 1977. Full text to be published in proceedings of meeting.

INTEREST ARBITRATION—VOLUNTARY AND MANDATORY—IN PUBLIC SECTOR LABOR RELATIONS[5]

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

[5]Developed from state laws and summaries provided by Government Employee Relations Rep. [illegible] Bureau of Labor Statistics, U.S. Department of Labor

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

MICHIGAN	Police and firefighters and emergency medical service personnel	Either party may petition MERC if dispute not resolved within 30 days of submission to mediation and factfinding or within additional periods to which parties agree. Award 30 days after conclusion of hearing, or such additional time agreed to by parties. Hearings must be concluded within 30 days unless parties otherwise agree.	Each party selects one member; they select neutral chairman. Commission submits list. Parties share costs equally. Permanent panel maintained by Commission.	Lawful authority of employer. Stipulation of parties. Interest & welfare of public. Ability to pay. Comparison with public and private sector workers doing similar work. Cost of living. Overall compensation. Changes in circumstances during arbitration. Other factors normally considered.	Each party submits final offer on economic issues. Panel selects a final offer by issue.
7. MINNESOTA	All public employees except charitable hospital employees	Either party may request arbitration. Award 10 days after conclusion of hearing, or by last date employer is required to submit its tax levy or budget or certify its taxes, or by Nov 1, whichever date is earlier.	May be tripartite or single arbitrator. PERB submits list of 7 names. Parties share costs.		Conventional arbitration used.
? -8. MONTANA	All public employees	Parties may voluntarily use arbitration.			
NEBRASKA	All public employees, including public utilities.	Court of Industrial Relations holds hearing to determine wages, hours and conditions of employment.		Comparison with employees having similar skills and working conditions. Overall compensation.	
? NEVADA	Local government employees, teachers and state nurses.	Parties may agree in advance to be bound by all or part of factfinding report. Governor has emergency power to order report final and binding at request of either party prior to May 1, based on public interest, fiscal impact and public safety.	Parties select impartial factfinder. If unable to agree, American Arbitration Association submits list. Parties share costs equally.	Ability to pay must be established first; then normal standards used in interest disputes applied.	
	Firefighters	If parties do not agree to binding fact finding 10 days after report, dispute is submitted to arbitrator. Hearing held within 10 days; parties may have additional 30 days for negotiations prior to submitting final offer. Effective 7/1/77 exp 7/1/81.	If parties unable to agree on arbitrator, American Arbitration Association submits list. Costs shared equally.		Arbitrator selects final offer of one of parties.
? - 10. NEW HAMPSHIRE	All public employees	Voluntary arbitration on non cost items.			
NEW JERSEY	Police and firefighters	If parties fail to agree on terminal procedure for impasse 50 days prior to budget submission date, arbitration is imposed. Arbitration limited to required scope of collective negotiations except parties may agree to submit one or more permissive subjects. Prior to start of proceeding, parties submit final offer in two separate parts: single package on all economic issues and individual issues not included in economic package set forth separately by issue.	May be tripartite or single arbitrator selected from special panel of arbitrators maintained by Commission. Parties share costs.	Public interest & welfare. Comparison with other public employees in similar jurisdictions and with comparable private employment and public and private employment in general. Overall compensation. Stipulations of parties. Lawful authority of employer. Financial impact on residents and taxpayers. Cost of living. Continuity and stability of employment.	Last offer of either party on economic issues as single package. Last offer of either party on non-economic items on issue-by-issue basis.
NEW MEXICO	State employees	Prohibited except by direction of State Personnel Board. Costs shared equally by parties.			
? -11. NEW YORK	All public employees except New York City	Voluntary arbitration may be used by anyone.			
	Police and firefighters (Provisions expire July 1, 1979)	If mediator does not settle dispute within 15 days after appointment, either party may seek arbitration.	Parties select one member; if unable to select neutral chairman, PERB submits list. Parties pay own member and share cost of neutral member.	Comparison with other public and private sector employees doing similar work in comparable communities. Public interest & welfare. Ability to pay. Comparison of skills, hazards and qualifications to other trades or professions. Other factors normally considered.	Panel uses conventional arbitration, majority vote.
	New York City employees	Board of Collective Bargaining may appoint impasse panel to do factfinding. Either party may reject any part of report and appeal to BCB for review. BCB holds hearings and may modify report. Board's decision on parties. Board may not alter salary and increment structure may agree to use arbitration rather than Board.		Comparison with other public and private sector employees. Overall compensation. Cost of living. Other factors normally considered. Public interest and welfare.	

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

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

(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 that 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 employes. 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 case load 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 role, 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 processes 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 negotiaton experiences in the first round 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 that a dispute be referred back to the parties for a limited period of time.

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

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

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

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

In early December 1976, PERB sponsored a symposium on police and fire fighter arbitration which used the Kochan study as the local 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 procedures. 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 7½% 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 fire 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

The law was passed in 1973 and became effective on about June 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.

January 1980

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

The Teacher Organization Perspective

CHARLES N. LENTZ*

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

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

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

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

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

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

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

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

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

The Minnesota Experience

The union view of arbitration under the Minnesota PELRA has been stated in considerable detail in an earlier article[2] printed in this journal. The article emphasized that, while developing case law was favorable to the unions' positions on scope of negotiations and arbitrability, the procedures of the PELRA advantaged the employer by permitting untimely delays in bringing

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

[2] CHARLES N. LENTZ, *Arbitration of Public Employment Contract Disputes: The Minnesota Experience, 1972-73. A Union Perspective*, Journal of Law and Education, Vol. 4, Number 4, October, 1975.

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

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

The effectiveness of the arbitration process is key to the bargaining behavior of the parties and ultimately to a reasoned determination on the questions of equity. MEA is a member of an alliance[1] of nineteen public employee unions which represent approximately five thousand professional employees of the State. The almost universal opinion of the union leaders participating in the alliance is that conventional arbitration under the PELRA is certainly weighted in favor of the employer and consequently should be avoided if at all possible. However, avoiding arbitration can be a futile effort: employers can petition for arbitration and, unlike the employer, the employee organization has no option but to submit.

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

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

	1977-79 Contract	1979-81 Contract[2]
Arbitration requests		
Petition by teachers' Assoc.	46	3
Petition by Boards	3	8
Actual Usage		
Hearing held, award issued	16	2
Settled prior to hearing	28	2
Strikes	5	—

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

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

The Iowa Experience

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

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

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

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

The Wisconsin Experience

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

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

The Wisconsin Education Association Council (WEAC) reports that mediation-arbitration has worked well from the organization's perspective.[6] Since the law was amended in 1978, the WEAC has had 68 teacher contracts submitted to arbitration. Of that number, twenty-one awarded the WEAC

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

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

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

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

This pattern of an essentially even split between employer and employee positions is borne out by the general statistics on all public employee bargaining under the statute since 1978 through June 30, 1979.[1]

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

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

Conclusions

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

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

[1] *Interim Report to the Legislature General Special Committee*, prepared by the Wisconsin Center for Public Policy, October 12, 1979

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

Secondly, there is the matter of political pressure generated by the parties and the arbitrator's personal view of the public good. Few arbitrators in Minnesota depend upon arbitration service for a living, but many view the work as a substantial supplemental income which they understandably wish to protect. Consequently, the desire to remain competitive through the arbitrator selection process can create a compulsion to remain cautiously attached to the status quo. The status quo generally conforms more comfortably with the employer's position than with the union's, since it is the union which has been seeking change (improvement) through its bargaining demands. In addition, arbitrators seem to view the public employer as a universal entity rather than as an individual county, municipality, or school district. Consequently, the arbitrator is inclined, perhaps subconsiously, to grant deference to the employer.

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

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

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

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

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

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

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

> If there is a significant chilling effect, we would expect that a large number of issues have been decided by arbitrators during the five year period. Through the 1976 negotiations, 32 percent of the final offer awards involve only one issue, and 76 percent of the total number of arbitrations involved three or fewer issues. Evidence supporting the absence of the chilling effect was also found in reading each of the awards. In over half a dozen instances, the case was resolved at the arbitration hearing.[1]

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

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

[1] Craig A. Olson, *Does 'final offer' allow the Bargaining that Conventional Arbitration Chills?* Monthly Labor Review, May, 1979, page 28. Mr. Olson reviews the Wisconsin statute covering other than municipal employees such as teachers. The final offer arbitration model was first used with these units before it was later extended to municipal employees in 1978.

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

JAY S. HAMMOND
GOVERNOR

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STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 20, 1981

The Honorable Charles H. Parr
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Senator Parr:

In response to concerns expressed regarding the adequacy of the collective bargaining law for certificated employees of school districts, Governor Hammond established, by Administrative Order dated April 10, 1980, a Blue Ribbon Commission to find alternatives to impasse in certified staff-school board negotiations.

The Commission was unable to reach a consensus on specific matters, but did agree on some general points. Enclosed for your information are the majority and minority reports of the Commission.

If you have any questions regarding the Commission or its report, please direct them to Carole Burger, Governor Hammond's Special Assistant for Human Services.

Sincerely,

Keith W. Specking

Keith W. Specking
Legislative Assistant
to the Governor

SUMMARY OF FINDINGS AND RECOMMENDATIONS

Findings

1. It was generally agreed that the collective bargaining process, as it is currently designed in the statute that provides for negotiations between certificated employees and school administrations, is too long.

2. Article 6 (Sec. 14.20.550-610) Negotiations and Mediations, is vague and ambiguous.

3. Article 6, as currently written, does not address this policy question of how the negotiations process should affect the student and the general public.

Recommendations

1. The Teacher Bargaining Law should include the following: A Policy Statement, Employees' Rights Statement, and a Management Rights Statement.

2. The Teacher Bargaining Law should provide for an Administrative Agency to assist in the implementation of the statute.

3. The Teacher Bargaining Law should identify the steps in the negotiations process and provide clear time lines to guide the negotiations process.

4. The Teacher Bargaining Law should provide for finality on matters of salary and benefits.

5. The Teacher Bargaining Law should address strikes and lock-outs as they relate to the collective bargaining process at the elementary and secondary school levels.

PREFACE

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

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

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

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

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

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

BACKGROUND

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

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

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

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

COMMISSION ACTIVITIES

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

Survey Questionnaire

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

Parent Members Conduct Interviews

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

Presentations by Individuals Involved in the Labor Relations Process

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

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

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

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

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

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

Review of Statutes and Documents from other Jurisdictions

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

FINDINGS

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

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

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

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

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

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

RECOMMENDATIONS

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

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

   a. The legislative intent of the law.

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

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

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

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

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

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

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

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

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

   a. Determine standards of educational services.

   b. Select employees.

   c. Direct the work of its employees.

   d. Take disciplinary action.

   e. Discharge employees as provided by law.

f. Determine the programs in the district.

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

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

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

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

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

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

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

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

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

November 1980

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F VIEW OF SURVEY RESPONSE

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

	Yes	No
Total Response	10	15
Community College	5	8

2. Does the current negotiations process take too long?

	Yes	No
Total Response	24	1
Community College	13	0

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

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

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

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

MAJORITY REPORT PRESENTED BY
THE PARENT MEMBERS

PARENT MEMBERS' RECOMMENDED PROCEDURES
FOR AMENDING ARTICLE 6

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

Public Education

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

Work Stoppages

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

Specific Negotiation Steps and Time Frames

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

Arbitration Options

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