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Effect of amendments. — The 1980 amendment substituted "the pay plan for state employees in AS 39.27.011(a)" for "AS 39.27.010" at the end of paragraph (7) of subsection (a).

Editor's notes. — The revisor of statutes, under the authority of AS 01.05.031 and § 4, ch. 58, SLA 1982, deleted "of

education" following "commissioner" in subsection (a)(4) and subsection (b), and, in subsection (a)(7), substituted "executive secretary" for "him" and "executive secretary's" for "his."

Legislative history reports. — For report on ch. 77, SLA 1972 (SB 120), see 1972 House Journal, p. 1208.

Sec. 14.20.475. Applicability of the Administrative Procedure Act. The Administrative Procedure Act (AS 44.62) applies to regulations and proceedings under AS 14.20.370 — 14.20.510. (§ 5 ch 9 SLA 1975)

Sec. 14.20.480. Effect of standards. Members of the teaching profession are obligated to abide by the professional teaching standards adopted by the commission. (§ 35 ch 98 SLA 1966)

NOTES TO DECISIONS

Applied in Renfree v. Green. Sup. Ct. Op. No. 225 (File Nos. 4394, 4481), 626 P.2d 1068 (1980).

Sec. 14.20.500. Support. In addition to available state funds, the commission shall also be financed by members of the profession in accordance with regulations adopted by the department including, if necessary, an increase in the fees for certificates. (§ 35 ch 98 SLA 1966; am § 1 ch 73 SLA 1973)

Revisor's notes. — The word "adopted" was substituted for "promulgated" by the revisor of statutes under AS 01.05.031.

Sec. 14.20.510. Short title. AS 14.20.370 — 14.20.510 shall be known as the Professional Teaching Practices Act. (§ 35 ch 98 SLA 1966)

Article 6. Negotiation and Mediation.

Section
550. Negotiation with certificated employees
555. Optional coordinated employee negotiations
560. Teachers' bargaining groups and meetings with the groups

Section
570. Mediation
580. The mediation report
590. Grievance procedures
600. Individual cases
610. Legal responsibilities of boards

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Legislative history reports. — For report on ch. 18, SLA 1970 (HB 391 am S), see 1970 Senate Journal, p. 296.

Opinions of attorney general. — While these provisions waive the state's sovereign immunity and that of its political subdivisions from having to bargain collectively with teachers in the public schools, they do not address, expressly or

even impliedly, any right to strike on the part of teachers of school districts. May 19, 1977, Op. Att'y Gen.

Teachers of school districts do not presently have the right to strike because the state has not waived its or its political subdivisions' immunity from strikes by teachers. May 19, 1977, Op. Att'y Gen.

Collateral references. — 48A Am. Jur. 2d Labor and Labor Relations, §§ 1727 — 1775.

51A C.J.S. Labor Relations, § 402.
Right of school authorities to make membership or nonmembership in teachers' association or other organization

a condition of employment as a teacher. 72 ALR 1225.

Bargainable or negotiable issues in state public employment labor relations. 84 ALR3d 242.

Union security arrangements in state public employment. 95 ALR3d 1102.

Sec. 14.20.550. Negotiation with certificated employees. Each city, borough and regional school board, shall negotiate with its certificated employees in good faith on matters pertaining to their employment and the fulfillment of their professional duties. (§ 1 ch 18 SLA 1970; am § 3 ch 71 SLA 1972; am § 21 ch 124 SLA 1975)

NOTES TO DECISIONS

Constitutionality. — This section and AS 14.20.610 state two goals which apparently conflict, but since the supreme court construes this section fairly narrowly, it finds no constitutional infirmity in this section and AS 14.20.610. *Kenai Peninsula Borough School Dist. v. Kenai Peninsula Educ. Ass'n*, Sup. Ct. Op. No. 1537 (File Nos. 2470, 2492, 2563), 572 P.2d 416 (1977).

Requirements of section. — This section merely requires a school board to negotiate with a union. It does not require a board to accept any particular proposal a union might offer. It does not require, and probably does not permit, a board to delegate to a union the sole power to make any decision. *Kenai Peninsula Borough School Dist. v. Kenai Peninsula Educ. Ass'n*, Sup. Ct. Op. No. 1537 (File Nos. 2470, 2492, 2563), 572 P.2d 416 (1977).

As to matters which affect educational policy and are, therefore, not negotiable, there is nevertheless

implicit in the Alaska Statutes the intention that the school boards meet and confer with the unions. *Kenai Peninsula Borough School Dist. v. Kenai Peninsula Educ. Ass'n*, Sup. Ct. Op. No. 1537 (File Nos. 2470, 2492, 2563), 572 P.2d 416 (1977).

Negotiable items. — Salaries, fringe benefits, the number of hours worked, and the amount of leave time are negotiable. *Kenai Peninsula Borough School Dist. v. Kenai Peninsula Educ. Ass'n*, Sup. Ct. Op. No. 1537 (File Nos. 2470, 2492, 2563), 572 P.2d 416 (1977).

The salary of teachers is a proper subject of collective bargaining under Alaska's statutes. *Rouse v. Anchorage School Dist.*, Sup. Ct. Op. No. 2106 (File No. 4715), 613 P.2d 263 (1980).

Nonnegotiable items. — Such items as (1) relief from nonprofessional chores, (2) elementary planning time, (3) paraprofessional tutors, (4) teacher specialists, (5) teacher's aides, (6) class size, (7) pupil-teacher ratio, (8) a teacher

ombudsman, (9) teacher evaluation of administrators, (10) school calendar, (11) selection of instructional materials, (12) the use of secondary department heads, (13) secondary teacher preparation and planning time, and (14) teacher representation on school board advisory committees are, under the existing statutory language, nonnegotiable. *Kenai Peninsula Borough School Dist. v. Kenai Peninsula Educ. Ass'n*, Sup. Ct. Op. No. 1537 (File

Nos. 2470, 2492, 2563), 572 P.2d 416 (1977).

Dismissal of complaint held proper. — Change in teachers' salaries brought about by contract renegotiation did not abuse any "vested" rights entitled to judicial protection, and dismissal of the complaint for failure to state a claim for which relief could be granted was proper. *Rouse v. Anchorage School Dist.*, Sup. Ct. Op. No. 2106 (File No. 8715), 613 P.2d 263 (1980).

Sec. 14.20.555. Optional coordinated employee negotiations.

(a) Negotiations between the certificated employees of the regional educational attendance areas and the respective regional school boards shall be conducted by one team representing all the certificated employees, one team representing all the certificated administrative personnel if they have joined together to negotiate independently as provided in AS 14.20.560(f), and one team representing all the participating regional school boards.

(b) Each team may consist of as many members as there are regional school boards. Each board is entitled to one member on the team. However, each negotiating team shall consist of not less than five members.

(c) A regional educational attendance area board may by resolution choose to conduct its own negotiations in accordance with AS 14.20.550. (§ 22 ch 124 SLA 1975)

Sec. 14.20.560. Teachers' bargaining groups and meetings with the groups

(a) When a majority of the certificated employees in a school district have designated an educational organization of their own choosing to bargain for them, the organization shall be recognized by the school board as the bargaining agent for all the certificated staff, except superintendents of schools. The membership of any such recognized educational organization shall be composed principally of those employed in the teaching profession in Alaska.

(b) The organization representing a majority of the certificated employees of a school district shall, upon the request of the school board, submit an affidavit verifying that it does represent a majority of the certificated employees. Recognition of the employee bargaining agency by a school board is valid for one year or a term agreed upon by the two parties to an agreement, unless a majority of certified staff votes to request the termination of recognition of the employee bargaining agency. The school board is entitled to an affidavit of membership from the employee bargaining agency once each year.

(c) Upon the request of 25 per cent of the certificated employees in a district, the school board shall hold, within 20 days, an election by secret ballot of all the certificated employees in order to determine their choice of a bargaining agency. The results of this election are binding for one year.

(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)

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 mediator 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)

Sec. 14.20.590. Grievance procedures. Negotiations agreements executed after July 1, 1975 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 § 3 ch 201 SLA 1975)

Sec. 14.20.600. Individual cases. Nothing in AS 14.20.550 — 14.20.590 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 AS 14.20.550 — 14.20.600 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)

NOTES TO DECISIONS

Constitutionality. — AS 14.20.550 and this section state two goals which apparently conflict, but since the supreme court construes AS 14.20.550 fairly narrowly, it finds no constitutional infirmity in AS 14.20.550 and this section. *Kenai Peninsula Borough School Dist. v. Kenai Peninsula Educ. Ass'n*, Sup. Ct. Op. No. 1537 (File Nos. 2470, 2492, 2563), 572 P.2d 416 (1977).

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Nos. 2470, 2492, 2563), 572 P.2d 416
(1977).

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

Section

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 AS 14.20.630. (§ 1 ch 83 SLA 1970)

Sec. 14.20.630. Terms and provisions of agreement. The terms and provisions of the agreement referred to in AS 14.20.620 are as follows:

INTERSTATE AGREEMENT ON QUALIFICATION OF EDUCATIONAL PERSONNEL.

ARTICLE I. PURPOSE, FINDINGS, AND POLICY.

(1) The states party to this agreement, desiring by common action to improve their respective school systems by utilizing the teacher or other professional educational person wherever educated. declare that it is the policy of each of them, on the basis of cooperation with one another, to take advantage of the preparation and experience of such persons wherever gained, thereby serving the best interests of society, of education, and of the teaching profession. It is the purpose of this agreement to provide for the development and execution of such programs of cooperation as will facilitate the movement of teachers and other professional educational personnel among the states party to it, and to authorize specific interstate educational personnel contracts to achieve that end.

(2) The party states find that included in the large movement of population among all sections of the nation are many qualified educational personnel who move for family and other personal reasons but who are hindered in using their professional skill and experience in their new locations. Variations from state to state in requirements for qualifying educational personnel discourage such personnel from taking the steps necessary to qualify in other states. As a consequence,

**CHAPTER 80.
ADVISORY ARBITRATION: TEACHER
NEGOTIATIONS**

Section

- 10. Purpose
- 20. Request for appointment of advisory arbitrator
- 30. Appointment of advisory arbitrator
- 40. Arbitrator's report

4 AAC 80.010. PURPOSE. The purpose of this chapter is to set out the conditions upon which the governor will exercise his discretion to appoint an advisory arbitrator in certificated staff/school board negotiations under AS 14.20.580(c) and the procedures that will be followed in making the appointment. (Eff. 6/17/77, Reg. 62)

Authority: AS 14.20.580(c)

4 AAC 80.020. REQUEST FOR APPOINTMENT OF ADVISORY ARBITRATOR. (a) The bargaining representative for the certificated staff or the school board or both may request the governor to appoint an advisory arbitrator. Verbal requests for an advisory arbitrator must be followed by letter or telegram within five days.

(b) A request for an advisory arbitrator must contain the following:

(1) a statement, verified by the party not making the request, that the final report of a mediator, as provided for in AS 14.20.580(b), has been rejected by either or both parties to the negotiation process;

(2) a statement of how any expenses incurred by the advisory arbitrator will be funded by the parties; and

(3) a written nomination of up to three candidates for appointment as advisory arbitrator who are mutually acceptable to both parties in negotiations and who are willing to serve as advisory arbitrator, if appointed. If the parties cannot agree on any candidates for appointment as advisory arbitrator, the request must contain a statement that both parties will accept the appointment of an advisory arbitrator from the American Arbitration Association.

(c) A request for an advisory arbitrator may not contain any statement or description of the issues involved in the negotiations impasse. (Eff. 6/17/77, Reg. 62)

Authority: AS 14.20.580(c)

4 AAC 80.030. APPOINTMENT OF ADVISORY ARBITRATOR. (a) If the governor decides to exercise his discretion under AS 14.20.580(c), an advisory arbitrator will be appointed within 10 days of receipt of a request for an advisory arbitrator which conforms with the requirements of sec. 20 of this chapter. Notification of the appointment will be provided to both parties to the negotiations by the office of the governor.

(b) Following the notification of appointment to the parties, all communications related to the advisory arbitration of the issues at impasse must take place between the parties and the arbitrator. Attempts on the part of either party to discuss or otherwise communicate with the office of the governor with respect to the issues will not be acknowledged.

(c) If the governor decides not to exercise his discretion to appoint an advisory arbitrator under AS 14.20.580(c), both parties to the negotiations will be so advised within 10 days of receipt of the request for an advisory arbitrator. (Eff. 6/17/77, Reg. 62)

Authority: AS 14.20.580(c)

4 AAC 80.040. ARBITRATOR'S REPORT. At the conclusion of their arbitration duties, advisory arbitrators shall submit a summary of their activities and recommendations, along with a copy of their report, to the parties and to the office of the governor. (Eff. 6/17/77, Reg. 62)

Authority: AS 14.20.580(c)



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NEA-Alaska Position Statement Teacher Negotiations Law AS 14.20.550-610

The absence of finality to the process of teacher negotiations is not in the public interest of the State of Alaska and is inconsistent with the public policies of the State as they pertain to employer/employee relationships for all other public employees.

Collective negotiations is well established in both the public and private sectors as the best procedure for employees to equitably share in the decision making processes regarding their terms and conditions of employment. The State of Alaska in AS 23.40.070, the public employee negotiations law, has further stated that it is the public policy of the State to promote harmonious and cooperative relationships between employees and government and that government will be more effective and responsive when employees have such opportunity.

The current teacher negotiations law fails every reasonable test relative to equity and effective bilateral decision making.

- There is no meaningful incentive for school boards to reach agreement on terms and conditions of employment as a result of the good faith negotiations requirement.
- The dispute settlement mechanism does not achieve finality in the process.
- The law does not define unfair labor practices.
- There is currently no administrative procedure for resolution of alleged unfair labor practices except through costly and time consuming court procedures.
- Bargaining unit determination procedures are ambiguous at best.
- Time, energy and valuable resources (human and financial) are being spent in a collective bargaining process which is substantially increasing in its length and its frustrations.
- The right of employees to organize and participate in matters pertaining to negotiations does not have adequate statutory protection.
- The law is silent on the negotiation of fair representation fees.

Minimally, the legislative reform should address finality through arbitration, preferably final offer on an item by item basis.

Final offer interest arbitration is the only effective labor relations alternative to strike as a method of achieving finality to a negotiations dispute.

In the public sector it is a better alternative than strike, in that it provides for a continuity of services and does not adversely effect the public interest, health, safety, and welfare.

Final offer interest arbitration is effective because it represents a risk for both parties to a dispute and it subjects their positions to neutral scrutiny, thus causing them to be more defensible and rational.

The reality of final offer interest arbitration is that a very low percentage of disputes actually end up in written arbitration awards. The mere presence of such an arbitration procedure enhances the settlement potential and results in more bilateral agreements between the parties short of the arbitration itself.

In his dissenting opinion in the Supreme Court determination that teacher strikes are illegal, Justice Rabinowitz said: "If public school teachers are so essential to society that they must be denied the right to strike then they should be given the right to compulsory arbitration".

Further, the public supports interest arbitration for teachers.

- Between 1979 and 1981 Senator Colletta, Representative Phillips, and Senator Kelly found constituent support for interest arbitration ranging from 67% to over 80%.
- In early 1983, a supermarket survey of nearly 5,000 shoppers in ten communities around the State found over 90% in support of arbitration for teachers.
- The 1983 Hellenthal Survey, commissioned by the Anchorage School District, reinforces the need for arbitration with a favorable response in excess of 80%.

The NEA-Alaska desire for finality through arbitration has been a matter of record for a number of years. Our commitment only intensifies as each round of bargaining with school districts produces a lengthening process and greater frustrations for our members.

NEA-Alaska recommends the following as minimal revision to AS 14.20.550-610.

- a) Include a policy statement similar to PERA (As 23.40.070)
- b) Clarify procedures regarding questions of representation and bargaining unit determination
- c) ESTABLISH FINAL OFFER (item by item) ARBITRATION AS THE NEGOTIATIONS DISPUTE SETTLEMENT MECHANISM
- d) Define unfair labor practices
- e) Provide administrative procedures for resolution of alleged unfair labor practices
- f) Establish an agency for administration of the teacher negotiations law
- g) Provide non certified public school employees access to a negotiations law.

The following points effectively summarize the positive effect of the recommended revisions to the teacher negotiations law.

1. Achieves finality in an expeditious way
2. Reinforces equity in the process
3. Reinforces good faith negotiations
4. Final offer is a risk for both parties
5. Final Offer forces the position to be defensible, rational
6. Third party assistance is sometimes necessary/desirable
7. An improper award can be challenged in court and set aside
8. Currently, too much time, money and energy is wasted in the impasse process
9. Management rights/prerogatives are protected by statute
10. Arbitration stops strikes
11. The public favors interest arbitration.

Attached please find:

- a) Summary of the Connecticut final offer arbitration law. It was passed subsequent to the 1979 Bridgeport teacher strike (the Anchorage teacher strike was also in 1979). The effect has clearly been an increase in the number of bilateral agreements reached short of the arbitration award itself. (Phi Delta Kappan)
- b) An article summarizing the viability and acceptability of arbitration as an alternative to teacher strikes. (American School Board Journal)
- c) A summary of the mediation-arbitration process which focuses on the Wisconsin procedure.

Enclosures

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COLLECTIVE BARGAINING ALTERNATIVES

Compulsory Binding-Interest Arbitration In Connecticut

by Leo L. Mann

The state of Connecticut reacted to a bitter teacher strike by enacting a law mandating mediation and compulsory binding-interest arbitration. Now, more than two years later, Mr. Mann reports that the law may have served as a catalyst to improve the negotiation process.

LEO L. MANN (University of Bridgeport Chapter) is a professor of educational management at the University of Bridgeport, Bridgeport, Conn.

A revised Connecticut statute that took effect on 1 July 1979 may go a long way toward improving the working relationship between teacher bargaining units and boards of education in the state. The statute revision had its roots in a lengthy and bitter teacher strike in Bridgeport, the state's largest city (population 139,552), in September 1978. The 19-day strike closed all 37 Bridgeport schools; 274 members of the teacher association were jailed, and the association was assessed \$194,000 in damages. The strike sent shock waves across Connecticut.

Gov. Ella Grasso reacted by calling for change in the state law governing teacher contract negotiations. Following her lead, the Connecticut State Legislature enacted the revised law. Its significant changes are a mandated mediation process and compulsory binding-interest arbitration; this latter provision makes Connecticut the seventh state (after Iowa, Maine, Nebraska, Nevada, Rhode Island, and Wisconsin) to provide such arbitration for teachers.

The Mediation Process

Under the revised law, negotiations between a board of education and a teacher bargaining unit must begin 180 days before the board is scheduled to submit its budget. If the parties fail to reach an agreement on the terms and conditions of teachers' employment, either side may submit the issues to the commissioner of education for mediation. This action can be taken at any time during the first 60 days of negotiations. If, after the first 60 days, the parties have neither reached an agreement nor initiated mediation, the commissioner must order mediation to begin.

From a panel of mediators approved by the state department of education, the parties mutually select the person who will work with them. The parties share equally in mediation costs. The mediator must make his or her recommendations within 30 days of the date that mandated mediation began. These recommendations are not binding, however.

The school board and the teacher bargaining unit are required to report their settlement to the state commissioner of education no later than the 90th day before the board is scheduled to submit its budget. (The date for submitting a budget is determined locally.) If issues remain unresolved at this point, the matter goes automatically to arbitration.

The Arbitration Process

Connecticut's 15 arbitrators for public education disputes are appointed by the governor and must be approved by the legislature. This panel of arbitrators represents the interests of local boards of

education, certified employees, and the general public. Each of these constituencies has a voice in the selection process.

The parties in arbitration may jointly select a single arbitrator, or each may choose an arbitrator who represents its own exclusive interests. When the second option is exercised, the two arbitrators, within five days of their selection, must appoint a third arbitrator who represents the interests of the general public. This arbitrator chairs the three-member panel. As in the case of mediation, arbitration costs are shared equally by the local board of education and the teacher bargaining unit.

The law strictly specifies the next steps. The school district must hold a hearing on the 10th day after the arbitrator or arbitrators have been named. Five days prior to the hearing, the parties to the dispute and the governmental body with budgetary responsibility for the school district must be notified in writing of the time and place of the hearing. The hearing must last no longer than 20 consecutive days.

Only unresolved items are addressed at this arbitration hearing. In fact, negotiators for the two sides may continue to meet and discuss items at issue while arbitration is going on. Should the parties manage to agree on a given contract provision before arbitration ends, they can stipulate that this provision be included in the arbitration decision.

The parties submit to arbitration their respective positions on each unresolved issue in the form of a "last best offer." The arbitrator or arbitrators accept either the last best offer of the board or the last best offer of the teachers. There can be no middle ground. Each unresolved issue is handled in this way.

Six factors influence an arbitration decision: 1) the negotiations between the parties before entering arbitration, 2) the public interest and the financial capability of the school district, 3) the interests and welfare of the employee group, 4) changes in the cost of living, 5) the existing employment conditions of this employee group compared with those of similar groups, and 6) the salaries, fringe benefits, and other conditions of employment prevailing in the state labor market.

The arbitrator(s) must present a decision in writing within 15 days after a hearing ends. This decision is binding on both parties and is not subject to rejection. Because arbitration is a quasi-judicial process, however, the law does provide for formal judicial review. Within 30 days of receiving the arbitration decision, a dissatisfied party may file a motion in superior court to annul or modify the arbitration award. After a hearing, the court may modify or annul an award if, in its judgment, the substantial rights of a party have been prejudiced.

During the first two years under the revised law, 71 Connecticut teacher contracts were settled annually for negotiation. The number of contracts settled at the table through local bargaining increased slightly, from 25 in 1980-81 to 29 in 1981-82. This represents a 5% increase in the number of contracts settled without third-party intervention.

A marked change occurred during this same interval in the number of settlements reached through mediation and arbitration. Of 53 attempted mediations in 1980-81, only 15 (28%) were successful. By contrast, 26 of 49 attempted mediations (53%) resulted in settlements in 1981-82. During this second year under the revised law, 26 of the 78 open teacher contracts (33%) were settled through mediation. In 1980-81, by contrast, only 15 of the 77 open teacher contracts (19%) were settled in this manner.

As the number of successful mediations increased between 1980-81 and 1981-82, the number of arbitration awards declined sharply. Arbitration awards accounted for 38 of the 78 teacher contract settlements (49%) in 1980-81, but such awards accounted for only 23 of the 78 settlements (29%) in 1981-82. From another perspective, 52% of open teacher contracts were settled locally or through mediation in 1980-81, and 71% were settled in this fashion in 1981-1982.

When the legislature passed the new law, a doomsday view of the future of good-faith bargaining spread across Connecticut. The fact that nearly 50% of all teacher contracts went to arbitration in the first year under the new law suggests that good-faith bargaining *did* suffer a reversal. By 1981-82, however, slightly fewer than 30% of all teacher contracts went to arbitration. This suggests that boards of education and teacher bargaining units now seek to avoid arbitration when that is possible. Both parties give up control over the final outcome when they turn to arbitration. They are left instead to implement decisions made by an external agent. Many Connecticut school districts discovered in 1980-81 that settling contracts through arbitration can be traumatic.

Because it is frequently difficult to live with the results of arbitration awards, teachers and school boards tried more vigorously to settle contracts for 1981-82 through mediation. The increase in the number of contracts settled through mediation in 1981-82 suggests that initial concern about the potential of binding arbitration to undermine good-faith bargaining in Connecticut is unjustified. The binding arbitration provision may, in fact, serve as a catalyst for improving the negotiation process between boards of education and teacher bargaining units in the state. □

What's good about binding arbitration: It puts an end to teacher strikes

By Bernadette Marczyk

IMAGINE negotiating your teacher contract months before the old contract expires, eliminating the nasty chance that contract negotiations will drag on into the summer—in short, ending once and for all the threat of a teacher strike in your school system. Connecticut has come close to making this dream a reality: The state has legislated an end to teacher strikes, and so far, the law is working. But ironically, that doesn't mean everyone is happy (see article on page 32). More on why in a moment.

Before Connecticut passed the Teacher Negotiation Act in October 1979, the state had its share of strikes and strikes threats. Not so anymore. Sponsored by the Connecticut Education Association (an affiliate of the National Education Association) and supported by the administration of the late Governor Ella Grasso, the law provides school boards a tightly structured blueprint for the process of negotiating teachers' contracts—ending, if need be, with binding arbitration. In brief, compulsory binding arbitration replaces strikes as the final step in resolving board/teacher impasses in contract negotiations.

Here's how the law mandates negotiations: The process begins when the local school board selects a budget submission date—that is, a date on which the board will submit to the local governing body its itemized estimate of what it will cost to run the system's public schools in the following year. (In Connecticut, school board budgets must be approved by the local government unit.) The school system's teacher contract negotiations then are keyed to this date (for an example, a March 15 budget-submission date for a contract that takes effect June 1). Once that date is established, no time is to be lost in beginning the negotiations process.

If the teacher contract has not been settled by the 120th day before the budget submission date, the law requires that negotiators for both the board and the teacher union mutually select a mediator who will try to help them resolve their

remaining differences. (Working back from a March 15 deadline, the mediator would be selected by November 15 of the year prior.) If the mediator's efforts do not succeed and unresolved issues still exist on the ninetieth day before budget submission (mid-December of the year prior, if March 15 is the budget submission date), both sides are compelled to begin the arbitration phase of the process.

Essentially, this phase involves choosing an arbitrator (or a panel of three arbitrators—one representing the board, one representing teachers, and one representing the public interest) to decide between the proposals submitted by each side for resolving each unresolved issue. Example: If the negotiations are stuck on two points—salary increases and teacher medical benefits—the arbitrator selected must deal with each of the two issues separately. The proposals submitted by the board and the teachers for this final judgment must represent the *last and best offer* each side is willing to make. Not only are both sides under legal mandate to settle, they also are jointly responsible for each arbitrator's fee, amounting to approximately \$200 per day per arbitrator. The cost of having failed to resolve as many issues as possible earlier in the negotiations process, then, can be quite high.

Once in arbitration, each side must present proposals dealing with each disputed issue; and each proposal must be reasonable and rationally supported by accepted norms and the practices of surrounding school districts. (A teacher union demand for 25 percent salary increases would not be considered reasonable, because it is not in line with increases teachers receive nationally or locally.) The arbitrator or panel of arbitrators then must choose between the two proposals submitted for resolving each issue: *The arbitrator cannot attempt to reach compromise, nor can they superimpose solutions of their own.* They make a simple, direct decision; the accepted proposal then becomes contractually binding on all parties—the school board, teachers, and the local governing body—for the duration of the contract period. Neither veto nor public referendum can void the arbitrated decision or any other

element of the negotiated contract. In short, the points of the legal contract by which both sides must abide are settled once and for all by a neutral third party.

On the surface, the Teacher Negotiation Act is doing exactly what it is intended to do—eliminate teacher strikes in Connecticut's public schools. The state has not experienced a teacher strike since the law's passage in 1979. Its real and sustained success, however, will depend on how the process and the end results in local school systems are perceived by the teachers, administrators, and school board members most involved. The law can be effective only as long as those involved believe it is a just and efficient way to reach a fair settlement.

To find out what both sides of school system negotiating teams think about the binding arbitration law in Connecticut, I sent a questionnaire to board members, district administrators, and teachers who have served on negotiating teams subject to binding arbitration during the first year the law was in effect. An equal number of randomly selected board and teacher union negotiators was asked to evaluate both the process and the results of the law in light of their experience.

Here's what the responses suggest: Board and bargaining unit negotiators think the law effectively accomplishes what it sets out to do. Here are the breakdowns:

- Eighty percent of all respondents say it's a good idea to have contract disputes settled by a disinterested third party. They also say the time restraints mandated do indeed expedite negotiations.

- Sixty-one percent say the last-best-offer aspect of the law is a positive factor.

- More than three-quarters say the finality of the law is important—that decisions negotiated and arbitrated cannot be rendered useless by veto of the government unit or by local referendum.

- In an open response segment of the questionnaire, respondents from both sides note that the process makes careful preparation and planning for reasonable solutions absolutely necessary. Negotiators are required to do their homework within the time allotted if they hope to present truly productive proposals.

To sum, a majority of the negotiating

team members questioned, representing boards and teacher union members equally, says the procedure defined by Connecticut's Teacher Negotiation Act are good ones and agree that the law provides suitable limitations for early contract settlements.

I also asked negotiators to evaluate their district's arbitrated contract. Of the 32 separate issues submitted for arbitration

during the first year, the issues most frequently arbitrated were salary and benefits. The arbitrated "win/loss" on these two issues was almost evenly shared, with board negotiators winning 57 percent of all benefit disputes, and teacher unions winning 68 percent of all salary disputes. Arbitrated far less frequently than monetary issues during the first year of arbitration were education

issues, such as length of school day, and issues dealing with teachers' rights, such as leave policies.

Board and teacher union negotiators who've been subject to the arbitration process—and who've had the opportunity to live with the results—approve, on the whole, of the contracts developed under binding arbitration. Only 6 percent

(Continued on page 34)

Binding arbitration

(Continued from page 32.)

of those who responded were decidedly pro; 75 percent characterized their contracts as moderately good or excellent.

At first glance, then, all these responses suggest that Connecticut's unique approach to negotiating teacher contracts not only is eliminating conflict in the public schools but also is perceived as a fair and efficient one by all involved. Appraisals, however, are striking. The responses also reveal a significant snag. School board negotiators, despite their perception of the law as an effective avenue to a fair contract, remain philosophically opposed to the concept of compulsory binding arbitration. When asked to indicate a stand either supporting or opposing compulsory binding arbitration, 75 percent of the board members questioned say they oppose Connecticut's binding arbitration law. They view the use of arbitration as an unlawful violation of their powers as an elected body, and they believe a disinterested arbitrator panel or single outside arbitrator should not be given the authority to make ultimate decisions affecting a community to which they have no retained responsibility. The stand taken by board members isn't unusual. It reflects the organized position regarding compulsory binding arbitration taken by the Connecticut Association of Boards of Education (C.A.B.E.). C.A.B.E. in fact has challenged the constitutionality of Connecticut's Teacher Negotiation Act in court and is awaiting a decision.

More surprising, perhaps: The Connecticut State Federation of Teachers (C.S.F.T.)—the Connecticut Education Association's rival teacher union—has joined forces with C.A.B.E. in voicing regard of the law. C.S.F.T. traditionally has favored a different approach to resolving contract impasses and stands opposed to any system that inhibits the right of teachers to negotiate freely and to strike if need be.

Connecticut's arbitration law seems to be recognized by all those directly involved as an effective plan of legislation producing generally equitable settlements, yet a strong philosophical challenge to its existence has been mounted on two fronts, and the future of this legislative approach to negotiated peace in the classroom will have to be decided in a courtroom. Connecticut's plan must pass the test of constitutionality if it is to survive as an alternative to teacher strikes. □

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*Midwest Center for
Public Sector Labor Relations*

IMPASSE RESOLUTION IN THE PUBLIC SECTOR: NEW DIRECTIONS

A Practitioner's Guide



SCHOOL OF PUBLIC AND
ENVIRONMENTAL AFFAIRS

INDIANA UNIVERSITY, BLOOMINGTON

MEDIATION-ARBITRATION REDUCES MUNICIPAL STRIKES

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

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

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

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

Strikes Spur Lawmakers

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

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

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

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

Law Includes Public

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

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

Provides Mediation-Arbitration

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

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

Parties Give Final Offers

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

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

Inspires Change

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

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

Either Party May Object

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

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

If the parties disagree over whether the proposal is mandatory or permissive, either may petition the Commission to make a declaratory ruling. On the other hand, no disagreement may arise. If either party raises any objection about the status of the proposals, it is presumed that every issue involved is mandatory.

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

Parties Choose Arbitrator

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

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

Stays Varies

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

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

Parties Present Evidence

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

the lawful authority of the municipal employer,

the stipulations of the parties,

the financial ability of the government unit to meet the settlement costs,

the interest and welfare of the public,

... wages, hours and conditions of employment of other municipal employees performing similar work in the same community or in private employment in the same or other communities.

... the consumer price index.

... overall compensation being received.

... changes in the foregoing during the proceedings, and

... all other factors normally and traditionally taken into consideration by factfinders and arbitrators.

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

Parties Can Stop Process

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

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

Law Penalizes Strikers

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

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

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

Commission Interprets Law

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

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

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

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

Declaratory Rulings Increase

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

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

Law Discourages Arbitration

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

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

Therefore, an analysis of these 355 settlements shows that in only 93 cases was it necessary to carry out the entire process of mediation-arbitration in order to reach a settlement. And of these 93 awards, 24 were consent or split awards. This means that the parties to the dispute reached an agreement on the contract themselves but wanted it in the form of an award. It also might mean that the parties accepted the med-arbitrator's proposal instead of either one of their own final offers. The remaining 69 awards were decided as follows: 33 for the union and 31 for the employer. Seventy percent of the mediation-arbitration cases have dealt with school employees.

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

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

Med-Arbitration Alters Bargaining

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

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

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

Eliminates Extremes

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

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

Issues Remain the Same

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

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

Takes Seven Months

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

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

Law Meets Goal

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

ASSOCIATION OF ALASKA SCHOOL BOARDS

326 Fourth St., Suite 510 • Juneau, Alaska 99801 • (907) 586-1083

March 19, 1985

Representative Drue Pearce
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

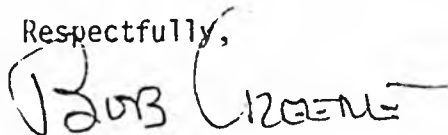
Dear Representative Pearce:

At the Labor and Commerce Committee hearing Monday evening, you asked me why four districts of the state had not concluded collective bargaining agreements with their teachers. I did not know the answer at that time.

This morning I asked my staff to research the question and the information is provided for you here. Hopefully it has some bearing on the discussions of the evening.

Thank you for your sincere interest in the issues before us.

Respectfully,



Robert C. Greene
Executive Director

RCG/sam
encl.

cc: Representative Navarre
Representative Collins
Representative Hanley
Representative Davis
Representative Koponen
Representative Boucher
Gayle Pearce, NEA, Alaska

ASSOCIATION OF ALASKA SCHOOL BOARDS

326 Fourth St., Suite 510 • Juneau, Alaska 99801 • (907) 586-1083

March 19, 1985

Northwest Arctic-Negotiating History: At the direction of the Board, management went to the table to retrieve management rights that had been eroded in previous contracts. The primary issue was involuntary transfer. Northwest Arctic School District had, through a grievance arbitration, lost the ability to transfer staff most able to meet program needs and were trying to regain that right at the table.

Hard bargaining occurred with the Board and District Administration firm on their intentions to gain language concessions as a quid pro quo for economic increases. Impasse occurred followed by mediation and finally advisory arbitration in late August. The arbitration report, received in late October, split the economic issues between management and the Association but left old contract language in place on the policy issues.

The Board rejected the arbiter's report and the parties went back to the table in December. The Board's position regarding involuntary transfer remained the same and an additional issue was retroactivity of any salary increase. The Association insisted on taking the issues once again to mediation. The Board's position was that a tentative agreement was close if the parties would stay at the table; however, if the Association insisted on the mediation process--with the time delay that it involved--the Board would not agree to make the economic items retroactive to July 1 of the previous year.

The parties went to mediation a second time. Following that a tentative agreement was worked out, with the exception of the effective date of salary increases.

The Association, in violation of the bargaining ground rules, calling for a consensus to be reached and a joint report to go to the Association and the Board, took the tentative agreement to their membership without management's concurrence. Unilaterally the Association added a retroactive date of July 1, 1984 for salary increases and changed the wording of the tentatively agreed upon Involuntary Transfer clause. The Board refused to accept the changes the Association had unilaterally made to the tentative agreement. The parties are still negotiating these final two issues.

Al Weinberg has been the Chief spokesperson for the Board throughout the entire process. There has never been a change in negotiators, nor has Mr. Weinberg even had any miscommunications with the Board. His authority at the table has been absolute and always within the Board's parameters.

During the entire process the provisions of the old contract have been adhered to by the Administration. Salary increments have been granted, leave and all other benefits have continued.

TWO OTHER DISTRICTS HAVE NOT YET SETTLED:

Lower Kuskokwim: The parties went to mediation and arbitration over the primary issue of salaries. The arbitrator's time schedule precluded hearing the case until after Christmas. The arbiter's report was due in early March, but due to his illness has not yet been received.

Lower Yukon: Following mediation and advisory arbitration the parties are back at the table. The district is insisting on stronger management language regarding transfer and reduction in force, and is trying to increase the length of the work year. The Association wants an increase in Association leave time, preparation time, extra duty pay and salary, while the Board is trying to hold the line. The salary increase for last year was seven percent.

RECENTLY SEYTLED:

Yukon-Koyukuk: Reached tentative agreement in late February. Negotiations were held up in this district when the Association insisted that principal-teachers be included in the bargaining unit, although this group had many years ago opted to negotiate separately as part of the Administrator's bargaining unit. The Association filed for a restraining order, which was denied by the court. Following that the parties bargained an agreement without mediation or arbitration.

ASSOCIATION OF ALASKA SCHOOL BOARDS

326 Fourth St., Suite 510 • Juneau, Alaska 99801 • (907) 586-1083

March 20, 1985

17

Representative Mike Navarre, Chairman
House Labor and Commerce Committee
Alaska State Legislature
Pouch ✓
Juneau, AK 99811

Dear Representative Navarre:

As you have requested, I am providing your committee with proposed language pursuant to H.B. 130 relative to collective bargaining between school boards and their employees.

You have specifically asked for a Management Rights provision. The attached recommended language is a direct derivative of the labor relations statute for all public employees in the state of Iowa. Language changes were necessary only to the extent that your request targets school district employees and the Iowa language targets public employees. I believe there are no substantive changes in my proposed language.

I have also included an Employee Rights section for consideration by the committee which is also derived from Iowa.

The following is language which AASB would propose for H.B. 130:

Insert on page 7, after line 11:

"(c) An employee is entitled to

(1) organize, form, join, or assist an employee organization;

(2) negotiate collectively through representatives of the employees' choosing;

(3) engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection if the activity is not prohibited by law;

(4) refuse to join or participate in the activities of employee organizations, including the payment of dues, fees, or assessments or service fees of any type."

Representative Mike Navarre, Chairman
House Labor and Commerce Committee
March 20, 1985
Page two

Insert on page 8, after line 9, a new section that reads:

"* Sec. 13. AS 14.20.610 is amended by adding a new subsection to read:

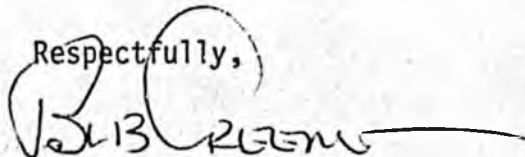
(b) In addition to the powers and duties established by law, a school board has the ~~exclusive~~ power and duty to

- (1) direct the work of its employees;
- (2) hire, promote, demote, transfer, assign, and retain employees in positions within the school district;
- (3) suspend or discharge school district employees for proper cause;
- ~~(4) maintain the efficiency of governmental operations;~~ *educational*
- 4 (5) relieve school district employees from duties because of lack of work or for other legitimate reasons;
- 5 (6) ascertain and implement the methods, means, assignments and personnel by which the school district's operations are to be conducted;
- 6 (7) take actions necessary to carry out the duties of the school district; and
- 7 (8) initiate, prepare, certify, and administer its budget."

The remaining sections of the bill should be renumbered accordingly.

Thank you again for the opportunity to have the concerns of school boards be so well received by you and your committee.

Respectfully,



Robert C. Greene
Executive Director

RCG/sam

insurance rates is legal because the college's paying is for the "benefit" of its employees [Western Iowa Tech. Comm. Coll. v. W.I.T.C.C. Ed. Assn. (Ia. Dist. Ct., Woodbury Cnty.), No. 92926, 5-1-78].

PERB has ruled that reimbursement for educational opportunities is bargainable as wages [Eastern Iowa Comm. Coll. Merged Area IX and Eastern Iowa Comm. Coll. Higher Ed. Assn., PERB, 2-1-78].

Nothing in this section shall diminish the authority and power of the merit employment department, board of regents' merit system, educational radio and television facility board's merit system, or any civil service commission established by constitutional provision, statute, charter or special act to recruit employees, prepare, conduct, and grade examinations, rate candidates in order of their relative scores for certification for appointment or promotion or for other matters of classification, reclassification or appeal rights in the classified service of the public employer served.

Annotation: Though Civil Service Law for deputy sheriffs could be superseded by bargaining agreement negotiated under

PERB held that wages paid teachers because of increased workloads was a mandatory rather than permissive subject of bargaining [Urbandale Ed. Assn. and Urbandale Comm. Sch. Dist., PERB, 1-18-77].

School district violated PERA by changing its paid leave policy without negotiating with union on a mandatory subject of bargaining [Ames Ed. Assn. and Ames Comm. Sch. Dist., PERB Hearing Officer, 9-2-76].

PERA, civil service procedures for discipline would prevail [OAG No. 77-2-14, 2-23-77].

All retirement systems shall be excluded from the scope of negotiations. [Am. L. 1977, H.F. 634.]

[§11,110] 20.10 Prohibited practices. 1. It shall be a prohibited practice for any public employer, public employee, or employee organization to willfully refuse to negotiate in good faith with respect to the scope of negotiations as defined in section nine (9) of this Act.

Annotations: Employer's unilateral insistence on open negotiating sessions demonstrates bad faith and is an unfair practice [Burlington Comm. Sch. Dist. v. PERB (Ia. S. Ct., 1978) 268 NW2d 517].

Though PERA doesn't require an employee organization to notify an employer that it has rejected a tentative agreement, PERB said such lack of notification may be a failure to bargain in good faith [City of Dubuque, Iowa and Dubuque Assn. of Prof. Firefighters, Local 353, PERB, 9-8-77].

A second final offer during arbitration constitutes a refusal to negotiate in good faith [Southwestern Comm. Coll. Ed. Assn.

and Southwestern Comm. Coll., PERB Hearing Officer, 9-1-77].

Duty to bargain in good faith requires employer to provide union with information substantiating its inability to grant salary increases [Sergeant Bluff-Luton Ed. Assn. and Sergeant Bluff-Luton Comm. Sch. Dist. and Iowa Assn. of Sch. Bds., PERB Hearing Officer, 7-18-77].

Refusal by school district to grant paid leave to teachers attending delegates meeting of Iowa State Education Association is a prohibited practice designed to discourage union participation [Ames Ed. Assn. and Ames Comm. Sch. Dist., PERB Hearing Officer, 9-2-76].

2. It shall be a prohibited practice for a public employer or his designated representative willfully to:

- a. Interfere with, restrain, or coerce public employees in the exercise of rights granted by this Act.

Annotation: Superintendent released survey and memo to teachers outlining consequences of wage increases. PERB found release of survey, along with release of portions of memo, to be co-

ercive and an attempt at individual bargaining [Akron Ed. Assn. and Akron Comm. Sch. Dist., PERB, 7-5-78].

- b. Dominate or interfere in the administration of any employee organization.
- c. Encourage or discourage membership in any employee organization, committee, or association by discrimination in hiring, tenure, or other terms or conditions of employment.
- d. Discharge or discriminate against a public employee because he has filed an affidavit, petition, or complaint or given any information or testimony under this Act, or because he has formed, joined, or chosen to be represented by an employee organization.
- e. Refuse to negotiate collectively with representatives of certified employee organizations as required in this Act.
- f. Deny the rights accompanying certification or exclusive recognition granted in this Act.
- g. Refuse to participate in good faith in any agreed upon impasse procedures or those set forth in this Act.

Annotation: A second final offer during arbitration is a refusal to participate in good faith in agreed-upon impasse procedures

[Southwestern Comm. Coll. Ed. Assn. and Southwestern Comm. Coll., PERB Hearing Officer, 9-1-77].

h. Engage in a lockout.

3. It shall be a prohibited practice for public employees or any employee organization or for any person, union, or organization or their agents willfully to:

- a. Interfere with, restrain, coerce, or harass any public employee with respect to any of his rights under this Act or in order to prevent or discourage his exercise of any such right, including, without limitation, all rights under section eight (8) of this Act.
- b. Interfere, restrain, or coerce a public employer with respect to rights granted in this Act or with respect to selecting a representative for the purposes of negotiating collectively on the adjustment of grievances.
- c. Refuse to bargain collectively with a public employer as required in this Act.
- d. Refuse to participate in good faith in any agreed upon impasse procedures or those set forth in this Act.
- e. Violate section twelve (12) of this Act.
- f. Violate the provisions of chapter seven hundred thirty-six B (736B), sections one (1), two (2) and three (3) of the Code, which are hereby made applicable to public employers, public employees and public employee organizations.

4. Hold hearings and administer oaths, examine witnesses and documents, take testimony and receive evidence, issue subpoenas to compel the attendance of witnesses and the production of records, and delegate such power to a member of the board, or persons appointed or employed by the board, including hearing officers for the performance of its functions. The board may petition the district court at the seat of government or of the county wherein any hearing is held to enforce a board order compelling the attendance of witnesses and production of records.

5. Adopt rules and regulations in accordance with the provisions of chapter seventeen A (17A) of the Code as it may deem necessary to carry out the purposes of this Act.

[§11,107] 20.7 Public employer rights. Public employers shall have, in addition to all powers, duties, and rights established by constitutional provision, statute, ordinance, charter, or special act, the exclusive power, duty, and the right to:

1. Direct the work of its public employees.
2. Hire, promote, demote, transfer, assign, and retain public employees in positions within the public agency.
3. Suspend or discharge public employees for proper cause.
4. Maintain the efficiency of governmental operations.
5. Relieve public employees from duties because of lack of work or for other legitimate reasons.
6. Determine and implement methods, means, assignments and personnel by which the public employer's operations are to be conducted.
7. Take such actions as may be necessary to carry out the mission of the public employer.
8. Initiate, prepare, certify, and administer its budget.
9. Exercise all powers and duties granted to the public employer by law.

Annotation: Public employer can't unilaterally demand open bargaining sessions [Burlington Comm. Sch. Dist. v. PERB (Ia. S.Ct., 1978) 268 NW2d 517].

[§11,108] 20.8. Public employee rights. Public employees shall have the right to: 1. Organize, or form, join, or assist any employee organization.

2. Negotiate collectively through representatives of their own choosing.
3. Engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection insofar as any such activity is not prohibited by this Act or any other law of the state.
4. Refuse to join or participate in the activities of employee organizations, including the payment of any dues, fees or assessments or service fees of any type.

Annotations: PERA provision protecting "concerted activities for the purpose of collective bargaining or other mutual aid or protection" protects an employee's labor relations conduct, even if no union is involved [AFSCME Iowa Organizing Committee and Madison Cnty. Secondary Roads Dept., PERB Hearing Officer, 9-10-76].

Public hospital erred in discharging employees for attempting to organize others since a clear right exists under PERA to organize [AFSCME and Jackson Cnty. Public Hospital, PERB Hearing Officer, 6-9-76].

[§11,109] 20.9 Scope of negotiations. The public employer and the employee organization shall meet at reasonable times, including meetings reasonably in advance of the public employer's budget-making process, to negotiate in good faith with respect to wages, hours, vacations, insurance, holidays, leaves of absence, shift differentials, overtime compensation, supplemental pay, seniority, transfer procedures, job classifications, health and safety matters, evaluation procedures, procedures for staff reduction, in-service training and other matters mutually agreed upon. Negotiations shall also include terms authorizing dues checkoff for members of the employee organization and grievance procedures for resolving any questions arising under the agreement, which shall be embodied in a written agreement and signed by the parties. If an agreement provides for dues checkoff, a member's dues may be checked off only upon the member's written request and the member may terminate the dues checkoff at any time by giving thirty days written notice. Such obligation to negotiate in good faith does not compel either party to agree to a proposal or make a concession.

Annotations: Insurance for dependents is a mandatory subject of bargaining. Payment of grievance committee members for processing grievances during worktime is not [Charles City Comm. Sch. Dist. v. PERB (Ia. S. Ct., 1979) 275 NW2d 766].

Clothing or a clothing allowance is not a mandatory subject of bargaining under either wages or supplemental pay [City of Fort Dodge v. PERB and Local 6-502, Oil, Chem. and Atomic Workers Intl. Union, AFL-CIO (Ia. S. Ct., 1979) 275 NW 2d 393].

Union proposal providing for employee's advancement on the salary schedule through completion of college courses in employee's teaching or certified field is a mandatory subject of bargaining because advancement on the scale determines wages. [Charles City Ed. Assn. v. PERB and Charles City Comm. Sch. Dist. (Ia. Dist. Ct., Polk Cnty.) No. CE 10-5683, 3-22-79].

PERA doesn't authorize any bargaining with minority representatives; therefore, "public employers and minority employees' organizations would commit breaches of Iowa law by permitting and requesting dues checkoff for a minority union" [OAG No. 79-3-1, 3-7-79].

Health and welfare insurance for retiring employees and their families is a mandatory subject of bargaining [City of Mason City and Teamsters, Local 828, PERB, 2-13-79].

Unused sick leave pay is a form of teacher compensation which may be paid in a lump sum at retirement [Bettendorf Ed. Assn., et al. v. Bettendorf Comm. Sch. Dist. (Ia. S. Ct., 1978) 262 NW2d 550].

Contract requiring community college to pay 50% of the differential between single and family member health and accident

**KENAI PENINSULA BOROUGH
SCHOOL DISTRICT and Kenai Penin-
sula Borough, Appellants,**

v.

**KENAI PENINSULA EDUCATION
ASSOCIATION, Appellee.**

**ANCHORAGE BOROUGH EDUCATION
ASSOCIATION, Appellant,**

v.

**GREATER ANCHORAGE AREA BOR-
OUGH, ANCHORAGE BOROUGH
SCHOOL DISTRICT, Appellee.**

**MATANUSKA-SUSITNA SCHOOL
DISTRICT, Appellant,**

v.

**MATANUSKA-SUSITNA EDUCATION
ASSOCIATION, Appellee.**

Nos. 2470, 2492 and 2563.

Supreme Court of Alaska.

Dec. 9, 1977.

In two separate actions, teachers' associations sued school district and boroughs to compel collective bargaining in good faith. In third action, school board sought declaratory judgment that certain issues were not bargainable. Appeals were taken from judgments of the Supreme Court, Third Judicial District, Kenai and Anchorage District, James A. Hanson, Victor D. Carlson and C. J. Occhipinti, JJ., ruling in favor of school boards in one action, in favor of teachers' union in another, and in third action, in favor of board on some issues and union on others. The Supreme Court, Connor, J., held that: (1) salaries, fringe benefits, number of hours worked and amount of leave time are negotiable and (2) relief from nonprofessional chores, elementary planning time, paraprofessional tutors, teacher specialists, teacher's aides, class size, pupil-teacher ratio, teacher ombudsman, teacher evaluation of administrators, school calendar, election of instructional materials, use of secondary department

heads, secondary teacher preparation and planning time and teacher representation on school board advisory committees are nonnegotiable.

Affirmed in part, reversed in part.

1. Labor Relations ⇌ 178

Questions concerning public school teachers' salaries, number of hours to be worked and amount of leave time are all so closely connected with economic well-being of individual teacher that they are negotiable and subject to collective bargaining under statutes governing negotiation with certificated employees and legal responsibilities of school board. AS 14.20.550, 14.20.610.

2. Labor Relations ⇌ 178

Following specific items pertaining to public school teachers are, under existing statutory language, nonnegotiable: relief from nonprofessional chores; elementary planning time; paraprofessional tutors; teacher specialists; teacher's aides; class size; pupil-teacher ratio; teacher ombudsman; teacher evaluation of administrators; school calendar; selection of instructional materials; use of secondary department heads; secondary teacher preparation and planning time, and teacher representation on school board advisory committees. AS 14.20.550, 14.20.610.

3. Labor Relations ⇌ 179

As to matters which affect educational policy and are therefore not negotiable, there is implicit in statutes governing negotiation with certificated employees and legal responsibilities of school board intention that school boards meet and confer with union and it is desirable that boards consider teacher proposals on such questions. AS 14.20.550, 14.20.610.

4. Statutes ⇌ 216

Even if it were placed in evidence, reliance upon privately expressed opinion in

letter of a former legislator in construing statutes governing negotiation with certificated employees and legal responsibilities of school boards should be impermissible, and therefore resort to letter as means of legal interpretation was therefore error in action in which collective bargaining requirements for public school teachers was in issue. AS 14.20.550, 14.20.610.

Allen McGrath and John R. Snodgrass, Jr., of Graham & James, Anchorage, for School Districts.

John R. Strachan, Anchorage, for Education Associations.

Before BOOCHEVER, Chief Justice, and RABINOWITZ, CONNOR, ERWIN and BURKE, Justices.

CONNOR, Justice.

These cases present important questions of labor law and constitutional law concerning the collective bargaining requirements for teachers in the public schools. Two of these cases are before us because the teachers' associations (the unions) have sued school districts and boroughs (the school boards) to compel collective bargaining in good faith under AS 14.20.550. In the third, a school board seeks a declaratory judgment that certain issues are not bargainable. The school boards, while not disputing the unions' right to collective bargaining on a number of employment-related issues, contend that they should not be forced to bargain collectively on various items which they regard as affecting educational policy. Educational policy, the school boards contend, must be determined only by the public through the legislature and, by delegation, through the school boards. We

1. *Anchorage Borough Ed. Ass'n v. GAAB, Anchorage Borough School Dist.*, No. 2492 (hereinafter Anchorage).

2. *Kenai Pen. Borough Sch. Dist. and Kenai Pen. Borough v. Kenai Pen. Ed. Ass'n*, No. 2470 (hereinafter Kenai).

will examine the more specific issues later in this opinion. They include such items as class size and the use of teacher specialists and para-professionals. Of the three trial courts which passed on the matter, one ruled in favor of the school boards,¹ one ruled in favor of the teachers' union,² and one split the various items, ruling for the board on some and the unions on others.³

I. Introduction

To facilitate the understanding of our more detailed legal discussion later in this opinion, we will summarize at the outset the contentions of the parties. The statutes at issue in this litigation are AS 14.20.550 and .610, which provide:

"Sec. 14.20.550. *Negotiation with certificated employees.* Each city, borough and regional school board, shall negotiate with its certificated employees in good faith on matters pertaining to their employment and the fulfillment of their professional duties. (§ 1 ch 18 SLA 1970; am § 3 ch 71 SLA 1972; am § 21 ch 124 SLA 1975)."

"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)."

The boards contend, using labor cases from the private sector, that the requirement of collective bargaining in good faith is a term of art in labor law. Unlike a simple "meet and confer" requirement, to negotiate in "good faith" entails a duty to make concessions. Thus, management does

3. *Matanuska-Susitna Sch. Dist. v. Matanuska-Susitna Ed. Ass'n*, No. 2563 (hereinafter Mat-Su).

not have the final decisions on matters subject to good faith collective bargaining, since if management adheres to its determined policies, it violates the law.

The school boards contend that the submission of educational policies to a good faith collective bargaining requirement would remove the final decisions on such matters from the boards, contrary to the intent of the legislature expressed in AS 14.20.610. The boards contend that to require bargaining on questions of educational policy would also contravene the Alaska Constitution, art. VII, § 1, which makes education the exclusive domain of the legislature.⁴ See *Macauley v. Hildebrand*, 491 P.2d 120 (Alaska 1971). Delegation of part of the decision-making power on educational policy to labor unions is unconstitutional, they urge, because the union is a private organization, unaccountable to the public. The union can use the power for its own ends, and is under no duty to foster educational policies which are in the general public interest.

The unions argue that such delegation is perfectly proper, and that there is no delegation of decision-making power inherent in a labor negotiations requirement. They further argue that they represent professional employees, and that their participation in good faith collective bargaining labor negotiations is an attempt by the legislature to provide professional advice to school boards on the management of the schools. They assert that this is a legislative policy judgment, in no way inimical to the Alaska Constitution. Also relying on labor cases, they discount the importance of

any "management prerogative" to determine educational policy under AS 14.20.610, and assert that labor's concerns with working conditions override any management prerogative as to basic policy.

The unions argue that the Alaska teachers' collective bargaining statutes are more comprehensive than those found elsewhere, and hence the scope of bargaining should be interpreted broadly. The school boards assert that the Alaska Constitution as interpreted in *Macauley v. Hildebrand, supra*, is more adamant than provisions in other states in placing education firmly within the legislative prerogative. Therefore, collective bargaining must yield across a wide range of issues affecting educational policy.

II. Scope of the Duty to Bargain

If we were to look to the law concerning bargaining between labor unions and private employers, we would conclude that the scope of negotiable issues is broad. The law relating to the private sector has always contained, and still does contain, uncertainties. But the general trend has been to require that employers bargain in good faith on a wide range of items with respect to wages, hours, and other conditions of employment, without regard to whether the employers consider the items bargained for to be within the prerogatives of management.⁵ Moreover, some cases hold that for an employer or a union to avoid being found to have bargained in bad faith, the parties must make some reasonable effort to compose their differences. While the good faith standard of collective bargaining

4. Alaska Constitution, art. VII, § 1 states:

"The legislature shall by general law establish and maintain a system of public schools open to all children of the State, and may provide for other public educational institutions. Schools and institutions so established shall be free from sectarian control. No money shall be paid from public funds for the direct benefit of any religious or other private educational institution."

5. *Fibreboard Paper Products Corp. v. N. L. R. B.*, 379 U.S. 203, 85 S.Ct. 308, 13 L.Ed.2d 233 (1964) (management decision to subcontract

out the work of some employees must be bargained); *International Ladies' Garment Workers Union v. N. L. R. B.*, 150 U.S.App.D.C. 71, 463 F.2d 907 (1972) (decision to relocate the business to another state subject to bargaining); *Royal Typewriter Co.*, 209 N.L.R.B. 1006, 1012 (1974) (decision to close a plant subject to bargaining). But see *General Motors Corp.*, 191 N.L.R.B. 951 (1971), *aff'd sub nom.*, *International Union, United Auto. A. & A. Imp. Wkrs. v. N. L. R. B.*, 152 U.S.App.D.C. 274, 277, 470 F.2d 422, 425 (1972) (decision to sell part of business not bargainable).

does not compel either party to make concessions, intransigent positions, adopted in an effort to avoid any agreement, are disfavored.⁶ Thus a legal determination that a matter is subject to good faith collective bargaining may narrow the policy-making powers of an employer by curtailing any absolute directives on his part.

When we turn to employment in the public sector, and particularly in education, the question of what is properly bargainable is thrown into more doubt. If teachers' unions are permitted to bargain on matters of educational policy, it is conceivable that through successive contracts the autonomy of the school boards could be severely eroded, and the effective control of educational policy shifted from the school boards to the teachers' unions. Such a result could threaten the ability of elective government officials and appointive officers subject to their authority, in this case the school boards and administrators, to perform their functions in the broad public interest.⁷

Recently the United States Supreme Court had occasion to comment upon the differences between collective bargaining in the public and private sectors. In *Abood v. Detroit Board of Education*, 431 U.S. 209, 227-28, 97 S.Ct. 1782, 1795-96, 52 L.Ed.2d 261, 279-80 (1977), the Court, speaking through Mr. Justice Stewart, observed:

"A public employer, unlike his private counterpart, is not guided by the profit motive and constrained by the normal operation of the market. Municipal services are typically not priced, and where they are they tend to be regarded as in some sense 'essential' and therefore are

often price inelastic. Although a public employer, like a private one, will wish to keep costs down, he lacks an important discipline against agreeing to increases in labor costs that in a market system would require price increases. A public-sector union is correspondingly less concerned that high prices due to costly wage demands will decrease output and hence employment.

The government officials making decisions as the public 'employer' are less likely to act as a cohesive unit than are managers in private industry, in part because different levels of public authority—department managers, budgetary officials, and legislative bodies—are involved, and in part because each official may respond to a distinctive political constituency. And the ease of negotiating a final agreement with the union may be severely limited by statutory restrictions, by the need for the approval of a higher executive authority or a legislative body, or by the commitment of budgetary decisions of critical importance to others.

Finally, decisionmaking by a public employer is above all a political process. The officials who represent the public employer are ultimately responsible to the electorate, which for this purpose can be viewed as comprising three overlapping classes of voters—taxpayers, users of particular government services, and government employees. Through exercise of their political influence as part of the electorate, the employees have the opportunity to affect the decisions of government representatives, who sit on the other side of the bargaining table. Whether these representatives accede to

effort in some direction to compose his differences with the union"; emphasis in original); *Majure v. N. L. R. B.*, 198 F.2d 735 (5th Cir. 1952). See generally Swerdlow, *Freedom of Contract in Labor Law*, 51 *Tex.L.Rev.* 1 (1972).

7. As one commentator has noted, "what is in the best interest of the students and the community is not always in the best interests of teachers." Rund, *Symposium on Teacher Bargaining: Commentary*, 50 *Ind.L.J.* 344, 350 (1975).

6. *Sign and Pictorial Union Local 1175 v. N. L. R. B.*, 136 U.S.App.D.C. 144, 149, 419 F.2d 726, 731 (D.C.Cir. 1969); *N. L. R. B. v. General Electric Co.*, 418 F.2d 736, 756-62 (2d Cir. 1969), cert. denied, 397 U.S. 965, 90 S.Ct. 995, 25 L.Ed.2d 257 (1970); *N. L. R. B. v. McLane Co.*, 405 F.2d 423, 484 (5th Cir. 1968); *N. L. R. B. v. Reed & Rim Mfg. Co.*, 205 F.2d 131, 134-35 (1st Cir. 1953), cert. denied, 346 U.S. 887, 74 S.Ct. 139, 53 L.Ed. 391 (1953) ("the employer is obliged to make some reasonable

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a union's demands will depend upon a blend of political ingredients, including community sentiment about unionism generally and the involved union in particular, the degree of taxpayer resistance, and the views of voters as to the importance of the service involved and the relation between the demands and the quality of service."

In a concurring opinion in that case Mr. Justice Powell noted the similarity between a public sector union and a conventional political party:

"The ultimate objective of a union in the public sector, like that of a political party, is to influence public decisionmaking in accordance with the views and perceived interests of its membership. Whether a teachers' union is concerned with salaries and fringe benefits, teacher qualifications and in-service training, pupil-teacher ratios, length of the school day, student discipline, or the content of the high school curriculum, its objective is to bring school board policy and decisions into harmony with its own views. Similarly, to the extent that school board expenditures and policy are guided by decisions made by the municipal, state and federal governments, the union's objective is to obtain favorable decisions—and to place persons in positions of power who will be receptive to the union's viewpoint. In these respects, the public sector union is indistinguishable from the traditional political party in this country."

8. The holding of the majority in *Abouli* was that a union shop or agency shop agreement for public employees, requiring all employees in the bargaining unit to make financial contributions to the union, did not violate the first amendment rights of employees who objected to the union. The same rule obtains for unions in the private sector. Although Justice Powell concurred in the majority's decision to remand the case for further proceedings, he disagreed with this constitutional holding. Unlike the majority, he felt that the differences between public and private employment compelled a holding that agency shop or union shop agreements in the public sector are forbidden by the first amendment.

431 U.S. at 256, 97 S.Ct. at 1810, 52 L.Ed.2d at 298.⁸

The legislature was evidently cognizant of this concern when it enacted AS 14.20-.550 and .610, stating two goals which apparently conflict. We must now proceed to interpret what we believe the legislature meant by these provisions.

The school boards initially argue that to make matters of school operation and educational policy subject to collective bargaining amounts to an unconstitutional delegation of governmental power to the unions.

While courts in an earlier era often held laws unconstitutional on the ground that they delegated legislative power to private persons or groups, e. g., *Carter v. Carter Coal Co.*, 298 U.S. 238, 311, 56 S.Ct. 855, 80 L.Ed. 1160 (1936), the trend has been to uphold such delegations, even when the power is delegated to a group with an economic interest in the decisions to be made. E. g., *United States v. Rock Royal Cooperative, Inc.*, 307 U.S. 533, 577-78, 59 S.Ct. 993, 83 L.Ed. 1446 (1939) (cooperative marketing program from agricultural products); *Agricultural Prorate Comm'n v. Superior Court*, 5 Cal.2d 550, 55 P.2d 495, 504-06 (Cal.1936) (same); *Potter v. New Jersey Supreme Court*, 403 F.Supp. 1036, 1039-40 (D.N.J. 1975), *aff'd*, 546 F.2d 418 (3d Cir. 1976) (requirement that attorneys have graduated from law schools accredited by the American Bar Association). See generally,

See generally Rehms, Constraints on Local Governments in Public Employee Bargaining, 67 *Mich.L.Rev.* 919 (1969); Shaw and Clark, The Practical Differences Between Public and Private Sector Collective Bargaining, 19 *U.C.L.A.L.Rev.* 867 (1972); Summers, Public Sector Bargaining: Problems of Government Decision-making, 44 *U.Cinn.L.Rev.* 669 (1975); Summers, Public Employee Bargaining: A Political Perspective, 83 *Yale L.J.* 1156 (1974); Wellington & Winter, The Limits of Collective Bargaining in Public Employment, 78 *Yale L.J.* 1107 (1969); Project, Collective Bargaining and Politics in Public Employment, 19 *U.C.L.A.L.Rev.* 887, 1010-51 (1972).

1 K. Davis, Administrative Law Treatise § 2.14 (Supp.1970) (collecting cases). See also 1 *Id.* § 2.15 (1958).

Furthermore, the statute merely requires the school board to negotiate with the union. It does not require the board to accept any particular proposal the union might offer. It does not require, and probably does not permit, the board to delegate to the union the sole power to make any decision. Therefore, cited cases invalidating outright grants of governmental power to private groups, e. g., *Hetherington v. McHale*, 458 Pa. 479, 329 A.2d 250 (1974), and *Bayside Timber Co. v. Bd. of Supervisors*, 20 Cal.App.3d 1, 97 Cal.Rptr. 431 (1971), are not apposite.

The cases in other states rejecting the argument that collective bargaining with teachers' unions is an unconstitutional delegation of power, all involve statutes which fairly narrowly constrict either the scope of bargainable issues, or the school boards' duty to accede to union proposals, or both. *Chicago Div. of Ill. Ed. Ass'n v. Board of Ed.*, 76 Ill.App.2d 456, 222 N.E.2d 243, 251 (1966); *Joint School Dist. No. 8 v. Wisc. Emp. Rel. Bd.*, 37 Wis.2d 483, 155 N.W.2d 78, 83 (1967); *State v. City of Laramie*, 437 P.2d 295, 300 (Wyo.1968) (firemen). In this opinion, we similarly construe the Alaska statute. A statute defining the scope of collective bargaining as broadly as the union would have us do, might well present a more troubling constitutional question. But we find no constitutional infirmity in AS 14.20.550 and .610. The delegation of power problem still bears upon our task of statutory interpretation, however, for in interpreting the relevant statutes we will not readily assume that the legislature intended to divest the school boards of their power to determine matters of educational policy and school system management.

9. The teachers' unions in the case at bar argue that *Dunellen* was overruled by later legislation. The statute in question dealt with only a limited aspect of bargaining; and *Dunellen* has

Courts in other jurisdictions have considered problems similar to those which we confront here. It is instructive, though not determinative, to look to the case law of other jurisdictions as an aid to interpretation.

The court in *Dunellen Bd. of Education v. Dunellen Ed. Ass'n*, 64 N.J. 17, 311 A.2d 737 (1973), dealt with a conflict between a requirement to bargain about "terms and conditions" of employment (without further definition) and the broad managerial power over schools entrusted to local school boards. The court noted that "terms and conditions" of employment without further definition does not furnish a dispositive guideline. It held that the decision whether to consolidate chairmanships of the social studies department and English department was not a subject of mandatory bargaining. It was a matter predominately of educational policy and thereby fell within the exclusive prerogative of management.⁹

National Ed. Ass'n of Shawnee Mission, Inc. v. Board of Ed., 212 Kan. 741, 512 P.2d 426 (1973), is closely analogous to the case at bar. There the teachers' association negotiated under a statute which permitted it to "participate in professional negotiation with boards of education . . . for the purpose of establishing, maintaining, protecting or improving terms and conditions of professional service." The state constitution, like Alaska's, gave the legislature the power to provide for public schools. The negotiations reached an impasse after the board took the position that all matters, whether negotiable under the statute or not, were of a policy nature subject to unilateral change by the board and could not be incorporated into a contract, while the teachers asserted that nearly everything pertaining to school operations was negotiable.

been followed by the courts despite the statutory amendment. See, e. g., *Galloway Tp. Bd. of Ed. v. Galloway Tp. Ed. Ass'n*, 135 N.J.Super. 269, 343 A.2d 133 (1975).

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3 *Yale L.J.* 1107
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9 *U.C.L.A.L.Rev.*

On appeal the Kansas Supreme Court was confronted with the same problem that we are: how to frame a test which would delimit those matters which are bargainable from those which are not. The Kansas court held that salaries, vacations, and sick leave are negotiable. In so doing it pointed out that the term "policy" is not helpful, because even salaries are a matter of policy. It drew the following distinction:

"The key, as we see it, is how direct the impact of an issue is on the well-being of the individual teacher, as opposed to its effect on the operation of the school system as a whole." 512 P.2d at 435.

While the *Snawnee Mission* case represents a commendable attempt to balance competing claims, it does not provide a test which is useful in determining the negotiability of specific subjects. In other words, it does not provide any comforting guidance in determining how, in the last analysis, the balance should be weighed between the school boards and the teachers.

Put another way, a matter is more susceptible to bargaining the more it deals with the economic interests of employees and the less it concerns professional goals and methods. Bargaining over the latter topics presents particular problems because there is less likely to be any politically organized interest group other than the union concerned with these issues. The salaries of public employees have a direct financial effect on the taxpayers; on the other hand, a question such as teacher evaluation of administrators is unlikely to have any impact sufficiently direct to be discernible by laymen. Furthermore, it is such an abstract and abstruse subject that it is unlikely that any appreciable portion of the public will either understand it or care greatly about it. In such circumstances, the risk that effective power over the governmental decision will come to rest with the union is significantly greater. Moreover, it is more likely that there will be disagreements among union members on questions of this

nature than on "bread and butter" issues; the risk that minority viewpoints within the union will not be meaningfully represented in the bargaining is a real one. See Summers, *supra*, 83 *Yale L.J.* at 1181-82, 1194-95. But see Wollett, *The Coming Revolution in Public School Management*, 67 *Mich. L.Rev.* 1017 (1969) (arguing that these subjects should be bargainable).

III. Specific Issues

[1] We will now consider the Alaska situation in more detail. At the outset it appears to us that questions concerning salaries, the number of hours to be worked, and amount of leave time are all so closely connected with the economic well-being of the individual teacher that they must be held negotiable under our statutes. The troubling question is what other items are bargainable.

[2] The various trial courts in these cases considered such items as (1) relief from non-professional chores, (2) elementary planning time, (3) para-professional tutors, (4) teacher specialists, (5) teacher's aides, (6) class size, (7) pupil-teacher ratio, (8) a teacher ombudsman, (9) teacher evaluation of administrators, (10) school calendar, (11) selection of instructional materials, (12) the use of secondary department heads, (13) secondary teacher preparation and planning time, and (14) teacher representation on school board advisory committees.

The testimony adduced in the trial courts does not provide us with much enlightenment as to why any of these items should fall on one side of the line or another. Realistically the two areas, i. e., (1) educational policy, and (2) matters pertaining to employment and professional duties, merge into and blend with each other at many points. Logically and semantically it is nearly impossible to assign specific items to one category and not the other. Certain examples may make this point more clearly.

In the *Mel Su* case the teachers have asked for a planning period of 45 minutes "to be taken during the academic portion of the day." Were this merely a request for planning time, it might be considered negotiable. The demand that it be during the academic portion of the day, however, presents an additional complication: whether, as a matter of educational policy, elementary school children should have one teacher with them throughout the day or whether they are old enough to be taught by different people. This presents a basic educational decision. While the amount of paid time available to a teacher for preparation of lesson plans affects the teacher directly, the demand that such time be available "during the academic portion of the day" presents a policy question.

Similarly, the question of class size affects directly the amount of work a teacher must perform. But the determination of optimum class size is quite basic to school policy and management, and potentially has a substantial impact on the school district's personnel expenditures. A number of courts have found this to be clearly non-negotiable. See *National Ed. Ass'n of Shawnee Mission, Inc. v. Board of Ed.*, 512 P.2d 426, 435 (Kan.1973); *West Irondequoit Teachers Ass'n v. Helsby*, 35 N.Y.2d 46, 358 N.Y.S.2d 720, 315 N.E.2d 775, 777-78 (N.Y. App.1974); *School Dist. of Seward Ed. Ass'n v. School Dist. of Seward*, 188 Neb. 772, 199 N.W.2d 752, 759 (1972); *City of Biddeford v. Biddeford Teachers Ass'n*, 304 A.2d 387, 403 (Me.1973).

An examination of the other specific items listed above yields equally indefinite answers. We are confronted, then, with a situation in which the legislature has not spoken with clarity and concerning which we possess no expertise. We can only conclude that salaries, fringe benefits, the

10. In the list of proposals submitted in the *Kenai* case, for example, it appears that some 38 of the 47 proposals would come within the

number of hours worked, and the amount of leave time are negotiable.¹⁰ In view of the concerns expressed on pages 419, 420 *supra*, we conclude that the other specific items listed on page 422 are, under the existing statutory language, non-negotiable.

It would be helpful if the legislature, through future enactments, provided more specific guidance on a number of the items which the unions seek to negotiate. Lacking that guidance, however, we cannot confidently say that the legislature intended any of these items to be bargainable. We cannot, therefore, read the statutes expansively as to the scope of what is negotiable.

[3] As to matters which affect educational policy and are, therefore, not negotiable, we believe that there is nevertheless implicit in our statutes the intention that the school boards meet and confer with the unions. It is desirable that the boards consider teacher proposals on such questions. This will encourage teachers to give the boards the benefit of their expertise, and to make their positions known for the board's use in establishing educational policy.

[4] One minor question remains. In the *Kenai* case the trial court, in construing the statutes, relied upon the privately expressed opinion, by means of a letter, of a former legislator. The legislator's opinion was not a matter of public record, subject to judicial notice, nor was it introduced in evidence. Even if it were placed in evidence, reliance upon it would be impermissible under *Alaska Public Employees Ass'n v. State*, 525 P.2d 12, 16 (Alaska 1974). Resort to the letter as a means of legal interpretation was, therefore, error.

AFFIRMED IN PART, REVERSED IN PART.

categories of items we have concluded are negotiable. These items are set forth in the appendix to this opinion.

APPENDIX

LIST OF NEGOTIAELE AND
NON-NEGOTIAELE ITEMS

Those items which are non-negotiable are as follows:

1. Relief from Non-Professional Chores ¹¹
2. Class Size and Teacher Load
3. Ombudsman
4. Evaluation of Administrators
5. Teacher Aides
6. Para-Professionals
7. PTR Formula
8. Specialists
9. Calendar

Those items which are negotiable are:

1. Recognition
2. Negotiation Procedures
3. Grievance Procedures
4. Salary Schedule Conditions
5. Salary Schedule
6. Automatic Cost of Living
7. Extra Curricular and Extra Duty
8. Extended Contract
9. Additional Educational Employment
10. Life Insurance
11. Health Insurance
12. Liability Insurance
13. Automobile Allowance
14. Tuition/In-Service Workshops
15. Reimbursement for Physical Examinations
16. Sabbatical Leave
17. Career Development
18. Administrative Leave
19. Personal Leave
20. Sick Leave and Bereavement
21. Personal and Sick Leave for Half-Time Employees
22. Unpaid Leave of Absence

11. In the *Kenai* case this item was described in the negotiating document as follows:

"RELIEF FROM NON-PROFESSIONAL
CHORES

The Board and Association acknowledge that a teacher's primary responsibility is to teach and that his energies should be utilized to this end, therefore, they agree as follows: Teachers shall not be required to perform the following duties:

A. Non-instructional assignments, including but not limited to, supervising of cafeterias,

23. Maternity Leave
24. Political Leave
25. Duty-Free Lunch
26. Teacher Preparation Periods
27. Monthly Planning Time
28. In-Service Days
29. Discretionary Materials
30. Personnel Files
31. Teacher Transfer
32. Teacher Retention
33. Job Openings
34. Reduction of Staff
35. Teacher Contracts
36. Association Rights and Privileges
 - (a) Information
 - (b) Release Time for Meetings
 - (c) Use of School Buildings
 - (d) Use of School Equipment
 - (e) Supplies
 - (f) Mail Facilities
 - (g) Subcontracting
 - (h) Non jeopardy
 - (i) Exclusive Rights
 - (j) KPEA Professional Leave
 - (k) Dues Deduction/Continuing Membership
 - (l) Other Deductions
 - (m) Conformity to Law
 - (n) School Board Agenda
 - (o) Preliminary Draft of Budget
37. Agreement Print-up and Dissemination
38. Duration on Contract



sidewalks, bus loading, or unloading, or playgrounds of more than fifteen (15) minutes daily.

B. Collecting money from students.

C. Cumulative record cards and other clerical and/or custodial functions."

These matters seem so closely related to school board policy as to be non-negotiable. We do not pass upon other conceivable non-professional functions. We also do not know what is specifically meant by "custodial" functions, and do not, therefore, pass upon that aspect of this item.

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: March 5, 1985
Page 1 of 3

REQUEST
Bill/Resolution No.: CSHB 130
Title: Teacher's Collective Bargaining

FISCAL DETAIL
Agency Affected: Administration
Program Category Affected: Independent Operations

Sponsor: Governor Bill Sheffield
Requestor: _____
Date of Request: _____

BRU, Program or Subprogram(s) Affected: New--Educational Employees Labor Relations Agency

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
100 PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-	-0-
200 TRAVEL	-0-	68.3	72.4	76.7	81.3	86.2
300 CONTRACTUAL	-0-	90.2	95.6	101.3	107.4	113.8
400 SUPPLIES	-0-	1.0	1.1	1.2	1.3	1.4
500 EQUIPMENT	-0-	5.0	-0-	-0-	-0-	-0-
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	164.5	169.1	179.2	190.0	201.4

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	164.5	169.1	179.2	190.0	201.4
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	164.5	169.1	179.2	190.0	201.4

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared By: *William J. Gibbons, Director* Phone: 465-4404
Division: Labor Relations Date: March 5, 1985

Approved by Commissioner: *Lisa Rudd* Date: *3/5/85*
Agency: Department of Administration

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

COMMITTEE SUBSTITUTE FOR
HOUSE BILL 130
FISCAL NOTE ANALYSIS

Educational Employees' Collective Bargaining
Prepared by Division of Labor Relations
Department of Administration
March 5, 1985

This bill establishes an Educational Employees' Labor Relations Agency (EELRA) to administer the revised teachers' collective bargaining act. The effect of the revisions is to extend the privileges of the collective bargaining process to all noncertificated educational employees, and to add finality to the bargaining process now authorized for teachers by Title 14.

The three-member EELRA, with the advice and assistance of a professional on contract (probably an attorney), will investigate matters brought before it, hold hearings, resolve Unfair Labor Practice Complaints and conduct elections. The office will be in Anchorage, where a full-time clerk typist (on contract) will provide technical and clerical support.

Since both EELRA staff members will be on contract, the costs of their services are allocated to Contractual Services (\$76,200).

Rental charges for office space are estimated at \$6,000, based on a General Services and Supply quotation of typical Anchorage office space costs. The balance of Contractual Services (\$18,000) is reserved for other administrative costs such as telephone charges, office equipment rentals, duplicating materials, and equipment maintenance agreements.

The allotment for travel (\$68,300) permits a total of 91 individual trips of three days each to various school districts throughout Alaska. This assumes a total of 26 hearings per year which will require travel. For 13 of the hearings a group of four is expected to travel (the three EELRA members plus the attorney). Only three people are expected to travel for the remaining 13 trips (two of the EELRA members--a quorum--plus the attorney). An average cost of \$750 per individual trip in transportation and per diem expenses is assumed.

The budget for office supplies (paper, pens, typewriter ribbons, etc.) is \$1.0. A one-time equipment expense of \$5.0 is included for the initial purchase of office furniture and equipment (desks, chairs, file cabinets).

COMMITTEE SUBSTITUTE FOR
HOUSE BILL 130
FISCAL NOTE ANALYSIS

Educational Employees' Collective Bargaining
Prepared by Division of Labor Relations
Department of Administration
March 5, 1985

For future years' expenses, the following assumptions have been used:

1. An inflation rate of 6.0% per annum.
2. No significant change in the work load from FY 86 levels.

The Department recommends that the bill be amended to authorize teleconferencing of EELRA hearings where all interested parties agree. Teleconferencing some hearings will reduce the EELRA's funding requirements, and will enable them to conduct more hearings within allotted funds.

Public Testimony
HB-90 #15130 SB-129
Robert Nick, Chairman
Lower Kuskokwim School District

The Lower Kuskokwim School District has always opposed the imposition of binding arbitration as a means of resolving disputes with our teachers and continues to oppose that imposition. We have always conceded only what is necessary in order to retain and obtain the quality of teachers we want for our children's education. Based on the fact that we have experienced no loss of teachers for lack of appropriate salary or other benefits, and based on the fact that we have no shortage of qualified applicants for teaching positions in our district, we see no need for this legislation.

As a member of the board of the Alaska School Board Association who often meets with representatives of other districts around the state, I am not aware of any other district that is experiencing difficulty in this area either. I frankly do not understand why the legislature would consider legislation that could very possibly increase the already huge cost of education in the state and in our bush school districts particularly.

The greatest service you could provide the school districts of Alaska, in my opinion, is a means to facilitate the firing of a teacher that a local board deems unsuitable for further employment. Maybe at some future meeting you will consider an alternative to this problem such as: Upon the unanimous approval of a school board, any teacher can be terminated at the conclusion of any school year. A total vote of dissatisfaction from a school board should certainly indicate a lack of faith in a teacher sufficient to substantiate termination.

Given the falling revenue we are now experiencing in Alaska, I am sure there are many legislators who regret ^{some consequences} ~~the liberality~~ of the collective bargaining policy with state employees. The lesson to be learned from that however, is that it is hard if not impossible to take something back once you have given it away. Please do not put the school districts in a position where they may be forced to give too much...especially when we can never get it back.

DEPT OF ADMINISTRATION
Testimony 2/27/95

Mr. Chairman, my name is Bill Gibbons and I am the Director of Labor Relations for the State. I am here on behalf of the administration to urge the adoption of House Bill, 130.

Prior witnesses have already clearly set forth the various aspects of the Bill, so I will only take a few moments to briefly outline its purpose.

The Legislature has set forth as the policy of the State that the State will recognize the right of public employees to organize and bargain collectively. Yet, at present, the law which authorizes teachers and other certificated employees to bargain - Title 14 - does not provide for finality in the bargaining process. That is, when all efforts in negotiation, and mediation have failed, the teachers are not allowed to strike, nor are they entitled to present their case in compulsory arbitration. Non-certificated educational employees are not provided for at all. This Bill attempts to remedy that situation by providing that in the event of impasse, the parties must resolve their disputes in "last best offer" mediated arbitration. We propose arbitration, because where educational employees are involved, we believe that the consequences of a strike may impose unacceptable burdens on local communities.

The "last best offer" form of arbitration is designed to motivate the parties to state realistic positions and to provide them with an incentive to resolve their differences through bargaining, and thus avoid arbitration.

I recognized that the purposes of this legislation could be achieved by amending the Public Employment Relations Act. For example, (HB 90 adopts that approach for non-certificated educational employees). We would be pleased to consider a Bill that includes educational employees under PERA, if that is your preference.

In summary, this Bill allows educational employees to enjoy the privilege of collective bargaining without intruding upon the autonomy of local school boards.



NEA-ALASKA

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February 25, 1985

TO: Representative Mike Navarre, Chair
Members, House Labor and Commerce Committee

FROM: Gayle Pierce, President NEA-Alaska

RE: HB 130

After listening to testimony on Monday, February 18th I want to elaborate upon or reinforce some of the points made during the hearing. I do not expect to be available February 25, so I appreciate your consideration of this written testimony.

First, with regard to statutory recognition of non-certificated employees, I want to make three points.

- 1) For most non-certificated employees, those who do currently bargain, including those in Anchorage, Fairbanks, Mat-Su, Kenai and other districts, this bill does not mean these employees would be able to bargain for the first time. The larger districts have bargained with these employees. The difference is that they bargain now because the district has bestowed upon them a gift, a gift that could be taken away just as it was given and these employees are reminded of this prior to and during each bargaining round. When they receive statutory recognition their collective bargaining will be a right, not a gift, and they will at last be free of the constant insecurity that if management should take a disliking to their activity, they will lose access to the bargaining process.
- 2) For those non-certificated employees, in the small school districts who are not currently allowed by their employers to bargain, statutory recognition will provide some equity. It is unconscionable that the only public employees denied access to collective bargaining are those who work in small rural districts who, by district practice, are excluded from any participation in deciding salary and working conditions and are kept in a second class status because there currently is no statutory recognition.
- 3) Statutory recognition for non-certificated employees would establish the legal mandate to bargain in good faith on all terms and conditions of employment. Currently when bargaining does occur it happens out of the goodness of the employer's heart and any "good faith" occurs strictly on the terms of the employer.

The second aspect of the bill I wish to apprise is the provision for binding arbitration. Fred Pomeroy, Superintendent of Kenai Peninsula Schools testified the current law works and no amendment is needed. Anybody who knows anything about negotiations knows that the ideal bargaining situation results in an agreement reached by the parties. It's true that in this State in some districts there is a positive bargaining relationship and the parties are able to conclude an agreement at the table, or with the assistance of a mediator. This is not the case with all districts, however. In some districts the relationship is poor and the effort to conclude an agreement has taken over two years and tremendous energy, time, and money. Currently there are four districts which have not yet settled negotiations for 1984-85 contracts. In Northwest Arctic the Board rejected the arbitrator's report after the Board had been through two professional bargainers and had basically refused to bargain in good faith pushing for advisory arbitration from the onset of negotiations. In Yukon Koyukuk, bargaining was finally settled last week and there has been litigation about questions of who is in the bargaining unit and the district's bad faith, since the commencement of bargaining. Lower Yukon, Lower Kuskokwim and Skagway are the other three districts which have not yet been able to conclude bargaining.

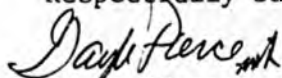
So for these districts and bargaining units which become locked in impasse we need finality. The mechanism we support differs from conventional arbitration. In this bill there is provision for public hearing which subjects the positions of each party to public scrutiny and exerts considerable pressure on each party to bargain and come to arbitration, if come they must, with reasonable positions. The mechanism proposed allows the arbitrator latitude to suggest compromise and indicate judgement about what are or are not reasonable positions and the parties have an opportunity to revise positions in light of public opinion and suggestions by the arbitrator, but in the end, the arbitrator must choose the position of one of the parties. This is a significant difference from conventional arbitration where the arbitrator has authority to write an award.

Finally I want to address the need for an Education Employees Labor Relations Agency. The bargaining relationship between parties is delicate, complex, and sometimes controversial. There are often legitimate questions about bargaining unit definition and employer and employee labor practices. There are also blatant flagrant unfair practices, but currently there is nowhere to turn (except in the most outrageous circumstances, the courts), to bring charges of unfair practices or to seek resolution of honest disagreements. In the paragraph above where I referenced Northwest Arctic and Yukon Koyukuk I made allegations about the behavior of the management of those districts. I believe those allegations to be true, I could substantiate them and convince others of my position and those districts should be compelled to abide by the mandate to bargain in good faith. Those districts though have their side of the story to tell and could perhaps defend their actions. The point is, that until there is a Labor Relations Agency to deal with these questions we are caught in the frustration of feeling victimized by certain practices that significantly interfere with bargaining because we have no recourse available to us; right or wrong, to resolve disputes and get on with bargaining. This need for finality in bargaining has been an issue for years. For ten years grievance arbitration has brought orderly, expeditious and relatively inexpensive resolution of contract disputes. We need to provide that same orderly, expeditious and relatively inexpensive mechanism for finality in negotiations.

Finally, the real point of HB 130 is not the fact of an arbitration award, but the very high probability that the mere presence of the last best offer arbitration requirement will enhance the bilateral negotiations process, increase the probability of a bilateral agreement before the imposition of a determination by the arbitrator, and foster the concept of "win/win" for both parties, students, and the public.

Speaking on behalf of the 7,000 public school teachers in Alaska I urge passage of HB 130.

Respectfully submitted:


Gayle Pierce
President

L85:11



Alaska Public
Employees Association **APEA**

State Headquarters: 340 N. Franklin, Juneau, AK 99801 (907) 586-2334

MEMORANDUM

TO: Representative Mike Navarre, Chairman
House Labor and Commerce Committee

FROM: Cherie Shelley *CS*
Executive Director

SUBJECT: HB 90 and HB 130: Collective Bargaining for School Employees

DATE: March 11, 1985

The Alaska Public Employees Association supports the provisions of HB 90 and HB 130 which grant collective bargaining rights to the noncertificated employees of school boards. These employees are the only public employees excluded from collective bargaining.

Noncertificated employees include teachers' aides, secretaries and custodians. They are traditionally the lowest paid public employees in Alaska. They are the only employees in the educational system who absorb the economic backlash when school boards intimate financial problems.

Previous testimony on these bills has revealed a preference for HB 130 by both teachers and noncertificated employees. APEA likewise supports the binding arbitration provision of HB 130. We recognize, however, that HB 130 is the more controversial of the two and may receive considerable opposition from school districts.

APEA urges the committee to act favorable on both bills. Passage will promote better employer-employee relations by affording noncertificated school employees the same collective bargaining rights provided to teachers and other public employees.

CS/kg

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RESOLUTION 84-85-5

A RESOLUTION OPPOSING BINDING ARBITRATION LEGISLATION

WHEREAS, the concept of binding arbitration is currently under consideration in the Alaska Legislature, i.e., HB 130; and

WHEREAS, the Kenai Peninsula Borough School District Board of Education believes that binding arbitration is an unnecessary component of the collective bargaining process; and

WHEREAS, the Kenai Peninsula Borough School District Board of Education believes that binding arbitration has proven to be nonproductive in other states, i.e., Michigan; and

WHEREAS, the Kenai Peninsula Borough School District Board of Education believes that binding arbitration imposes an alien third party on the process of negotiations; and

WHEREAS, binding arbitration erodes the concept of local control in conflict resolution;

NOW THEREFORE BE IT RESOLVED that the Kenai Peninsula Borough School District Board of Education opposes all legislation that mandates binding arbitration as a part of the collective bargaining process.

ADOPTED THIS 4th DAY OF MARCH, 1985.

Jerry Hobart, Acting President
Kenai Peninsula Borough Board of
Education

ATTEST:

Barbara A. Jewell
Notary Public



RECORDS CERTIFICATION



I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

7/25/89
Date

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COMMITTEE REPORT
HOUSE

(7)

FURTHER: JUDICIARY

2/28/85

Date: March 6 1985

The Committee on HEALTH, EDUCATION AND SOCIAL SERVICES has had HB 141

"An Act relating to the parole of offenders; and providing for an effective date."

under consideration and recommends:

[] do pass [] do not pass

[] do pass with attached amendments(s)

[] replace with CS for HB 141 [] same title [] new title

and recommends do pass

[] AND attaches a "Letter of Intent" [] New Fiscal Note

[] reports it back without recommendation [] Zero Fiscal Note Attached

[] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

[Signature]
[Signature]
[Signature]
[Signature]

MEMBERS HAVING
OTHER RECOMMENDATIONS:

(Vice Chair) Adm. Taylor No Rec
[Signature] No Rec

[Signature]
CHAIRMAN
[Signature]
Co Chair

HB 139

lack of responsiveness of grantees to expeditiously accomplish the intent of the legislature. This bill offers an opportunity for a change that will result in the speedy accomplishment of legislatively assigned purposes of grant appropriations.

Sincerely,

/s/

Bill Sheffield
Governor"

HB 140

HOUSE BILL NO. 140 by the Rules Committee by request of the Governor, entitled:

"An Act relating to the use of teleconferencing under the Administrative Procedure Act."

was read the first time and referred to the House Special Committee on Telecommunications, the Judiciary and Finance Committees.

A zero fiscal note with an analysis was attached and appears in House Journal Supplement No. 10.

The Governor's transmittal letter dated January 28, 1985, appears below:

"Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the use of teleconferencing for meetings and hearings held under the Administrative Procedure Act (AS 44.62). The bill confirms and clarifies that teleconferencing is a legally permissible means for increasing efficient public access and input to government bodies. Provisions to safeguard the constitutional and statutory rights of the public relating to hearings and public meetings are included in the bill.

The availability of new communications technology combined with our declining revenues make passage of this important measure a timely step towards economical efficient expansion of public access to the administrative process.

Sincerely,

/s/

Bill Sheffield
Governor"

HB 141

HOUSE BILL NO. 141 by the Rules Committee by request of the Governor, entitled:

"An Act relating to the parole of offenders; and providing for an effective date."

was read the first time and referred to the Health, Education & Social Services and Judiciary Committees.

Two zero fiscal notes, one with an analysis, were attached and appear in House Journal Supplement No. 10.

The Governor's transmittal letter dated January 28, 1985, appears below:

"Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the administration of parole. The bill updates the statutory authority for parole administration, clarifying apparently conflicting dictates of court decisions, and providing a higher degree of certainty in the parole process. Under the bill, existing AS 33.15, governing parole administration is repealed; the re-organized and revised parole administration statutes are placed in new AS 33.16.

Under this bill, all prisoners sentenced to terms of imprisonment of more than 180 days are eligible for parole. Parole may be granted discretionarily by the parole board for non-presumptively sentenced prisoners, or it may be attained mandatorily through the accumulation of good time credits by the prisoner while incarcerated. The board retains custody and jurisdiction over all paroled prisoners until the expiration of the maximum terms of imprisonment to which the prisoner was sentenced, unless the parolee is discharged early under AS 33.16.210.

This bill clarifies existing law by clearly stating that prisoners with presumptive sentences, with aggravated presumptive sentences, or with consecutive presumptive sentences are not eligible for discretionary parole. Additionally, it clearly sets out that prisoners released on mandatory parole as well as on discretionary parole are subject to the custody and jurisdiction of the board. Attendant to this, the board may set conditions of release which, if violated, can result in the reincarceration of the parolee.

For those prisoners eligible for discretionary parole, the minimum amount of the sentence required to be served has been retained for individuals convicted of first or second degree murder, or of kidnapping; it is one-third of the sentence. For the remainder of the prisoners potentially eligible for discretionary parole -- misdemeanants serving over 180 days, and first-time class B or C felons -- the minimum term before consideration has been shortened to one-quarter of the sentence. In addition, a judge at sentencing is permitted to set a longer minimum term for these prisoners before they may be considered for discretionary parole.

HB 141

In setting conditions of release for both mandatory and discretionary parolees, the bill requires that the parolee not violate any laws or ordinances, and permits the board to set numerous other conditions that will reasonably ensure that the parolee attains rehabilitation and reintegration into society. The board may also require that the parolee pay restitution to the victim of the crime.

Finally, the bill sets out in detail the factors that should be considered when granting discretionary parole; the procedures for granting, revoking, or rescinding parole; and the considerations that must be addressed when deciding whether an alleged parole violator is to be released pending revocation proceedings.

Drafts of the bill have been extensively discussed by members of criminal justice agencies, and this final version addresses the concerns they have regarding our current system of parole. I urge your prompt action on this measure.

Sincerely,

/s/

Bill Sheffield
Governor"

CONSIDERATION OF THE DAILY CALENDARSECOND READING OF HOUSE BILLSHB 66

HOUSE BILL NO. 66 (relating to worker's compensation; effective date) was read the second time with the Labor & Commerce Committee report (page 172).

Representative Clocksin moved and asked unanimous consent that HB 66 be considered engrossed, advanced to third reading and placed on final passage. There being no objection, it was so ordered.

HB 66 was read the third time.

The question being: "Shall HB 66 pass the House?" The roll was taken with the following result:

HB 66

Yeas:	33	Adams, Binkley, Boucher, Cato, Clocksin, Collins, Cotten, Davis, Duncan, Frank, Fuller, Furnace, Goll, Gruenberg, Grussendorf, Hanley, Herrmann, Jenkins, Koponen, Larson, Marrou, Martin, Miller, M.M., Miller, M.W., Navarre, Pearce, Phillips, Rieger, Ringstad, Shultz, Sund, Uehling, Wallis
Nays:	0	
Excused:	5	Hurley, Pettyjohn, Pignalberi, Szymanski, Thompson
Absent:	2	Pourchot, Taylor

Article 10, HB 66 passed the House.

Representative Clocksin moved and asked unanimous consent that the roll call on the passage of the bill be considered the roll call on the effective date clause. There being no objection, it was so ordered.

HB 66 was referred to the Chief Clerk for engrossment.

LEGISLATIVE CITATIONS

Representative Clocksin moved and asked unanimous consent that the House approve the citations on the calendar. There being no objection, the House approved the following citations:

Honoring - Mou Thongdy
by Representatives Gruenberg and Jenkins

Honoring - Jodi Gee
by Representatives Gruenberg and Jenkins

Honoring - Chester Gilmore
by Representatives Clocksin, Uehling and Gruenberg

Honoring - Kathleen McGuire
by Representatives Gruenberg, Clocksin, Uehling, Hurley and Pettyjohn; and Senators Rodey, V. Fischer and Josephson

Honoring - Krista Wilkins
by Representatives Clocksin and Uehling

STATE OF ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION PRETRIAL DIVERSION PROGRAM

March 5, 1985

BILL SHEFFIELD, GOVERNOR

REPLY TO:

- POUCH KIT
JUNEAU, ALASKA 99811
PHONE: (907) 465-3678
- 941 W 4th ST.
ANCHORAGE, ALASKA 99501
PHONE: (907) 278-3508
- 733 7th AVE.
FAIRBANKS, ALASKA 99701
PHONE: (907) 452-7713

The Honorable Max Gruenberg
Chairman
Health, Education and Social
Services Committee
Alaska State House of Representatives
Pouch V
Juneau, AK 99811

Dear Representative Gruenberg:

Enclosed for your consideration is a draft committee substitute for H.B. 141, an Act relating to parole. This proposed committee substitute incorporates amendments and changes suggested by members of the joint House HESS and Judiciary committees during hearings on this bill on February 22 and 25.

The major changes made in this draft are:

- 1) inclusion of language subjecting board appointments to legislative confirmation in AS 33.16.020(a); this was inadvertently omitted from the original draft of the bill;
- 2) inclusion of a new subsection requiring board appointments be made on geographical distribution; AS 33.16.030(e);
- 3) changing the method of compensating board members in AS 33.16.040, to an amount to be determined by the governor;
- 4) deleting AS 33.16.060(a)(6), as this subsection duplicated AS 33.16.060(b)(1);
- 5) adding language to AS 33.16.070 clearly indicating that subpoenas issued by the board are enforceable in Superior Court;
- 6) revising AS 33.16.100(a) to correspond to criteria used by courts at sentencing under State v. Chaney, 477 P.2d 441 (Alaska 1970), with particular emphasis on the rehabilitative goals of the board;

7) incorporating language in AS 33.16.100(8) which allows the board to consider disparate sentences;

8) addition of language in AS 33.16.150(a) clarifying the prohibition against violation of a law or ordinance to indicate a criminal law or ordinance;

9) deletion of AS 33.16.150(b)(9) as superfluous to the prohibition contained in subsection AS 33.16.150(a);

10) deletion of utilization of a grand jury indictment as conclusive proof of probable cause of a parole violation under AS 33.16.220(b); although Morrissey v. Brewers, 408 U.S. 471 (1972) does not prohibit the use of a grand jury indictment, the spirit of Morrissey may lead to protracted litigation of this issue; by using only the narrower, preliminary hearing requirement, litigation on this issue would be precluded;

11) rewording Section 8 of the bill to reflect the intent that board members retain their current seats for the duration of their appointments.

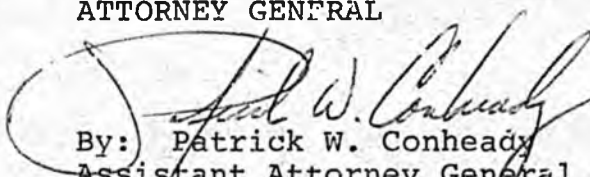
I have also made a number of minor technical changes in wording in order to make the bill read consistently.

Furthermore, I looked into the question raised by Chairman Miller regarding insertion of the sunset date change in the bill's title. This is not necessary. Rather, it is only required when the sunset date change is the major substance of the legislation.

I will continue to be available to assist the committee with any further changes. Additionally, I will be revising and expanding the previously transmitted commentary to this bill. It should be available in final form for your consideration before any floor action on the bill.

Sincerely yours,

NORMAN C. GORSUCH
ATTORNEY GENERAL


By: Patrick W. Conheady
Assistant Attorney General

Introduced: 1/28/85
Referred: Health, Education &
Social Services and Judiciary

BY THE HEALTH, EDUCATION
& SOCIAL SERVICES
COMMITTEE

1 IN THE HOUSE

2 CS HOUSE BILL NO. 141

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the parole of offenders; and
7 providing for an effective date."

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

9 * Section 1. AS 12.55 is amended by adding a new section to read:

10 Sec. 12.55.115. FIXING ELIGIBILITY FOR DISCRETIONARY PAROLE AT
11 SENTENCING. The court may, as part of a sentence of imprisonment,
12 further restrict the eligibility of a prisoner for discretionary
13 parole for a term greater than that required under AS 33.16.100.

14 * Sec. 2. AS 33 is amended by adding a new chapter to read:

15 CHAPTER 16. PAROLE ADMINISTRATION.

16 Sec. 33.16.010. PAROLE. (a) A prisoner who is serving a term
17 or terms of at least 181 days is eligible for either discretionary or
18 mandatory parole.

19 (b) A prisoner who is eligible under AS 33.16.090 may be granted
20 discretionary parole by the board of parole.

21 (c) A prisoner who is not eligible for discretionary parole, or
22 who is not released on discretionary parole, must be released on
23 mandatory parole for the term of good time deductions credited under
24 AS 33.20, if the term or terms of imprisonment exceed 180 days.

25 (d) A prisoner released on discretionary or mandatory parole is
26 subject to the conditions of parole imposed under AS 33.16.150.
27 Parole may be revoked under AS 33.16.220.

28 Sec. 33.16.020. BOARD OF PAROLE. (a) There is in the Depart-
29 ment of Corrections a board of parole consisting of five members

1 appointed by the governor, subject to confirmation by a majority of
2 members of the legislature in joint session.

3 (b) Members of the board serve for staggered terms of five years
4 and until their successors are appointed.

5 (c) The governor shall choose the presiding officer of the board
6 from among the membership.

7 (d) The governor shall make appointments to the board with due
8 regard for representation on the board of the ethnic, racial, sexual,
9 and cultural populations of the state.

10 (e) The governor shall appoint at least one member living in the
11 First Judicial District, one member living in the Third Judicial
12 District, and one member living in either the Second or Fourth
13 Judicial District.

14 Sec. 33.16.030. SELECTION CRITERIA FOR BOARD MEMBERS. (a) The
15 governor shall appoint board members on the basis of their qualifi-
16 cations to make decisions that are compatible with the welfare of the
17 community and of individual offenders. The governor shall appoint
18 members who are able to consider the character and background of
19 offenders and the circumstances under which offenses were committed.

20 (b) At least one person appointed to the board must have ex-
21 perience in the field of criminal justice.

22 (c) Officers or employees of the state may not be appointed to
23 the board.

24 Sec. 33.16.040. COMPENSATION AND EXPENSES. A board member is
25 entitled to compensation at an amount to be set by the governor for
26 each day the member is participating in business of the board, and is
27 also entitled to the per diem and travel allowances provided under
28 AS 39.20.180.

29 Sec. 33.16.050. MEETINGS OF THE BOARD. (a) The board may meet

1 as often as it considers necessary to carry out its responsibilities,
2 but shall meet at least four times a year.

3 (b) Three members of the board constitute a quorum for the
4 conduct of business.

5 (c) Decisions and orders of the board require the affirmative
6 votes of a majority of the members present.

7 (d) The board may conduct meetings by the use of teleconferenc-
8 ing facilities.

9 Sec. 33.16.060. DUTIES OF THE BOARD. (a) The board shall

10 (1) serve as the parole authority for the state;

11 (2) upon receipt of an application, consider the suitability
12 for parole of a prisoner who is eligible for discretionary parole;

13 (3) impose parole conditions on all prisoners released
14 under discretionary or mandatory parole;

15 (4) under AS 33.16.210, discharge a person from parole when
16 custody is no longer required;

17 (5) maintain records of the meetings and proceedings of the
18 board;

19 (6) recommend to the governor and the legislature changes
20 in the law administered by the board;

21 (7) recommend to the governor or the commissioner changes
22 in the practices of the department and of other departments of the
23 executive branch necessary to facilitate the purposes and practices of
24 parole;

25 (8) upon request of the governor, review and recommend
26 applicants for executive clemency; and

27 (9) execute other responsibilities prescribed by law.

28 (b) The board shall adopt regulations under the Administrative
29 Procedure Act (AS 44.62)

1 (1) establishing standards under which the suitability of a
2 prisoner for discretionary parole will be determined;

3 (2) providing for the supervision of parolees and for
4 recommitment of parolees; and

5 (3) governing procedures of the board.

6 Sec. 33.16.070. PROCESS. The board or a member of the board may
7 issue subpoenas and subpoenas duces tecum in the performance of board
8 duties under AS 33.16.060(a). Subpoenas issued under this section are
9 enforceable in Superior Court.

10 Sec. 33.16.080. EXECUTIVE DIRECTOR. The board shall hire an
11 executive director to serve the board in the discharge of its duties.
12 The executive director must have had training and experience in the
13 field of criminal justice. The executive director may employ addi-
14 tional staff to assist the board.

15 Sec. 33.16.090. ELIGIBILITY FOR DISCRETIONARY PAROLE. (a) A
16 prisoner who is serving a term of at least 181 days, and who is not
17 otherwise ineligible under (b) of this section, may, in the discretion
18 of the board, be released on discretionary parole subject to AS 12.-
19 55.086(b), 12.55.115, and AS 33.16.100(c) and (d).

20 (b) A prisoner is not eligible for discretionary parole if the
21 prisoner is serving a presumptive sentence. A presumptive sentence
22 means

23 (1) a sentence imposed under AS 12.55.125(c)(1) -- (4),
24 (d)(1) -- (3), (e)(1) -- (3), or (i)(1) -- (4), including any period
25 of imprisonment imposed after adjustment under AS 12.55.155(a), (c),
26 or (d); or

27 (2) sentences imposed under the statutes listed in (1) of
28 this subsection which are to be served consecutively.

29 (c) In determining the eligibility of a prisoner for

1 discretionary parole, the board may rely upon the verbatim written
2 transcript of the judge's sentencing remarks under AS 12.55.025(a)(1),
3 and any other portion of the sentencing proceeding, as well as the
4 judgment entered by the court.

5 Sec. 33.16.100. GRANTING OF DISCRETIONARY PAROLE. (a) The
6 board may authorize the release of a prisoner on discretionary parole
7 if it determines that

8 (1) the prisoner will live and remain at liberty without
9 violating any laws or conditions imposed by the board;

10 (2) the prisoner's rehabilitation and reintegration into
11 society will be furthered by release on parole;

12 (3) the prisoner will not pose a threat of harm to the
13 public if released on parole; and

14 (4) release of the prisoner on parole would not diminish
15 the seriousness of the crime.

16 (b) If the board finds a change in circumstances in a prisoner's
17 parole release plan submitted under AS 33.16.130(a), or discovers new
18 information concerning a prisoner who has been granted a parole re-
19 lease date, the board may rescind or revise the previously granted
20 parole release date. In reconsidering the release date, the proce-
21 dures set out in AS 33.16.130(b) and (c) must be followed.

22 (c) Except as provided in (d) of this section, a prisoner may
23 not be released on discretionary parole until the prisoner has served
24 at least one-fourth of the period of confinement imposed, or any
25 minimum term set under AS 12.55.115 at sentencing, whichever is great-
26 er.

27 (d) A prisoner who is sentenced for a term under AS 12.55.125(a)
28 or (b) may not be released on discretionary parole until the prisoner
29 has served the mandatory minimum term under AS 12.55.125(a) or (b), at

1 least one-third of the period of confinement imposed, or any minimum
2 term set under AS 12.55.115 at sentencing, whichever is greater.

3 Sec. 33.16.110. PREPAROLE REPORT. In determining whether a
4 prisoner is suitable for discretionary parole, the board shall
5 consider the preparole reports including,

6 (1) the presentence report made to the sentencing court;

7 (2) the recommendations made by the sentencing court, by
8 the prosecuting attorney, by the defense attorney, and any statements
9 made by the victim or the prisoner at sentencing;

10 (3) the prisoner's institutional conduct history while
11 incarcerated;

12 (4) recommendations made by the staff of the correctional
13 facilities in which the prisoner was incarcerated;

14 (5) reports of prior crimes, juvenile histories, and previ-
15 ous experiences of the prisoner on parole or probation;

16 (6) physical, mental, and psychiatric examinations of the
17 prisoner;

18 (7) information submitted by the prisoner, the sentencing
19 court, the victim of the crime, the prosecutor, or other persons
20 having knowledge of the prisoner or the crime;

21 (8) information concerning an unjustified disparity in the
22 sentence imposed on a prisoner in relation to other sentences imposed
23 under similar circumstances; and

24 (9) other relevant information that may be reasonably
25 available.

26 Sec. 33.16.120. RIGHT OF VICTIM TO COMMENT ON PAROLE OF PRISON-
27 ER. (a) Upon request of the victim, notice of a hearing to review or
28 consider discretionary parole for a state prisoner who is convicted of
29 a crime against a person must be sent to the victim of the crime at

1 least 30 days before the scheduled hearing.

2 (b) It is the responsibility of the victim to keep the board
3 apprised of the victim's most current mailing address. The board
4 shall send the notice required under (a) of this section to the last
5 known address of the victim. The address of the victim may not be
6 disclosed to the prisoner or the prisoner's attorney.

7 (c) The victim has a right to comment in writing on the proposed
8 action of the board. Copies of the comments must be provided to the
9 prisoner and the prisoner's attorney before action by the board.

10 (d) The board shall consider the comments presented under (c) of
11 this section in deciding whether to release the prisoner on parole.

12 (e) Upon request of the victim, if the board decides to release
13 on parole a prisoner who is convicted of a crime against a person, the
14 board shall make every reasonable effort to notify the victim before
15 the prisoner's release date. Notification under this subsection must
16 include the expected date of the prisoner's release, the geographic
17 area in which the prisoner is required to reside, and other pertinent
18 information concerning the prisoner's conditions of parole that may
19 affect the victim.

20 (f) Upon request of the victim, if a prisoner is released under
21 AS 33.16.010(c), the board shall make every reasonable effort to
22 notify the victim before the prisoner's release date. Notification
23 under this subsection must include the expected date of the prisoner's
24 release, the geographic area in which the prisoner is required to
25 reside, and other pertinent information concerning the prisoner's
26 conditions of parole that may affect the victim.

27 Sec. 33.16.130. APPLICATION FOR DISCRETIONARY PAROLE. (a) A
28 prisoner eligible for discretionary parole may apply to the board for
29 discretionary parole. As part of the application for parole, the

1 prisoner must submit to the board a parole release plan which includes
2 the prisoner's plan for employment, residence, and other information
3 concerning the prisoner's rehabilitative plans if released on parole.

4 (b) Before the board determines a prisoner's suitability for
5 discretionary parole, the prisoner is entitled to a hearing before the
6 board. The prisoner must be furnished a copy of the preparole reports
7 listed in AS 33.16.110, and permitted access to all records that will
8 be considered by the board in making its decision except those that
9 are made confidential by law. The prisoner may also respond in
10 writing to all materials considered by the board, be present at the
11 hearing, and present evidence to the board.

12 (c) The board shall issue its decision in writing and provide
13 the basis for a denial of discretionary parole. A copy of the deci-
14 sion must be provided to the prisoner.

15 Sec. 33.16.140. ORDER FOR PAROLE. An order for parole issued by
16 the board, setting out the conditions imposed under AS 33.16.150(a)
17 and AS 33.16.150(b), and the date parole custody ends, must be
18 furnished to each prisoner released on discretionary or mandatory
19 parole.

20 Sec. 33.16.150. CONDITIONS OF PAROLE. (a) As a condition of
21 parole, a prisoner released on discretionary or mandatory parole shall
22 refrain from violation of state or federal law or municipal ordinance,
23 which is punishable by imprisonment.

24 (b) The board may require as a condition of discretionary or
25 mandatory parole that a prisoner released on parole

- 26 (1) meet family obligations;
27 (2) pursue employment, education, counseling, or training;
28 (3) remain within stated geographic limits unless written
29 permission to depart from the stated limits is granted the parolee;

1 (4) report upon release to the parole officer assigned to
2 the parolee;

3 (5) report as required to the parole officer assigned to
4 the parolee;

5 (6) reside at a stated place and notify the board of any
6 change in place of residence;

7 (7) not possess or control firearms or other dangerous
8 weapons;

9 (8) refrain from possessing or consuming alcoholic beverages;
10

11 (9) submit to reasonable searches and seizures by a parole
12 officer, or a peace officer acting under the direction of a parole
13 officer;

14 (10) submit to appropriate medical, mental health, or controlled
15 substance or alcohol examination, treatment, or counseling;

16 (11) submit to periodic examinations designed to detect the
17 use of alcohol or controlled substances;

18 (12) make restitution ordered by the court to a victim of
19 the prisoner's crime, according to a schedule established by the
20 board;

21 (13) refrain from opening, maintaining, or using a checking
22 account or charge account;

23 (14) refrain from entering into a contract other than a
24 prenuptial contract or a marriage contract;

25 (15) refrain from operating a motor vehicle;

26 (16) refrain from entering an establishment where alcoholic
27 beverages are served, sold, or otherwise dispensed;

28 (17) refrain from participating in any other activity or
29 associating with any other person that the board determines is

1 reasonably likely to diminish the rehabilitative goals of parole, or
2 which may endanger the public.

3 (c) Except for a condition imposed under (b) (4), (7), (9), (11)
4 or (12) of this section, the board may generally delegate imposition
5 of special conditions under (b) of this section to the discretion of
6 the parole officer.

7 (d) The board may require a prisoner released on parole to
8 comply with special conditions imposed under (b) of this section for
9 any period up to the maximum term under which the prisoner is subject
10 to the custody and jurisdiction of the board.

11 Sec. 33.16.160. CHANGE IN PAROLE CONDITIONS. (a) Upon appli-
12 cation of the state or the parolee, the board may change a condition
13 of parole previously imposed under AS 33.16.150(b).

14 (b) If the proposed change in conditions of parole is more
15 restrictive of a parolee's liberty, the parolee is entitled to notice
16 of the proposed change, the reasons for the proposed change, a hearing
17 before the board, and an opportunity to respond to the proposed change
18 and to present evidence.

19 (c) Notwithstanding (a) and (b) of this section, when a parole
20 officer determines that an emergency situation requires an immediate
21 change in a condition of parole, or the imposition of a new condition,
22 the parole officer may impose the change or new condition immediately,
23 without a hearing. The parole officer shall immediately notify the
24 board of the imposition of the emergency change or new condition and
25 shall provide a written report setting out the basis for the change or
26 new condition and the nature of the emergency. The effective period
27 of a change in condition or imposition of a new condition under this
28 section may not exceed 15 working days.

29 (d) A condition of parole may be changed, a new condition of

1 parole may be imposed, or a new or changed condition imposed under (c)
2 of this section may be extended by a member of the board or the
3 board's designee if, after a preliminary hearing, an emergency situa-
4 tion is found which requires a change in condition. The effective
5 period of a change in condition under this subsection, the imposition
6 of a new condition under this subsection, or the extension under this
7 subsection of a new or changed condition imposed under (c) of this
8 section may not exceed 90 days.

9 Sec. 33.16.170. CONFIDENTIALITY OF RECORDS AND INFORMATION. The
10 preparole reports listed in AS 33.16.110, and other information ob-
11 tained and used by the board under this chapter, are confidential and
12 may not be disclosed to anyone other than the board, the sentencing
13 judge, the prosecuting and defense attorneys, the prisoner, the pris-
14 oner's attorney, the attorney for the board, the staff of the board,
15 or others granted access to this information under this chapter.

16 Sec. 33.16.180. DUTIES OF THE COMMISSIONER. The commissioner
17 shall

18 (1) conduct investigations of prisoners eligible for discre-
19 tionary parole, as requested by the board;

20 (2) supervise the conduct of parolees;

21 (3) appoint and assign parole officers and personnel;

22 (4) provide the board, within 30 days after sentencing,
23 information on a sentenced prisoner who may be eligible for discre-
24 tionary parole under AS 33.16.090;

25 (5) notify the board and provide information on a prisoner
26 120 days before the prisoner's mandatory release date, if the prisoner
27 is to be released to mandatory parole; and

28 (6) maintain records, files, and accounts as requested by
29 the board.

1 Sec. 33.16.190. PAROLE AND PROBATION OFFICERS. An officer ap-
2 pointed by the commissioner under AS 33.05.020(a) or under AS 33.16.-
3 180, may discharge duties under AS 33.05 or AS 33.16.

4 Sec. 33.16.200. CUSTODY OF PAROLEE. Except as provided in
5 AS 33.16.210, the board retains custody of discretionary and mandatory
6 parolees until the expiration of the maximum term or terms of impris-
7 onment to which the parolee is sentenced.

8 Sec. 33.16.210. DISCHARGE OF PAROLEE. The board may uncondi-
9 tionally discharge a parolee from the jurisdiction and custody of the
10 board after the parolee has completed two years of parole, if the
11 sentence of the parolee does not include any residual period of pro-
12 bation. A parolee with a residual period of probation may, after two
13 years of parole, be discharged by the board to immediately begin
14 serving the residual period of probation.

15 Sec. 33.16.220. REVOCATION OF PAROLE. (a) The board may revoke
16 parole for violation of a state or federal law, a municipal ordinance,
17 or a condition imposed under AS 33.16.150(b).

18 (b) Except as provided in (e) of this section, within 15 working
19 days after the arrest and incarceration of a parolee for violation of
20 a condition of parole, the board or its designee shall hold a prelimi-
21 nary hearing. At the preliminary hearing, the board or its designee
22 shall determine if there is probable cause to believe that the parolee
23 violated the conditions of parole and, when probable cause exists,
24 whether the parolee should be released pending a final revocation
25 hearing. A finding of probable cause at a preliminary hearing in a
26 criminal case is conclusive proof of probable cause that a parole
27 violation occurred.

28 (c) In determining whether a parole violator should be released
29 pending a final revocation hearing, the board or its designee shall

1 consider

2 (1) the likelihood of the parolee's appearance at a final
3 revocation hearing;

4 (2) the seriousness of the alleged violation;

5 (3) whether the parolee presents a danger to the community;
6 and

7 (4) whether the parolee is likely to further violate con-
8 ditions of parole.

9 (d) If the parole violator is released pending a final revoca-
10 tion hearing, the board or its designee may impose additional con-
11 ditions necessary to ensure the parolee's appearance at the final
12 revocation hearing, and to prevent further violation of conditions of
13 parole.

14 (e) A preliminary hearing under (b) of this section is not re-
15 quired if the board holds a final revocation hearing within 20 working
16 days after the parolee's arrest and incarceration.

17 (f) The board shall hold a final revocation hearing no later
18 than 120 days after a parolee's arrest, subject to restrictions aris-
19 ing under AS 33.10.010 and (g) of this section.

20 (g) When the basis for the revocation proceeding is a criminal
21 charge, the parolee may request, or the board upon its own motion may
22 propose that further proceedings on the revocation be delayed. In
23 making the determination to delay further proceedings, the board shall
24 consider prejudice that may result to the parolee's and the state's
25 interests in the pending criminal case and the parolee's decision to
26 delay final revocation proceedings. If good cause to proceed is
27 found, the board shall consult with the attorney general before con-
28 tinuing the final revocation proceeding.

29 (h) At a final revocation hearing, a violation of a condition of

1 parole must be established by a preponderance of the evidence.

2 (i) If, after the final revocation hearing, the board finds that
3 the parolee has violated a condition of parole imposed under AS 33.-
4 16.150(b), or a law or ordinance, the board may revoke all or a por-
5 tion of the parole, or change any condition of parole.

6 Sec. 33.16.230. WAIVER OF HEARING. A prisoner or parolee may
7 waive the right to a hearing provided under AS 33.16.120, 33.16.160,
8 or 33.16.220 by submitting a written waiver to the board.

9 Sec. 33.16.240. ARREST OF A PAROLE VIOLATOR. (a) A parolee may
10 be arrested, with or without a warrant, for a violation of parole.

11 (b) A warrant for the arrest of a parolee who is charged with a
12 violation of parole may be issued by the board, or a member of the
13 board, based on probable cause that a violation has occurred.

14 (c) A parole officer may, without a warrant, arrest a parolee
15 for a violation of parole only if there is danger to the public, if
16 there is a likelihood that the parolee will flee, or if the parolee
17 committed a crime in the presence of the parole officer.

18 (d) If a parolee is arrested without a warrant, the parole
19 officer shall notify the board no later than the working day immedi-
20 ately following the arrest. The parole officer shall, within five
21 working days after the arrest, provide the board with a written report
22 setting out the alleged violation and circumstances that required
23 immediate arrest of the parolee.

24 (e) A parolee arrested for violation of parole is not entitled
25 to bail.

26 (f) Time spent in custody pending revocation proceedings must be
27 credited toward the unexpired term of imprisonment of the parolee;
28 however, the time the parolee was at liberty on parole does not alter
29 the time the parolee was sentenced to serve.

1 Sec. 33.16.250. EXECUTION OF WARRANT FOR ARREST OF PAROLEE. (a)
2 A parole officer, or a peace officer acting at the request of a parole
3 officer, shall execute a warrant issued under AS 33.16.240 by ar-
4 resting the parolee and confining the parolee in a correctional facil-
5 ity designated by the commissioner.

6 (b) The parole officer or peace officer shall immediately notify
7 the board or a member of the board of an arrest under (a) of this
8 section.

9 Sec. 33.16.260. DEFINITIONS. In this chapter

10 (1) "board" means the board of parole;

11 (2) "commissioner" means the commissioner of corrections;

12 (3) "controlled substance" means a drug, substance, or
13 immediate precursor included in the schedules set out in AS 11.71.-
14 140 -- 11.71.190;

15 (4) "crime against a person" has the meaning given in
16 AS 33.30.900;

17 (5) "department" means the Department of Corrections;

18 (6) "discretionary parole" means the release of a prisoner
19 by the board before the expiration of a term, subject to conditions
20 imposed by the board and subject to its custody and jurisdiction;

21 (7) "mandatory parole" means the release of a prisoner who
22 was sentenced to one or more terms of imprisonment exceeding 180 days,
23 for the period of good time credited under AS 33.20, subject to con-
24 ditions imposed by the board and subject to its custody and jurisdic-
25 tion;

26 (8) "parolee" means a prisoner, sentenced to one or more
27 terms of imprisonment exceeding 180 days, released by the board or by
28 operation of law before the expiration of the term, subject to the
29 custody and jurisdiction of the board;

1 (9) "prisoner" means an offender confined for a violation
2 of state law, but does not include a person confined under AS 47;

3 (10) "victim" has the meaning given in AS 12.55.185.

4 * Sec. 3. AS 33.20.040(a) is repealed and reenacted to read:

5 Sec. 33.20.040. RELEASED PRISONER. (a) A prisoner released
6 under AS 33.20.030 must be released on mandatory parole to the custody
7 and jurisdiction of the parole board under AS 33.16, until the expir-
8 ation of the maximum time to which the prisoner was sentenced, if the
9 term or terms of imprisonment exceeded 180 days. However, a prisoner
10 released on mandatory parole may be discharged under AS 33.16.210
11 before the expiration of the term. A prisoner who was sentenced to an
12 imprisonment of 180 days or less must be unconditionally discharged,
13 except as provided in (c) of this section.

14 * Sec. 4. AS 33.20.040 is amended by adding a new subsection to read:

15 (c) If a prisoner's sentence includes a residual period of
16 probation, a prisoner released under AS 33.20.030 must immediately
17 begin serving the residual probationary period, except that if manda-
18 tory parole is required under (a) of this section, serving the proba-
19 tionary period must immediately follow discharge from parole.

20 * Sec. 5. AS 39.50.200(b)(20) is amended to read:

21 (20) [STATE] Board of Parole (AS 33.16.020 [AS 33.15.010]);

22 * Sec. 6. AS 44.66.010(a)(3) is amended to read:

23 (3) [STATE] Board of Parole (AS 33.16.020 [AS 33.15.010])

24 -- June 30, 1989 [1985];

25 * Sec. 7. AS 33.15 is repealed.

26 * Sec. 8. Current members of the board of parole appointed under AS
27 33.15.010, repealed in sec. 7 of this Act, retain their membership on the
28 board of parole under AS 33.16.020 for the remainder of the terms of
29 appointment.

1 * Sec. 9. This Act takes effect January 1, 1986.
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