

**ALASKA LEGISLATURE COMMITTEE FILES 1900-1900 00/2**

**3473 HLAB HB 130**

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# ASSOCIATION OF ALASKA SCHOOL BOARDS

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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 ten percent.

RECENTLY SETTLED:

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.



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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.

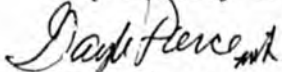
So for these districts and bargaining units which become locked in impasse we need finality. The mechanism we support differs from conventional arbitration. In this bill there is provision for public hearing which subjects the positions of each party to public scrutiny and exerts considerable pressure 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

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election it shall be certified by the labor relations agency as exclusive representative of all the employees in the bargaining unit.

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

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

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

**Sec. 23.40.110. Unfair labor practices.**

— (a) A public employer or his agent may not

(1) interfere, restrain or coerce an employee in the exercise of his rights guaranteed in Sec. 80 [Sec. 23.40.80] of this chapter;

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

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

(4) discharge or discriminate against an employee because he has signed or filed an affidavit, petition or complaint or given testimony under Secs. 70-260 [Secs. 23.40.70 to 23.40.260] of this chapter;

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

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

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

(2) payment by the employee to the exclusive bargaining agent of a service fee to reimburse the exclusive bargaining

agent for the expense of representing the members of the bargaining unit.

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

(1) restrain or coerce

(A) an employee in the exercise of the rights guaranteed in Sec. 80 [Sec. 23.40.80] of this chapter, or

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

(2) refuse to bargain collectively in good faith with a public employer, if it has been designated in accordance with the provisions of Secs. 70-260 [Secs. 23.40.70 to 23.40.260] of this chapter as the exclusive representative of employees in an appropriate unit.

**Sec. 23.40.120. Investigation and conciliation of complaints.**

— If a verified written complaint by or for a person claiming to be aggrieved by a practice prohibited by Sec. 110 [Sec. 23.40.110] of this chapter, or a written accusation that a person subject to Secs. 70-260 [Secs. 23.40.70 to 23.40.260] of this chapter has engaged in a prohibited practice, is filed with the labor relations agency, it shall investigate the complaint or accusation. If it determines after the preliminary investigation that probable cause exists in support of the complaint or accusation, it shall try to eliminate the prohibited practice by informal methods of conference, conciliation, and persuasion. Nothing said or done during this endeavor may be used as evidence in a subsequent proceeding.

**Sec. 23.40.130. Complaint and accusation.**

— If the labor relations agency fails to eliminate the prohibited practice by conciliation and to obtain voluntary compliance with Secs. 70-260 [Secs. 23.40.70 to 23.40.260] of this chapter, or, before it attempts conciliation, it may serve a copy of the complaint or accusations upon the respondent. The complaint or accusation and the subsequent procedures shall be handled in accordance with the administrative adjudication portion of the Administrative Procedure Act (AS 44.62).

**Sec. 23.40.140. Orders and decisions.**

— If the labor relations agency finds that a person named in the written complaint or accusation has engaged in a prohibited practice, the labor relations agency shall issue and serve on the person an order or decision requiring him to cease and desist from the prohibited practice and to take affirmative action which will carry out the provisions of Secs. 70-260 [Secs. 23.40.70 to 23.40.260] of this chapter. If

the labor relations agency finds that a person named in the complaint or accusation has not engaged or is not engaging in a prohibited practice, the labor relations agency shall state its findings of fact and issue an order dismissing the complaint or accusation.

**Sec. 23.40.150. Enforcement by injunction.**

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

**Sec. 23.40.160. Power to investigate and compel testimony.**

— (a) For the purpose of the investigation, proceedings, or hearings which the labor relations agency considers necessary to carry out the provisions of Secs. 70-260 [Secs. 23.40.70 to 23.40.260] of this chapter, the labor relations agency may issue subpoenas requiring the attendance and testimony of witnesses and the production of relevant evidence.

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

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

(d) If a person refuses to obey a subpoena issued under Secs. 70-260 [Secs. 23.40.70 to 23.40.260] of this chapter, the superior court in the district in which the person resides or is found may, upon application by the labor relations agency, issue an order requiring him to comply with the subpoena.

**Sec. 23.40.170. Regulation.** — The labor relations agency may adopt regulations under the Administrative Procedure Act (AS 44.62) to carry out the provisions of Secs. 70-260 [Secs. 23.40.70 to 23.40.260] of this chapter.

**Sec. 23.40.180. Penalty for violation of order or decision.** — A person who violates a provision of an order or decision of the labor relations agency is guilty of a misdemeanor and is punishable by a fine of not more than \$500.

**Sec. 23.40.190. Mediation.** — If, after a reasonable period of negotiation over the terms of a collective bargaining agreement, a deadlock exists between a public

**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)

Additional File Contents - HB 130

March 11, 1985 Monday

- 1) Revised Fiscal Note, Position Statement, and Fiscal Note for proposed CSHB 130 -- Dept. of Administration
- 2) Kenai Decision; Alaska Supreme Court, December 9, 1977.  
(from the Pacific Reporter-Includes the list of 9 non-negotiable items and 38 negotiable items)
- 3) Copy of CS for SB 78 (HESS) am, by Kerttula from the 13th Legislature; with attached FN from the Dept. of Administration and a Senate HESS Committee Report on the bill, including a sectional analysis.
- 4) Written testimony from William Gibbon's statements to Committee on February 25, 1985
- 5) Written testimony from Robert Nick, Chairman, Lower Kuskokwim School District read to Committee on February 25, 1985
- 6) Position Statement on HB 130 and HB 90 by the Alaska Public Employees Association

**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 board would 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

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,<sup>1</sup> one ruled in favor of the teachers' union,<sup>2</sup> and one split the various items, ruling for the board on some and the unions on others.<sup>3</sup>

### 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

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).

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.<sup>4</sup> See *Macaulay 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 *Macaulay 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.<sup>5</sup> 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. 398, 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.<sup>5</sup> 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.<sup>7</sup>

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 differences with the union"; emphasis in original); *Majure v. N. L. R. B.*, 198 F.2d 77, 5th Cir. 1952). See generally Sverdlov, *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 483, 484 (5th Cir. 1968); *N. L. R. B. v. Reed & Prince Mfg. Co.*, 205 F.2d 131, 134-35 (1st Cir. 1953), cert. denied, 346 U.S. 88, 74 S.Ct. 139, 98 L.Ed. 391 (1953) ("the employer is obliged to make some reasonable

gative" to determine AS 14.20.610, concerns with work-management policy.

The Alaska teacher-statutes are more found elsewhere, gaining should be school boards as inter-brand, supra, is visions in other n firmly within.

Therefore, could across a wide educational policy.

#### to Bargain

law concerning unions and conclude that the is broad. The sector has al-oes contain, un- trend has been bargain in good ms with respect r conditions of i to whether the s bargained for es of manage- es hold that for to avoid being bad faith, the asonable effort es. While the tive bargaining

ees must be bar- 'Garment Work- U.S.App.D.C. 71, a to relocate the bject to bargain- 09 N.L.R.B. 1006, plant subject to d Motors Corp., sub nom., Inter- . A. & A. Imp. pp.D.C. 274, 277, ion to sell part of

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 *Abood* 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.<sup>1</sup>

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. Wis. 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 14.20.559 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.<sup>9</sup>

*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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78, 59 S.Ct. 993,  
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*Superior Court*,  
14-06 (Cal.1936)  
*ersey Supreme*  
039-40 (D.N.J.  
3d Cir. 1976)  
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19 (1975); Sum-  
ning: A Political  
(1974); Welling-  
llective Bargain-  
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 *Shawnee 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) (argues 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 *Mat-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. Kelsby*, 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

number of hours worked, and the amount of leave time are negotiable.<sup>10</sup> 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.

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

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



## APPENDIX

LIST OF NEGOTIABLE AND  
NON-NEGOTIABLE ITEMS

Those items which are non-negotiable are as follows:

1. Relief from Non-Professional Chores <sup>11</sup>
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) Union 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.

I. REQUEST

Bill/Resolution No.: CS SB 78 (Hess)  
 Title: Teachers' Collective Bargain, Aqmts  
 Sponsor: Health, Educ. & Social Serv.  
 Requestor: \_\_\_\_\_

II. FISCAL DETAIL

Agency Affected: Administration  
 Program Category Affected: Independent Oper  
 BRU, Program of Subprogram(s) Affected:  
 Labor Relations Agency

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES	-0-	-0-	0-	-0-	-0-	-0-
200 TRAVEL	-0-	7.5	4.7	4.7	4.7	4.7
300 CONTRACTUAL	-0-	27.6	17.3	17.3	17.3	17.3
400 COMMODITIES	-0-	0.4	0.3	0.3	0.3	0.3
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	-0-	35.5	22.3	22.3	22.3	22.3
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	35.5	22.3	22.3	22.3	22.3
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

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

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

None

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Ken Ryals *Ken Ryals*  
 Division: Administrative Services

Phone: 465-2277  
 Date: 4/21/83

Approved by Commissioner: Lisa Rudd *Lisa Rudd*  
 Department: ADMINISTRATION

Date: 4/21/83

Distribution:

- Original to Legislative Finance
- Copy to Office of Management and Budget (for Legislature introduced bills)
- Copy to Department (for Governor introduced bills)
- Copy to Sponsor
- Copy to Requestor (if different from Sponsor)

3/8/83

Offered: 3/20/84

Original sponsors: Kerttula, V. Fischer,  
Josephson, et al

1 IN THE SENATE

BY THE RULES COMMITTEE

2

CS FOR SENATE BILL NO. 78 (Rules)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6

For an Act entitled: "An Act relating to teachers' collective bargaining

7

agreements; and providing for an effective date."

8

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

9

\* Section 1. AS 14.20 is amended by adding a new section to Article 6

10 to read:

11

Sec. 14.20.540. PUBLIC POLICY. The legislature finds that it is

12

the public policy of the state to promote harmonious and cooperative

13

relationships between government and its employees by permitting

14

school district certificated employees to organize and bargain collec-

15

tively. The legislature further finds that the welfare of the citi-

16

zens of this state is promoted by assuring the effective and orderly

17

operations of government. Accordingly the legislature declares that

18

strikes by school district certificated employees shall be prohibited

19

and that school district certificated employees shall be guaranteed

20

the right to join or refuse to join, and to participate in or refuse

21

to participate in, employee organizations.

22

\* Sec. 2. AS 14.20 is amended by adding a new section to read:

23

Sec. 14.20.552. RIGHTS OF CERTIFICATED EMPLOYEES. A certif-

24

icated employee of a school district shall have the right to

25

(1) organize or form, join or assist, any employee orga-

26

nization;

27

(2) negotiate collectively through representatives of their

28

own choosing;

29

(3) engage in other peaceful activities for the purposes of

1 collective bargaining or other mutual aid or protection unless the  
2 activity is prohibited by law;

3 (4) refuse to join or participate in the activities of an  
4 employee organization, including the payment of dues, fees, assess-  
5 ments, or service fees of any type; and

6 (5) representation by the certified and recognized orga-  
7 nization for the purpose of the administration of grievances arising  
8 under collective bargaining agreements.

9 \* Sec. 3. AS 14.20.555(a) is amended to read:

10 (a) Negotiations between the certificated employees of the  
11 regional educational attendance areas and the respective regional  
12 school boards may [SHALL] be conducted by one team representing all  
13 the certificated employees [, ONE TEAM REPRESENTING ALL THE CERTIF-  
14 ICATED ADMINISTRATIVE PERSONNEL IF THEY HAVE JOINED TOGETHER TO NEGO-  
15 TIATE INDEPENDENTLY AS PROVIDED IN AS 14.20.560(f),] and one team  
16 representing all the participating regional school boards. If admin-  
17 istrative personnel or noncertificated employees have joined together  
18 to negotiate independently as provided in AS 14.20.560(f), a team  
19 representing the independent employee organizations shall participate  
20 in the negotiations.

21 \* Sec. 4. AS 14.20.560 is repealed and reenacted to read:

22 Sec. 14.20.560. NEGOTIATING UNIT. (a) Upon petition for certi-  
23 fication by 25 percent of the employees in a proposed negotiation unit  
24 and if the agency has reasonable cause to believe that a question of  
25 representation exists, the agency shall provide for an appropriate  
26 hearing upon 10 days notice to all certificated employees of the  
27 school district. If the agency finds that there is a question of  
28 representation, the agency shall conduct an election by secret ballot  
29 to determine whether or by which organization the employees desire to

1 be represented and shall certify the results of the election. The  
2 ballot shall contain a "No Representation" option. A hearing may be  
3 waived by stipulation of the agency and petitioning employees and the  
4 agency may conduct a consent election or voluntary certification in  
5 conformity with the regulations of the agency or an election in a  
6 negotiating unit agreed upon by the parties. The agency shall deter-  
7 mine the persons eligible to vote in an election and shall establish  
8 rules governing the election. If none of the choices on the ballot in  
9 an election receives a majority of the votes cast, a runoff election  
10 shall be conducted. The ballot in the runoff election shall provide  
11 for selection between the two choices receiving the largest and the  
12 second largest number of valid votes cast in the election. If an  
13 organization receives the majority of the votes cast in the election,  
14 it shall be certified by the agency as the exclusive representative of  
15 all the employees in the negotiating unit.

16 (b) An election may not be held in a negotiating unit or in a  
17 subdivision of a negotiating unit if a valid election has been held  
18 within the preceding 12 months.

19 (c) A school board may recognize an organization as the exclu-  
20 sive representative of the certificated employees by mutual conse c.

21 (d) An election may not be conducted by the agency in a negoti-  
22 ating unit in which there is in force a valid agreement, except during  
23 the 90-day period preceding the expiration date of the agreement.  
24 However, an election may be held upon petition of 25 percent of the  
25 persons in the negotiating unit but not parties to the agreement if  
26 more than three years have elapsed since the execution of the agree-  
27 ment or the last timely renewal, whichever was later.

28 \* Sec. 5. AS 14.20 is amended by adding a new section to read:

29 Sec. 14.20.565. NEGOTIATION MEETINGS. (a) A school board

1 shall, upon the written request of an employee bargaining organiza-  
2 tion, meet with the representative of the organization within 20 days  
3 after the request at a time and place to be mutually agreed upon. In  
4 the same manner, representatives of an employee bargaining organiza-  
5 tion are required to meet with a school board or its representatives  
6 within 20 days after receiving a written request from the board.

7 (b) Notwithstanding AS 44.62.310, a negotiating meeting may be  
8 held in executive session upon mutual agreement of both parties, but  
9 all final agreements shall be made at a public meeting of the school  
10 board.

11 \* Sec 6. AS 14.20.570(a) is amended to read:

12 (a) Upon the written request for mediation by an employee bar-  
13 gaining organization or a school board, and upon certification by the  
14 requesting party that the parties cannot agree on an independent  
15 private mediator and that good faith negotiations have terminated in  
16 an impasse, the following shall occur [OCCURS]:

17 (1) Within seven days of the certification the requesting  
18 party shall ask the United States Federal Mediation and Conciliation  
19 Service to serve as the agency to resolve the dispute. The requesting  
20 party shall notify the agency that the parties have requested a media-  
21 tor.

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

26 [(3) WITHIN 30 DAYS OF THE INITIAL MEETING OF THE PARTIES  
27 TO THE DISPUTE THE MEDIATOR SHALL HAVE REDUCED ALL THE AGREED TERMS,  
28 CONDITIONS AND OTHER ITEMS TO A WRITTEN CONTRACT. IF MUTUALLY AGREED  
29 THE PERIOD FOR REPORTING THE CONTRACT TO BOTH PARTIES MAY BE

1 EXTENDED.]

2 (3) [(4)] Each party to the dispute may select a team of  
3 not more than five persons to present the evidence, thinking, and  
4 position of the group they represent [,] to the mediator.

5 \* Sec. 7. AS 14.20.580 is repealed and reenacted to read:

6 Sec. 14.20.580. CONTINUED IMPASSE. The mediator shall notify  
7 the agency when the parties jointly agree, or when the mediator inde-  
8 pendently determines, that further mediation would not promote resolu-  
9 tion of the dispute. The notification from the mediator to the agency  
10 shall indicate the items at impasse that qualify for arbitration  
11 determination. Those items shall be limited to wages and fringe  
12 benefits of a monetary nature. Following mediation, the parties shall  
13 observe a 10-day cooling off period.

14 \* Sec. 8. AS 14.20 is amended by adding new sections to read:

15 Sec. 14.20.585. ARBITRATION. (a) If impasse continues after a  
16 10-day cooling off period and continued negotiations thereafter, the  
17 parties shall submit all items still in dispute and determined eligi-  
18 ble for arbitration by the mediator to the process of last best offer  
19 mediated arbitration. An agreement between a board and an employee  
20 group shall include a procedure to promptly select an arbitrator. If  
21 the parties are unable to agree on a contractual provision that  
22 provides for the selection of an arbitrator, the agency shall direct  
23 the parties to use the services of and comply with the procedures of  
24 the American Arbitration Association in the selection of an arbitra-  
25 tor.

26 (b) In last best offer mediated arbitration under this section  
27 each party shall submit a final offer on all issues in dispute. Each  
28 party shall submit to the arbitrator oral or written evidence in  
29 support of its position and shall be given an opportunity to respond

1 to the presentation of evidence by the other party. The arbitrator  
2 may propose compromises to points in dispute. At the request of  
3 either party, or on the motion of the arbitrator, the arbitrator may  
4 conduct a public meeting for the purpose of allowing the parties to  
5 present and explain their positions and final offers. The arbitrator  
6 shall allow each party to revise its last best offer before final  
7 submission to the arbitrator for decision.

8 (c) The decision of the arbitrator shall take into consideration

9 (1) the history of negotiations between the parties before  
10 entering arbitration;

11 (2) the public interest and financial resources of the  
12 school district;

13 (3) the interest and welfare of the employee group;

14 (4) changes in the cost of living;

15 (5) the existing employment conditions of the employee  
16 group compared with those of similar groups; and

17 (6) the salaries, fringe benefits and other conditions of  
18 employment prevailing in the state labor market.

19 (d) The arbitrator shall without modification adopt the last  
20 best offer of one of the parties and issue a final decision not more  
21 than 10 days after the parties have presented their last best offer.

22 (e) The parties shall share the cost of the arbitrator equally.

23 Sec. 14.20.586. ARBITRATION AWARD. An arbitration award may be  
24 implemented in a school district only if the award has been approved  
25 by the local municipal government in the case of city and borough  
26 school districts or the legislature in the case of a regional educa-  
27 tional attendance area. If an arbitration award is not approved by  
28 the local municipal government or the legislature, the parties shall  
29 return to arbitration.

1           Sec. 14.20.587. JUDICIAL RELIEF. (a) On application of a  
2 party, the superior court shall confirm an award unless grounds are  
3 urged for vacating, modifying, or correcting the award.

4           (b) On application of a party, the court shall vacate an award  
5 if

6                   (1) the award was procured by fraud or other undue means;

7                   (2) there was evident partiality, corruption, or misconduct  
8 by an arbitrator prejudicing the rights of a party;

9                   (3) the arbitrator exceeded its powers;

10                  (4) the arbitrator refused to postpone the hearing upon  
11 sufficient cause being shown for postponement, refused to hear evi-  
12 dence material to the controversy, or otherwise conducted the hearing  
13 to substantially prejudice the rights of a party.

14           (c) The fact that the relief ordered by an arbitrator could not  
15 or would not be granted by a court is not a ground for vacating or  
16 refusing to confirm the award.

17           (d) An application to the superior court under this section  
18 shall be made within 90 days after delivery of a copy of the award to  
19 the applicant. However, if the application is predicated upon grounds  
20 set out in (b)(1) and (2) of this section, it shall be made within 90  
21 days after the grounds are known or should have been known.

22           (e) In vacating an award the court may order a rehearing before  
23 a new arbitrator chosen as provided in the agreement, or in the ab-  
24 sence of a provision in the agreement, as provided in AS 14.20.585(a).  
25 If the award is vacated on grounds set out in (b)(3) or (4) of this  
26 section, the court may order a rehearing before the arbitrator who  
27 made the award or a successor appointed as provided in this subsec-  
28 tion. The time within which the original agreement of the parties  
29 requires an arbitration award to be made is applicable to the

1 rehearing and commences from the date of the order requiring a  
2 rehearing.

3 (f) If the application to vacate is denied and a motion to  
4 modify or correct the award is not pending, the court shall confirm  
5 the award.

6 Sec. 14.20.588. MODIFICATION OR CORRECTION OF AWARD. (a) On  
7 application of a party made within 90 days after delivery of a copy of  
8 the award to the applicant the superior court shall modify or correct  
9 the award if

10 (1) there was an evident miscalculation of figures or an  
11 evident mistake in the description of a person or real or personal  
12 property referred to in the award;

13 (2) an arbitrator has made an award concerning a matter not  
14 submitted to the arbitrator and the award may be corrected without  
15 affecting the merits of the decision upon the issues submitted; or

16 (3) the award is imperfect in a matter of form not affect-  
17 ing the merits of the controversy.

18 (b) If the application of a party under this section is granted,  
19 the court shall modify and correct the award to effect its intent and  
20 shall confirm the award as modified and corrected. If the application  
21 is denied, the court shall confirm the award as made.

22 (c) An application to modify or correct an award may be joined  
23 in the alternative with an application to vacate the award.

24 \* Sec. 9. AS 14.20.590 is amended to read:

25 Sec. 14.20.590. GRIEVANCE PROCEDURES. Negotiations agreements  
26 between school boards and their certificated employees [EXECUTED AFTER  
27 JULY 1, 1975] shall define "grievances" as a misapplication or mis-  
28 interpretation of the terms and conditions of a negotiated agreement  
29 and provide for grievance procedures for the certificated staff. The

1 grievance procedures shall provide that the final step in the proce-  
2 dure shall be binding arbitration. The negotiations agreement shall  
3 provide a method for the selection of an arbitrator to resolve griev-  
4 ances.

5 \* Sec. 10. AS 14.20.600 is amended to read:

6 Sec. 14.20.600. INDIVIDUAL RIGHTS [CASES]. Nothing in AS 14.-  
7 20.540 - 14.20.615 [AS 14.20.550 - 14.20.590] prohibits an employee  
8 from addressing a school board, as an individual, through the regular  
9 procedures of the school board for hearing individual cases.

10 \* Sec. 11. AS 14.20 is amended by adding new sections to read:

11 Sec. 14.20.605. CERTIFICATED EMPLOYEES LABOR RELATIONS AGENCY.

12 (a) There is established a certificated employees labor relations  
13 agency that consists of five members. The three members of the state  
14 personnel board (AS 39.25.060) are members of the certificated employ-  
15 ees labor relations agency. The governor shall appoint two additional  
16 members to the agency, one each from lists of nominees submitted by  
17 the National Education Association of Alaska and the Alaska Associa-  
18 tion of School Boards. Each nominee shall have at least three years  
19 experience in matters relating to education in Alaska. The two  
20 appointees of the governor to the certificated employees labor rela-  
21 tions agency serve at the pleasure of the governor.

22 (b) Members of the agency receive no compensation for their  
23 services, but are entitled to per diem and travel expenses authorized  
24 for boards and commissions.

25 (c) The agency may employ staff assistance as it considers  
26 necessary to implement the provisions of AS 14.20.540 - 14.20.615.

27 Sec. 14.20.606. APPLICABILITY OF PUBLIC EMPLOYMENT RELATIONS  
28 ACT. (a) The agency shall perform the functions described in  
29 AS 23.40.120 - 23.40.180 to carry out the provisions of AS 14.20.540 -

1 14.20.615.

2 (b) The prohibition of unfair labor practices, as described in  
3 AS 23.40.110, applies to a school board and an employee organization.

4 \* Sec. 12. AS 14.20.610 is amended to read:

5 Sec. 14.20.610. LEGAL RESPONSIBILITIES OF BOARDS. (a) Nothing  
6 in AS 14.20.540 - 14.20.615 [AS 14.20.550 - 14.20.600] may be con-  
7 strued as an abrogation or delegation of the legal responsibilities,  
8 powers, and duties of the school board including its right to make  
9 final decisions on educational policies.

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

12 (1) direct the work of its employees;

13 (2) hire, promote, demote, transfer, assign, and retain  
14 employees in positions within the school district;

15 (3) suspend or discharge school district employees for  
16 proper cause;

17 (4) maintain the efficiency of governmental operations;

18 (5) relieve school district employees from duties because  
19 of lack of work or for other legitimate reasons;

20 (6) ascertain and implement the methods, means, assignments  
21 and personnel by which the school district's operations are to be  
22 conducted;

23 (7) take actions necessary to carry out the duties of the  
24 school district; and

25 (8) initiate, prepare, certify, and administer its budget.

26 \* Sec. 13. AS 14.20 is amended by adding new sections to read:

27 Sec. 14.20.611. REDUCTION IN FORCE. (a) A school district may,  
28 for reasons of program reduction or insufficient revenue, reduce the  
29 work force of the district by placing certificated tenured and non-

1           tenured employees on unpaid furlough status at any time during the  
2 school year with 30 days prior notice to the employee.

3           (b) An employee on furlough status has the first right of re-  
4 fusals on a vacancy for which the furloughed employee is qualified.

5           (c) Failure on the part of a furloughed employee to accept an  
6 offer of reemployment with the district shall constitute an abrogation  
7 of all rights to reemployment with the district.

8           Sec. 14.20.612. STRIKES PROHIBITED. (a) A certificated em-  
9 ployee or certificated employee organization may not, directly or  
10 indirectly, induce, instigate, encourage, authorize, ratify, or par-  
11 ticipate in a strike against a school district.

12           (b) A school board may not authorize, consent to, or condone a  
13 strike or pay a certificated employee for any day in which the em-  
14 ployee participates in a strike. A school board may not pay an in-  
15 crease in compensation or benefits to a certificated employee in  
16 response to or as a result of a strike that violates (a) of this  
17 section. An official or representative of a school board may not  
18 authorize, ratify, or participate in a violation of this subsection.  
19 This subsection does not prohibit new or renewed bargaining and agree-  
20 ment within the scope of negotiations as permitted by AS 14.20.540 -  
21 14.20.615, at any time after a violation of (a) of this section has  
22 ceased; but a school board or certificated employee organization may  
23 not bargain at any time regarding suspension or modification of a  
24 penalty provided in this section or regarding a request by the school  
25 board to a court for the suspension or modification.

26           (c) A citizen domiciled within the jurisdictional boundaries of  
27 the school district may petition the superior court for an injunction  
28 restraining a violation or imminent violation of this section.

29           (d) If a certificated employee violates this section the

1 employee shall be ineligible for employment by the same school dis-  
2 trict for a period of 12 months and the school board shall immediately  
3 discharge the employee.

4 (c) If a certificated employee organization or any of its offi-  
5 cers violates this section the certificated employee organization  
6 shall be immediately decertified, shall cease to represent the bar-  
7 gaining unit, shall cease to receive dues by checkoff, and may again  
8 be certified only after 12 months have elapsed from the effective date  
9 of decertification.

10 (f) A person who violates this section is guilty of a class B  
11 misdemeanor. The penalties provided in this section may be suspended  
12 or modified by the court, but only upon request of the public employer  
13 and only if the court determines the suspension of modification is in  
14 the public interest.

15 Sec. 14.20.615. DEFINITIONS. In AS 14.20.540 - 14.20.615

16 (1) "agency" means the certificated employees labor rela-  
17 tions agency;

18 (2) "certificated employee" includes teachers, counselors,  
19 and nonadministrative certificated personnel as considered appropriate  
20 by the agency but does not include assistant principals, principals,  
21 and other certificated administrative personnel.

22 \* Sec. 14. This Act does not modify or terminate a negotiating unit or  
23 agreement in existence on the effective date of this Act.

24 \* Sec. 15. This Act takes effect immediately in accordance with AS 01.-  
25 10.070(c).

SENATE COMMITTEE REPORT (HESS) - CSSB 78

Mr. President:

For years, the representatives of certificated school employees have asked for a change in the way disputes between their bargaining groups and school districts are resolved.

The matter is important to the public for several reasons. Alaska needs to attract and retain qualified school personnel. Alaska should avoid disruptions in the school year. An orderly and fair way to resolve disputes should be provided for.

The administration recommended that school boards be given the right to choose among three procedural options -- granting employees the right to strike, submitting to mediated arbitration, or granting employees the right to "limited strike" (strike for a limited time period).

The administration proposed that school boards be allowed to exercise these options after a dispute has arisen.

Your Committee preserves the idea of the school boards' right to select procedural options, but the Committee Substitute would require that the school boards make their respective option choice within 90 days after enactment of the bill, or thereafter from time to time but not while a dispute is in progress. The so-called "limited strike" option is removed, since testimony showed no compelling reason for its inclusion and indicated that this option would rarely, if ever, be chosen.

The Committee Substitute introduces the "last best offer" approach to mediation and arbitration. The Committee Substitute reflects the belief that by requiring the arbitrator to select between the settlement package proposed by management and the settlement package proposed by the employees, both sides will be induced to narrow the differences between them and to adopt reasonable positions.

The Committee Substitute expressly retains the boards' right to make final decisions on educational policies.

At present, there exists within the Department of Administration the State Labor Relations Agency. In school employee matters, this agency would serve as part of the educational employees labor relations agency. The agency would consist of three members of the State Labor Relations Agency augmented by two additional members to be selected by the Governor, one from a list submitted by the National Education Association-Alaska, and one selected from a list submitted by the Alaska Association of School Boards.

- A. Assumptions: Since this bill will make the three member State Labor Relations Agency (LRA) serve as the majority of the new, five member Educational Employees Labor Relations Agency (EELRA), it will add to the LRA's workload. Our experience with implementation of the Public Employment Relations Act leads us to believe that the workload increase will be most pronounced during the first year of operation under the new law, as bargaining units are set up and representation elections conducted. Subsequent years' workloads will be permanently higher than present, since a larger client group will permanently be served, but the lasting impact on workload will be significantly less than the initial impact. We have assumed a 40% workload increase (above present) for the first year; subsequent years' workloads are assumed to be 25% higher than the present.

While serving as the EELRA, travel and per diem costs will be proportionately higher, since five members will be participating instead of the present three.

- B. Program Summary: Present Labor Relations Agency services include bargaining unit determination; conducting representation elections, investigation and conciliation of complaints, holding hearings, and issuing orders and decisions. A larger client group - educational employees, their representatives, and school boards - will receive these services. No new positions will be required; none presently are authorized. Since office and legal services are contracted for, there will be a significant increase in contractual services. Travel and per diem will also increase with the size and workload of the Agency.

C. Computations: 1. First year under CS SB 78 - FY84

• 200 Travel: Funded @ \$11.2 for FY83. This is for three members (\$3.7 ea.) with an assumed workload of 1.00. If workload is increased to 1.40 and five members participate in the new case load, the increase in travel funding requirements will be:

Three existing members:  $\$11.2 \times .40 = \$4.5$

Two new members:  $\$3.7 \times .80 = 3.0$

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Total FY84 Travel Increase \$7.5

300 Contractual: Funded during FY83 at \$69.0. Increase of .40 = \$27.6

400 Commodities: Funded during FY83 at \$1.0. Increase of .40 = \$.4

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Total FY84 Increase \$35.5

2. Subsequent years under CS SB 78 - FY85-88

200 Travel:

Three existing members:  $\$11.2 \times .25 = \$2.8$

Two new members:  $\$3.7 \times .50 = \$1.9$

---

Total FY85-88 Travel Increase \$4.7

300 Contractual:  $\$69.0 \times .25 = \$17.3$

400 Commodities:  $\$1.0 \times .25 = \$.3$

---

Total FY85-88 Increase \$22.3

Among the educational employees labor relations agency's functions would be the determination of appropriate negotiation units; determinations as to the need for elections to resolve questions of representation in a negotiation unit; the determination of the eligibility of voters in such elections and the rules governing elections.

Sectional Analysis:

14.20.540. Declares the policy supporting collective bargaining in the public schools.

14.20.550. Includes noncertificated employees in the requirement that school boards negotiated with employees on matters pertaining to their employment, in good faith; defines "certificated employees" to include teachers, counselors, principals, assistant principals, and 'other certificated administrative personnel', but excludes superintendents, assistant superintendents, and other 'certificated executive administrative personnel who the educational employees labor relations agency determines to be inappropriate members of an employee negotiating unit.'

14.20.555(a). Corrects language in the existing law to address the new provisions for negotiations with noncertificated personnel in REAS.

14.20.560. Provides that the educational employees labor relations agency will decide the appropriate unit for purposes of negotiation, and sets out criteria or factors to be used by the agency.

14.20.560(b). Contains procedures for representation elections within a proposed negotiation unit.

14.20.560(c). Prohibits a representation election in a negotiating unit if a valid election has been held within the preceding 12 months.

14.20.560(d). Permits a school board to recognize an employees' organization as the employees' exclusive representative, by consent of the board.

14.20.560(e). Limits the agency's power to direct an election to the 90-day period before the expiration date of the employer-employee agreement, except upon a petition of persons in the negotiating unit, who are not parties to the agreement, if more than three years have elapsed since the execution of the agreement or the last timely renewal of the agreement.

14.20.560(f). Permits noncertificated employees, or certificated administrated personnel groups, to decide by secret ballot to negotiate independently of other school personnel. Requires the educational employees labor relations

agency to conduct a representation election in such circumstances, upon petition of 25 percent of the employees in a proper negotiating unit.

14.20.565. Requires the school board, on request of an employee bargaining organization, to meet with the organization's representatives within 20 days after the request. Reciprocally, requires the employee bargaining organization to meet with a school board or its representatives within 20 days after its request.

14.20.565(b). Permits negotiation meetings to be in executive session, except that all final agreements shall be made at a public meeting of the school board.

14.20.570(a). When an employee bargaining agency or a school board certifies that the parties cannot agree on an independent private mediator, and that good faith negotiations have terminated in an impasse, and the requesting party asks for mediation from the U. S. Federal Mediation and Conciliation Service, the requesting party must notify the educational employees labor relations agency. This paragraph deletes provisions requiring a mediator to reduce "all the agreed terms, conditions and other items to a written contract" within 30 days "of the initial meeting of the parties (unless the parties mutually agree to extend the period)." This paragraph also deletes language in present law governing the size of the negotiating team that appears before the mediator.

14.20.580. Requires the mediator to notify the educational employees labor relations agency either when the parties reach agreement or when the mediator determines that they are at impasse. Provides for a 10-day cooling-off period following mediation.

14.20.581. Provides the "local option", i.e., the school board's right by resolution adopted following public hearing to decide "whether last best offer mediated arbitration or the right to strike shall follow the mediation procedure." However, the board's resolution shall be adopted before the "mediation process begins." (However, the parties may mutually agree to modify the option selected originally by the board).

14.20.582. Provides that where a school board has taken the right-to-strike option, a strike may occur if a majority of the employees in the bargaining agency elect to strike. Provides that where the employees vote not to strike, the school board shall not be required to participate in arbitration. Provides that "an aggrieved person" may apply to the Superior Court to enjoin a strike, and an injunction can issue if the strike "threatens the health, safety, or welfare of the public." If a strike is enjoined by the Court, after considering "the total equities", and an impasse still

remains, the parties shall submit to arbitration. Provides that elections under this section will be conducted by the educational employees labor relations agency.

14.20.583. Provides for arbitration if the school board's "local option" is the non-strike option, or if arbitration arises after a Court injunction against a strike, or where a strike has occurred in a district which permits strikes and a majority of the employees in the bargaining agency have elected to strike. Provides that the educational employees labor relations agency may direct the parties to use the services of and comply with the procedures of the Federal Mediation and Conciliation Service or the American Arbitration Association, if the parties are unable to otherwise agree upon a mutually selected arbitrator.

14.20.582(b). Provides for mediated arbitration. The parties are to submit evidence to support their respective positions before the arbitrator. Each party can respond to the other's evidence. The arbitrator may propose compromises. The arbitrator, on his own motion or the request of either party, may call for a public meeting to allow the parties to present and explain their "last best offer(s)". Before final submission to the arbitrator for decision, the arbitrator shall allow each party "to revise its last best offer."

14.20.582(c). Sets out the factors which the arbitrator will take into consideration.

14.20.582(d). Requires the arbitrator to adopt "without modification" the last best offer of either of the parties.

14.20.582(3). Requires the parties to share the cost of the arbitrator equally.

14.20.584. Provides for the confirmation by the Court of the arbitrator's award, and provides for Court vacation of an award in certain circumstances similar to those applicable under the Alaska Arbitration Act.

14.20.585. Provides for modification or correction of an award, under circumstances similar to those applicable in the Alaska Arbitration Act where modification or correction is provided for.

14.20.590. Requires grievance procedures and a definition of "grievances" in all agreements. Requires each agreement to provide a method for the selection of an arbitrator to resolve grievances.

14.20.600. Requires the educational employees labor relations agency to set forth procedures to safeguard the rights of "nonassociation" of employees having "bona fide religious convictions."

14.20.605. Establishes the educational employees labor relations agency, as explained above. Members of the agency receive no compensation, but are entitled to per diem and travel expenses. The agency may employ staff to implement the provisions of the chapter.

14.20.606. Functions set out in AS 23.40.120 - 23.40.180 are to be performed by the educational employees labor relations agency, as well as specific functions set out in this chapter. The school board and the employee organization alike are prohibited from "unfair labor practices", as described in AS 23.40.110.

14.20.610. Reiterates the power of school boards to "make final decisions on educational policies."

Sec. 13. (Temporary Provision). School Boards must make their initial local option decision between last best offer mediated arbitration and the right-to-strike within 90 days after enactment of the chapter.

Sec. 14. (Temporary Provision). "Grandfather" clause for existing negotiating units and negotiating agreements.

Sec. 15. (Temporary Provision). The effective date is to be immediate.

Respectfully Submitted,

COMMITTEE ON HEALTH, EDUCATION  
& SOCIAL SERVICES

  
By: Joe P. Josephson, Chair

# STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

## DEPARTMENT OF ADMINISTRATION

POUCH C-0220  
JUNEAU, ALASKA 99811  
(907) 465-4404

### DIVISION OF LABOR RELATIONS

February 27, 1985

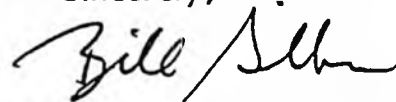
Honorable Mike Navarre  
Chairman  
Labor & Commerce Committee  
Pouch V  
Juneau, AK 99811

Dear Mr. Chairman:

RE: HB 130  
HB 90

As you requested at the hearing on Monday, I have enclosed copies of my statement for the Committee regarding the above bills.

Sincerely,



William J. Gibbons  
Director

WJG/vcy

Encl:

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.

It is 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.

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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.

It is 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.

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Public Testimony  
~~HB-90~~ ~~AK 130~~ ~~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 <sup>some consequences</sup> ~~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.



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

Fairbanks Field Office  
825-D College Road  
Fairbanks, AK 99701  
Telephone: (907) 456-5412

Anchorage Field Office  
833 Gambell Street, Suite A  
Anchorage, AK 99501  
Telephone: (907) 274-1688

Juneau Field Office  
227 4th Street  
Juneau, AK 99801  
Telephone: (907) 586-6305

AMENDMENTS TO HB 130

Page 5 & 6, delete lines 16 - 22 and insert:

\* Sec. 7. AS 14.20.580 is repealed and reenacted to read:

(a) In the event mediation fails to produce an agreement on all of the issues in dispute, either party may call for arbitration. When arbitration is requested, the parties shall submit to item by item, last best offer arbitration.

(b) If the parties are unable to agree on a procedure to promptly select an arbitrator, the educational employees labor relations agency shall direct the parties to utilize the services of and comply with the procedures of the American Arbitration Association.

(c) In last best offer mediated arbitration under this section each party shall submit a final offer on each issue in dispute. Each party may submit to the arbitrator oral and/or written evidence in support of its position and shall be given an opportunity to respond to the presentation of evidence by the other party. The arbitrator may propose compromises to points in dispute. The arbitrator may conduct a public meeting for the purpose of taking testimony from any interested person, on the issues in dispute. The arbitrator shall allow each party to revise its final offer on each issue before making his/her decision.

(d) The arbitrator shall then, without modification, adopt the last best offer on each issue in dispute of one of the parties and issue a final and binding decision not more than 10 days after the parties have presented their last best offer.

~~ACB~~ Page 5, line 29, after "arbitration", delete [.] and insert ", or"

ok Page 6, line 5, delete "An", and delete lines 6 & 7

Page 6, line 17, after "best offer", insert ", item by item"

Page 6, line 22, after "offers", insert ", item by item"

page 1 line 30

a. "To negotiate in good faith" is the performance of the mutual obligation of the board of education or its representatives or agents and the organization designated or elected as the exclusive representative for the appropriate unit to meet at reasonable times, and to participate actively so as to indicate a present intention to reach agreement, but such obligation shall not compel either party to agree to a proposal or require the making of a concession.

G:38



# Delta/Greely School District

REAA #15  
P. O. Box 527  
Delta Junction, Alaska 99737  
(907) 895-4657

TO: Mike Navarre, Chairperson, House Labor & Commerce Committee  
FROM: Glen Chowning, Superintendent, Delta/Greely School District  
RE: Binding Arbitration Bills  
DATE: February 27, 1985

---

The Delta/Greely School District would respectfully like to go on record opposing the Binding Arbitration Legislation currently being considered by the Legislature.

The contention that there is presently no final decision or that advisory arbitration doesn't work in the negotiation process is erroneous--the arbitration process has worked in every case in relationship to settlement of our contract negotiations--both the Union and the District has agreed with the arbitration reports.

It is our contention that a final decision to the negotiation process is one of local control. It seems a third party intervention diminishes the very fiber of local control and puts fiscal responsibility in the hands of a person who is not accountable to the local constituents of the District.

The public officials, the local District School Board, who represent and are elected by the general public should have the final decision making authority on all matters that financially affect the District.

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

Max

p. 7, line 2

best offer ~~of~~ on each  
issue presented by

yes: Greenberg  
Taylor  
Haley  
Koponen

no: Thompson  
Hanley

# The Capital REPORTER

A Journal of Alaskan Political News and Opinion

Volume 1, No. 9

March 8, 1985

## Binding Arbitration: Proponents Try Again This Session

Teachers, marshalling their forces behind the National Education Association (NEA), are again hoping to push through legislation calling for mandatory binding arbitration for teachers.

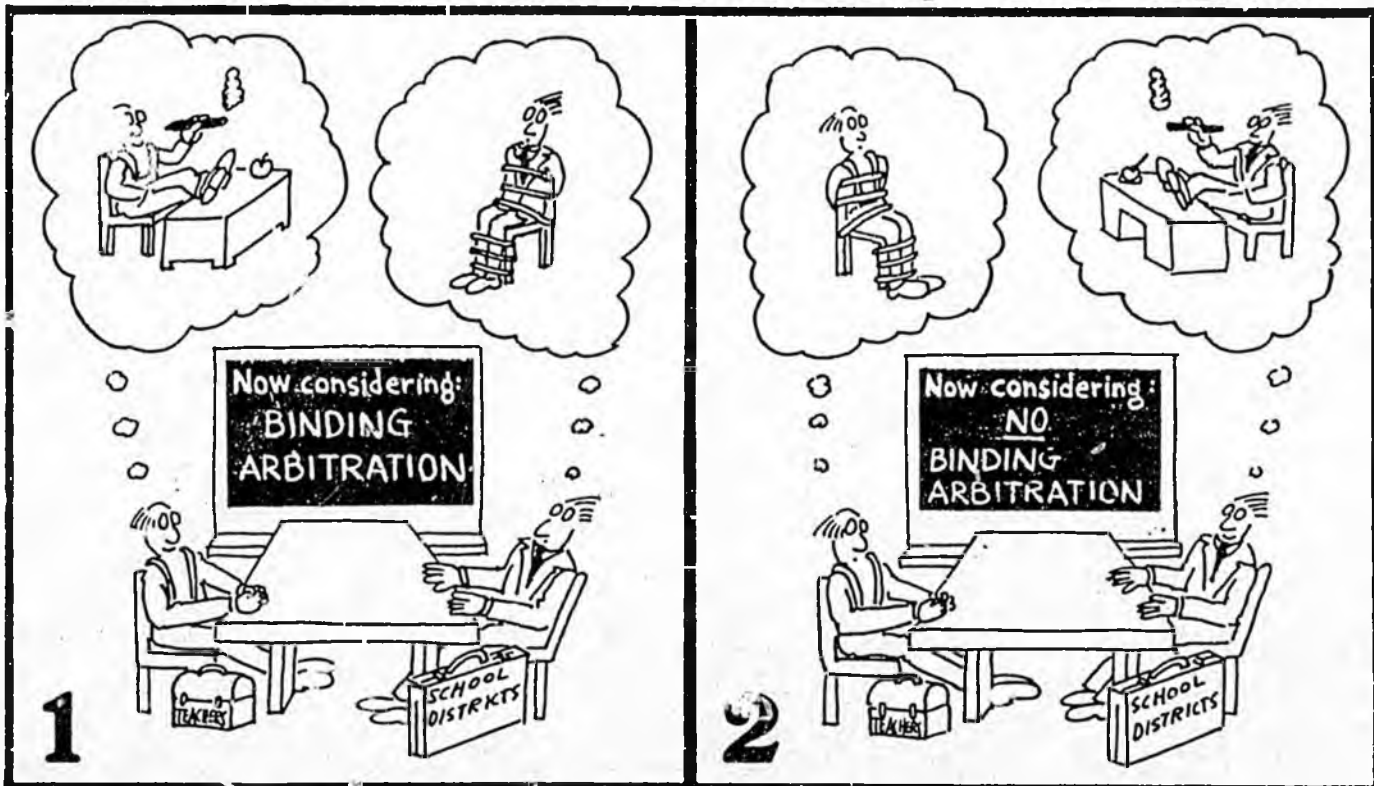
The issue has been debated regularly in the legislature over the last several legislatures, but has never made it through both the House and

the Senate during one two-year legislature. During the 1983-84 sessions, a Senate Rules Committee Substitute for SB 78 by Senator Kerttula passed the Senate handily, but died a slow death in Rep. Walt Furnace's House Labor & Commerce Committee, despite efforts by Rep. Mike Miller of Juneau to pull it from committee in the waning days of the 1984 session. The binding arbitration

bill in the 1981-82 session, SB 668 by Governor Hammond, also failed to make it through the House.

This year Governor Sheffield has made it one of his priorities, introducing HB 130 and intending to follow this with a companion bill in the Senate. HB 130 along with a related bill, HB 90, have been heard several times in House Labor &

### AT THE NEGOTIATING TABLE...



(Continued on page 8)

## Teachers . . .

(Continued from page 1)

Commerce and are expected to pass from the committee within the next week. Supporters in the House hope that at the very least the bill will pass the House this session. Although similar bills passed the Senate last year, the change in make-up after the last election have left supporters uncertain as to its chances of passing the Senate this year.

HB 130 extends collective bargaining privileges to noncertificated school district employees (janitors, secretaries, etc.) and establishes a comprehensive collective bargaining procedure for all educational employees, to be administered by a newly created "Educational Employees Labor Relations Agency" (EELRA). If, after mediation, employees and the school board are unable to reach an agreement, both parties would be required to submit to "last best offer mediated arbitration." Under that form of arbitration, an outside arbitrator would be called in to choose which side had offered the most reasonable package. The arbitrator, before making a decision, would be able to offer suggestions for compromise and both parties would be given the opportunity to revise their last offer. A provision is included for public hearings to air the differences, upon the motion of either party or the arbitrator. Sheffield claims that the system "provides a practical assurance that the parties will state realistic positions and, as importantly, that all parties will have an incentive to resolve their differences through bargaining, not arbitration."

Last best offer mediated arbitration, argues the NEA, will introduce some "finality" into a bargaining process that presently can drag on for months, even years. Four districts in Alaska have not yet settled negotiations for the 1984-85 school year: Northwest Arctic, Lower Yukon, Lower Kuskokwim and Skagway.

HB 90, by Rep. Nillo Koponen (D-Fairbanks), simply grants noncertificated school district employees the right to bargain collectively. It would not include them under binding arbitration procedures, as does HB 130, but instead would allow them to strike for unlimited periods of time. Rep. Koponen says he would prefer to see HB 130 pass the legislature, but that if that bill falters, he will push for

passage of HB 90. An identical bill, SB 129, has been introduced in the Senate by Senator Bill Ray (D-Juneau), but as yet no action has been taken on it by Senate Labor and Commerce.

Noncertificated employees, for nebulous reasons, were left in limbo in 1970 when teachers were granted the right to bargain collectively. They were specifically left out of the laws governing certificated school employees (AS 14.20.550 - 14.20.610), but were not specifically covered by collective bargaining laws for other public employes (the Public Employment Relations Act, or PERA, AS 23.40.070 - 23.40.260).

NEA maintains that although the larger districts bargain with their noncertificated employees, this fact is held over the employees' heads as a gift, not a right. They feel statutory recognition would "provide some equity" for these employees.

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*"Binding arbitration takes power away from local school boards and puts it into the hands of an outside third party."—Dennis Murray, Kodiak Is. Borough School District*

---

School districts around the state seem uniformly opposed to the adoption of binding arbitration, claiming it will wrest from them control over hiring and firing, undermine their influence over their employees, and result in more costly settlements.

At a House Labor & Commerce meeting on March 4, representatives from several school districts said they were concerned that under a binding arbitration scheme, their boards would forfeit considerable control over hiring and firing. Billy Williams from the Copper River School District said that it would undermine the local board's ability to influence employees if the employees knew that by stalling, an outside third party would be brought in to resolve an impasse. He suggested that if teachers are granted binding arbitration, perhaps they should forfeit tenure rights to make up for the loss of control by school boards.

School districts want management rights more specifically defined. CSSB 78(R1s) from last year listed the rights of school boards, including the right to

hire, promote, demote, transfer, suspend, or discharge employees for cause.

Dennis Murray from the Kodiak Island Borough School Board recommended that lawmakers limit the scope of what can be arbitrated to salaries and benefits (which was the case with CSSB 78(R1s) from last year). He pointed out that there are no penalties for letting negotiations stall and go to arbitration.

Bob Green from the Alaska Association of School Boards said that the bill does not deal with what is and what is not bargainable, and that these must be spelled out before the bill is acceptable to his organization. He said there should be a set list of "required," "prohibited" and "permissible" items, and that the difference between arbitrable and bargainable items must be defined. He also recommended that some sort of penalty be added for going to arbitration. Green said the stock phrase relating to arbitration is "save a little bit for the arbitrator," since both parties always shoot for more than they'll actually settle for. Holding firm until arbitration may actually seem preferable than slogging through negotiations where compromise is the name of the game.

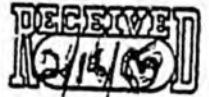
Green said that negotiations rarely take place over the summer in Alaska and that the issue of time is not addressed in the bill. He said that the choice of an item-by-item decision or last best offer was "a toss of the coin" to him. He tended to go with the idea of a package decision, since both parties would be less likely to come up with unreasonable demands knowing they'll lose.

Don MacKinnon of the Alaska Council of School Administrators commented that there is no mechanism to opt out of the collective bargaining procedure for noncertificated personnel who choose not to bargain. Under HB 130, he claims, such employees would be required to bargain. He said that it would force employees to bargain who would prefer just to "sit down and talk things out." He pointed out that the larger districts do bargain with their noncertificated personnel.

NEA has submitted a list of recommended changes to HB 130. They want arbitrators to be able to make an item-by-item decision, rather than having to select one or the other "last best offer." They also recommend eliminating the requirement that the arbitrator be a resident of Alaska.

SITKA SCHOOL DISTRICT

ACCREDITED BY THE NORTHWEST ASSOCIATION OF SECONDARY SCHOOLS & COLLEGES



P.O. BOX 179 SITKA, ALASKA 99835

February 14, 1985

The Honorable Bill Sheffield  
Governor of Alaska, Juneau  
Pouch "A" (MS0101)  
Juneau, Alaska 99811

Dear Governor Sheffield:

I have enclosed a copy of a speech that the Honorable Coleman Young gave to the Michigan legislature.

Coleman Young was a former Senator in the Michigan legislature before he was elected Mayor of Detroit. I think the speech is very apropos in light of HB130 that you have had introduced into the Alaska house regarding binding arbitration.

Coleman Young was always strongly backed by labor as a Senator. He pushed hard and succeeded in getting mandatory binding arbitration (Act312) into Michigan law. Now, as you read his speech, remember that he is black, a Democrat, labor backed and a long-time Mayor of Detroit.

I hear him saying over and over that we must preserve collective bargaining and I agree with that premise. He also repeatedly warns that binding arbitration is destroying collective bargaining and I have had enough background in Michigan to agree with that point as well.

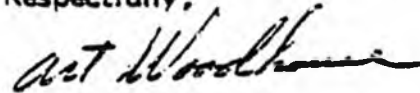
Governor Sheffield  
February 14, 1985  
Page 2

SITKA SCHOOL DISTRICT

I hope you will consider calling him after you have digested his comments, because I am sure he can draw you a better picture of the impact that HB130 will have on the Alaskan economy than anything I can tell you as Superintendent of the Sitka School District.

I hope you will take the time to read over his remarks. Thank you.

Respectfully,



Art Woodhouse  
Superintendent

AW/sh

encs.

cc: Representative Ben Grussendorf  
Senator Richard Ellason  
Board of Education President Ernestine Griffin

Address of Mayor Coleman A. Young to Legislative Forum on New Directions  
for Public Employee Labor Relations - LANSING, MICHIGAN - Dec 4, 1979

"What's Wrong with Public Employee Labor Relations in Michigan?"

MAYOR YOUNG  
was one of the  
prime sponsors  
of Act 312 when  
he was in  
the  
Legis. Ltrure.

I have been asked to come before you today and tell you what I think is wrong with public employee labor relations in Michigan. Most of you are experts on public employee labor relations and so you already know what's wrong. There are some greater problems and there are some lesser problems. I'm going to discuss the problems that have had the most serious affect on the City of Detroit.]

The number one problem is, of course, compulsory arbitration. When Act 312 was first passed, most of us sincerely hoped it would be a success. It was a new idea and we felt it was certainly worth a try. After all, no one wants police or fire strikes or strikes by any other employees for that matter. The Romney Committee recommended trying it, several noted arbitration experts recommended trying it -- and so we voted to try it. I say "we" because I was a member of the State Senate at the time, and I voted for it too. We now know that compulsory arbitration has been a failure. Slowly, inexorably, compulsory interest

arbitration destroys collective bargaining and collective bargaining relationships and, even more disastrous for Detroit, compulsory arbitration destroys sensible fiscal management. The costs of paying the awards are too high. They come after a budget is planned, or, in our case, after two or even three, annual budgets are planned. The process is so slow that we not only don't know what our next budget should look like, we can't even close our books on old budgets long since passed.

The costs of the Act 312 awards have been astronomical in Detroit. We have calculated that these costs since the enactment of Act 312 are now \$50 million dollars or more per year for the City of Detroit. The arbitrators seem to believe that there is no limit to how much of our money they should spend.

There are many procedural problems with Act 312, but I want to focus your attention on two fundamental problems: (1) Act 312 destroys collective bargaining, and (2) the awards we have had under Act 312 are

intolerable - and have caused more damage to the public service in Detroit than the strikes the law was designed to prevent.

Our claim that Act 312 destroys collective bargaining, as most of us understand that term, is not made lightly. We are convinced that compulsory arbitration, by its very nature, simply cannot resolve differences in the same way voluntary agreements resolve differences. Compulsory arbitrations differs sharply from voluntary binding arbitration in this respect also. If a party to a dispute does not voluntarily agree to its solution, either by direct agreement or agreeing to be bound by a third party's decision, then that party can, and probably will, repudiate that solution if he disagrees with it in any way. The non-voluntary "solution", then, really is no solution at all. The issue lives and will be raised again at the next opportunity.

At the bargaining table, Act 312 unions find it difficult, if not impossible, to bargain in good faith. How can they agree to drop, or

compromise on, any issue? Each issue is the favorite demand of some member or group of members. How can responsible union leadership, which must stand for election to keep their jobs, tell any part of the membership that their pet demand will not be pursued when Act 312 is readily available? The answer is: they usually can't; and they wind up going to arbitration with dozens of issues. The only way a union can avoid arbitration is to get the employer to grant its demands. As each issue is discussed at the bargaining table, the underlying position of the union is: "either give in or we'll arbitrate."

There is very little good faith bargaining. There is very little mutual understanding and mutual problem solving. Compromises are not made. Either we give in to the union or they arbitrate. The Act 312 unions in Detroit have proven they have no reluctance to go to arbitration. They are not deterred by the costs of the procedure as some smaller units in other parts of the state might be. Today, the City of Detroit deals with eight separate bargaining units that are entitled to

Act 312. Some of these have only recently been included in Act 312 coverage. So far there have been seventeen possible opportunities for Detroit unions to utilize Act 312. There have been eleven cases. In the other six situations, the City avoided arbitration only by promising to pass on to the union involved, the terms of the Act 312 award being determined in another case.

The destruction of the bargaining process caused by Act 312 is not solely a matter of opinion. There is evidence available to support this conclusion. Because Act 312 puts the parties in antagonistic positions - forces them to fight over virtually every issue - they tend to fight rather than try to agree on disputed questions.

In the last three years the City of Detroit has been involved in approximately 76 court actions involving city employee unions. Although the City deals with 57 unions, four of these unions, all Act 312 unions, have accounted for over 75% of the litigation. The other unions, the

non-Act 312 unions that are used to collective bargaining, tend to bring their problems to us so they can be solved through negotiation. The Act 312 unions tend to run to court. And they scream bloody murder if we exercise our right to go to court! I could talk all day about how Act 312 prevents collective bargaining, but I'll move on now to the other fundamental weakness of this Act.

Act 312 gives to an arbitrator broad powers - powers so broad that they undermine the democratic process and strip from the people of a community their ability to control their own affairs. This broad power makes it possible for an arbitrator to do almost any damn thing he, or she, wants. It is possible for good awards to issue, and there have been some. The problem is: there is no way to stop arbitrators from issuing bad awards. There are insufficient controls, no checks and balances, and no truly meaningful appeal mechanisms. Thus, if an arbitrator is biased in some way going into a case, or doesn't understand the issues, or just

has a bad day when he decides the case, there is very little anyone can do about it. We are hoping the courts of this state will see the very real need to provide a meaningful appeal process. There is so much at stake that we are confident the courts will deal directly with this problem. We have recently experienced some very bad awards, about which there has been much publicity, and we are hopeful the courts will see the very real need for them to act.

We were shocked by the recent police and fire arbitration awards we received. We have about as much experience as anyone with Act 312 and we are not naïve. But we were shocked. The awards make no sense. There is no logic in their reasoning. They ignored obvious facts and ignored the factors that Act 312 requires them to follow. We put those factors in the law in the first place for a reason. We expected that arbitrators would adhere to them. But they chose to ignore the most important ones there.

Before I go on about the misplaced reasoning of arbitrators, I have to tell you a few things about the policies and attitudes of the City of Detroit.

First, and foremost in our labor relations policies, is our commitment to the proposition that our employees should be paid fairly and equitably. Detroit is a town of working men and women. It is a union town. It is unthinkable that the City of Detroit would have any other policy. Furthermore, I have a deep personal life-long commitment to the concept of a fair day's pay for a fair day's work. It is sometimes true, as all of you know, when there is a financial situation facing an employer, either private or public, that makes it impossible to pay the going rate. I think the recent Chrysler-UAW agreement illustrates how that sort of problem might be handled. But that was not quite the situation with our police and fire employees. We were prepared to tighten our belts and pay fair wages. Our offers to our police and fire employees were more than fair. If they had been adopted by the arbitrators our

police and fire employees would have been the highest-paid in the nation. Both the salaries and the fringes would have been number one. Detroit has not been the traditional wage leader among the large cities, but the financial troubles of New York City and the effects on Los Angeles and San Francisco of Proposition 13 had slowed down wage increases in those cities. So it happened, that even though we were not the traditional leader, our offers to our police and fire employees would have made them the highest paid in the country. Our offers were also equal to our settlements with our other unions - and the strongest among them engaged in strikes to get those settlements. We were not ashamed of our offers. We were not hiding behind an inability to pay argument.

Despite some gossip to the contrary, we did present a great deal of evidence about our fiscal condition. I testified personally at length on that subject. I was there. The arbitrators could have asked me anything they felt they needed to know about our finances. We told those arbitrators that it would not be easy, but we could afford to pay fair wages.

We also told them we could not afford to pay excessive wages - that there were too many other essential programs for us to finance.

Despite all this, the Act 312 arbitrators chose to ignore the evidence and ignore the factors that Act 312 requires them to use. They ignored the factor of comparability even though this is the one that arbitrators generally proclaim to be the most important; they ignored the factor that says "The interests and welfare of the public and the financial ability of the unit of government to meet those costs."

One of the arbitrators as much as admitted that he ignored all but one of the factors. He claimed he was moved by the cost of living factor, but when you read his award you can't find where he even used that. His award was to grant the same percentage increases that had been granted in the previous contract, apparently believing that to be self-justifying. Now think about that for a minute. What he was saying was that, if, for example, General Motors and the UAW agree to a .75¢ per

hour raise in 1974, then .75¢ per hour is the appropriate settlement in 1977 - no matter how different all the circumstances may be. If you followed this kind of logic, you'd have to say that no further bargaining would ever be required. The previous settlement will become the next one and so on.

The other arbitrator, whose award came out a little later, said he was compelled to follow the first guy. The first arbitrator's union has traditionally followed the second but this time the second felt he must follow the first. It was the classic case of the tail wagging the dog - as the second arbitrator later admitted. The problem is, these awards will cost the City \$50 million dollars more than our offers would have cost. This is why we are appealing these awards and asking the courts to save us from these maniacs. And this is why we believe the time has come for the legislature to get rid of Act 312 and go back to the drawing boards.

Now this \$50 million dollars is not the same \$50 million I mentioned earlier. The non-police and fire employees of the City of Detroit are also very well paid. In fact, they too are among the best-paid in the country. However, since Act 312 was passed some 10 years ago, if police and fire employees had received wage increases similar to those increases negotiated with the City's other employees, the City's costs would be \$50 million per year less than they are now.

These costs are tremendous! They exceed the total revenues from our unpopular, regressive utility excise tax. I could go on and on about how much \$50 million a year could mean to us - suffice it to say that we believe damage done through Act 312 has exceeded the potential damage of any strikes Act 312 was designed to prevent. The costs in one budget of wages and fringes for just police and fire employees now exceeds the total revenues from both our local property taxes and our local income taxes.

The City of Detroit is not the only victim of Act 312. In our part of the state, we are now painfully aware of the crushing affect Act 312 has had on Wayne County. Arbitrators have not only imposed unreasonable financial costs on Wayne County, they have also hamstrung the County's efforts to control their costs with improved efficiency.

Although only a relatively small proportion of Wayne County's employees are covered by Act 312, the County has found it nearly impossible to keep the wage pattern established through Act 312 from spreading to its other Unions.

I think it can be safely said that most, of the County's current fiscal difficulties can be traced back to excessive Act 312 awards. The County's new budget, announced this past week, calls for approximately a 10% reduction in County employment and, therefore, in the levels of services the County will be able to provide it citizens.

It is time for a change in our labor laws. It is time for the repeal of Act 312. It doesn't work. It was a noble experiment but we now know it is a disaster.

In his state of the State address, the Governor announced he was going to have the Department of Labor review the state's labor laws and recommend any necessary changes. He told them he was specifically concerned about the impact of Act 312 on the fiscal solvency of the State's local units of government. Those departments did conduct a study and on May 21 of this year they issued their report. We were so disappointed in that Report that we felt compelled to write a criticism of it which we sent to the Director of the Department of Labor. Copies of our critique are available here today.

The Report to the Governor contained quite a few suggested modifications of Act 312, some of which are very good, but the Report did not deal with the basic problems.

First, the Report specifically rests upon the premise that a strike of public safety employees is always more costly to society when compared with the costs of an arbitration award. In other words, it is not possible for an award to hurt society more than a strike. We say no! It is possible. We have had such awards. The premise is false.

Our other quarrel with that report is that it fails to examine carefully the problem I discussed earlier: that Act 312, especially in the larger cities, has become, instead of a "strike substitute", a substitute for the collective bargaining process.

We believe those State departments should reexamine Act 312. We believe that a thorough, objective study will reveal that it is time to repeal Act 312.

There are many people who claim that if we are going to prohibit strikes then we must provide compulsory, binding interest arbitration.

They say we must have one or the other. Police and fire unions and arbitrators say we must have arbitration. They know a golden goose when they see it! I say, if that is the choice, one or the other, let it be the right to strike - exactly in the format used in the private sector.

But I hasten to add that I'm not convinced we have to be on the horns of that dilemma. There are some other things we haven't thoroughly tried yet. All of them designed to improve the climate for collective bargaining.

We should consider a closely limited, carefully regulated right to strike. If we do that, of course, we should learn a lesson from the private sector and exclude supervisors from collective bargaining. There should be a reasonable attempt to balance bargaining power as is done in the private sector under the National Labor Relations Act. There should be a far greater effort made by the State government in providing mediation services. Because in the public service we have a greater desire to

avoid strikes, the mediation effort should be greater than that provided to the private sector by the federal and state governments. Most of all we should be encouraging the process of collective bargaining. Many people are afraid of it or don't understand it. It works, we know it works, we should do everything possible to make it work. And we should remove every impediment to collective bargaining that exists. Most particularly we should remove compulsory arbitration.

I would like to read to you the words of one of the prominent labor leaders of this century. This is from a paper he wrote entitled "Union Leaders and Public Sector Unions." Here are the words of the recently retired president of the AFL-CIO, George Meany:

"The success of voluntary arbitration in settling disputes unresolved at the bargaining table is based on the fact that such arbitration is itself a product of the collective bargaining process. It is not imposed by some outside authority against the will of either party.

And this is the rock against which the notion of compulsory arbitration has been shipwrecked every time it has been tried. The hasty, ill-conceived legislation with which Congress tried to break strikes in the airline and railroad industries only succeeded in making matters worse. In any guise, under any name - "mediation to finality," "final-offer" arbitration, or what have you - compulsory arbitration has been perceived by employers as an out that makes real bargaining unnecessary and by employees as a tool of tyranny that makes bargaining meaningless.

Collective bargaining is a two-handed tool that won't work unless both parties want it to work, and that goes for arbitration as well.

There are those who argue that collective bargaining is all very well in "non-critical" public services such as schools and sanitation departments, but that some substitute for the strike must be found in the areas of law enforcement, fire protection, and hospital services.

That would be fine if such a substitute could be found, but so far none has been found. There are no shortcuts and no substitutes for the bargaining table and mutual freedom of contract.

And compulsory arbitration - the favorite proposal of certain editorialists - just will not work because it is an abrogation of freedom. The crucial difference between voluntary and compulsory arbitration is the difference between freedom and its denial.

Fairly long experience convinces me that the best, surest and, indeed, only way to secure stability in labor-management relations in any area, including government service, is through the normal pattern of free negotiations on every aspect of wages and working conditions."

- End of Quote -

George is right. There is no substitute for collective bargaining. Act 312 destroys collective bargaining. Act 312 must be repealed. It's time to fold that hand and ask for a new deal.

However, Act 312 is not the only concern we have with the State's labor laws. As I'm sure you all know, there is currently pending in the House of Representatives a bill that is being called the "Right to Strike" bill. This is HB 4645.

The proponents of this bill argue that public employees should have a legal right to strike, that public employees should not be deprived of a basic right enjoyed by their union brothers and sisters in the private sector. Don't be fooled by their sophistry! They no more want to be treated like their so-called brothers and sisters than you want to go live at the North Pole. They do not want to give up the protections they enjoy under the Civil Service rules or the Teacher Tenure Act. They do not want to exclude supervisors from unions, they do not want to give up the golden goose we call Act 312, and they do not want to limit collective bargaining to the subject matters traditional in the private sector. Public employees in Michigan now have many advantages under the State's labor laws that their private sector brothers and sisters do not have. Many of these were given them because there was no legal right to strike. Now they want to have their cake and eat it too! And they're quite willing to allow their brothers and sisters to continue to pay for the advantages they enjoy.

In connection with HB 4645, the City of Detroit and other public employers have argued strenuously that the State's labor laws must provide a balance of power at the bargaining table, that, if the legislature feels we should pattern ourselves after the private sector, then we must go all the way, and adopt that kind of balance. There must be no collective bargaining for supervisory employees and the kinds of things that must be negotiated must be limited to the kinds of things that must be negotiated in the private sector. The public employee unions that endorse HB 4645 don't merely want the right to strike - they want a law that will virtually guarantee they'll win every strike. And there's an amendment to the bill before the House that would open up access to Act 312 to all public employee unions under certain circumstances.

Today the House may be voting on the Right to Strike Bill and several important amendments to it. I for one hope, and I am very confident, that the House of Representatives will act responsibly to assure that collective bargaining in this state will be given every chance to operate

in a balanced, fair, and reasonable manner.

I say to you today that the central theme of the State's Labor laws must be collective bargaining. This is the key to reasonable employee relations in the public sector in this state. We must not destroy collective bargaining with compulsory arbitration and we must not destroy it with lopsided changes in the labor laws.

# Our Opinions

## Suspend Arbitration

The case against Michigan's arbitration law for police and fire unions is now more convincing than ever.

Act 312, requiring compulsory arbitration of pay disputes between cities and their police and fire unions, has been often criticized. But, in light of Detroit's desperate financial plight, the case takes on a new urgency.

Not only must the city trim its payroll, swollen by arbitration, it must also finance a \$119 million deficit with bonds. Rodkey Craighead, chairman of Detroit Bank & Trust Co., recently noted that his firm would find it very difficult to buy the city's deficit bonds without some changes to narrow the gap between Detroit's costs and revenues. Not least among the changes Mr. Craighead mentioned was relief from the effects of Act 312.

The concern of Mr. Craighead, and of other Detroit bankers, is understandable. As bankers are fond of saying when they are asked to make risky investments, it's not their money. They have obligations to their depositors.

Too, Mayor Young's blue-ribbon fiscal crisis committee has noted that Act 312 contains provisions that "have had the effect of compounding Detroit's employe-compensation cost problems and have in fact directly accounted for more than half of the present deficit."

The arbitration award for the police-fire contract beginning in 1977 cost the city \$79 million more than raises for all of the city's other employes, who engaged in collective bargaining.

Arbitration is probably the soundest way to avoid dangerous police and fire strikes. But, as we've noted many times before, Michigan's law is seriously flawed — particularly with reference to a city's ability to pay.

The distortions created in Detroit's ledgers by the failure of arbitration panels to give attention to the city's fiscal position is all too apparent. Ability to pay needs much narrower definition. The law's current last-best-offer provision, which forces a panel to choose between two positions, with no room for compromise, also needs adjustment. Arbitration laws appear to be working in other states. With some amendments, Michigan's might also work.

But this is not the time for Lansing to fine tune a complicated statute. The city is asking the Legislature, as part of a package of bills enabling Detroit to issue the bonds to suspend Act 312 for three years. This would have the effect of forcing the police and fire unions to the bargaining table, where agreements with the city's other unions have been held to reasonable levels in recent years.

If the police and fire unions won't agree to a voluntary waiver of Act 312 for this round of wage negotiations, the Legislature should set to suspend the law as an absolutely necessary part of the city's survival plan. The marketability of the bonds depends on it.

What lender or investor, surveying the damage already inflicted by Act 312, would gamble on the outcome of yet another arbitration?

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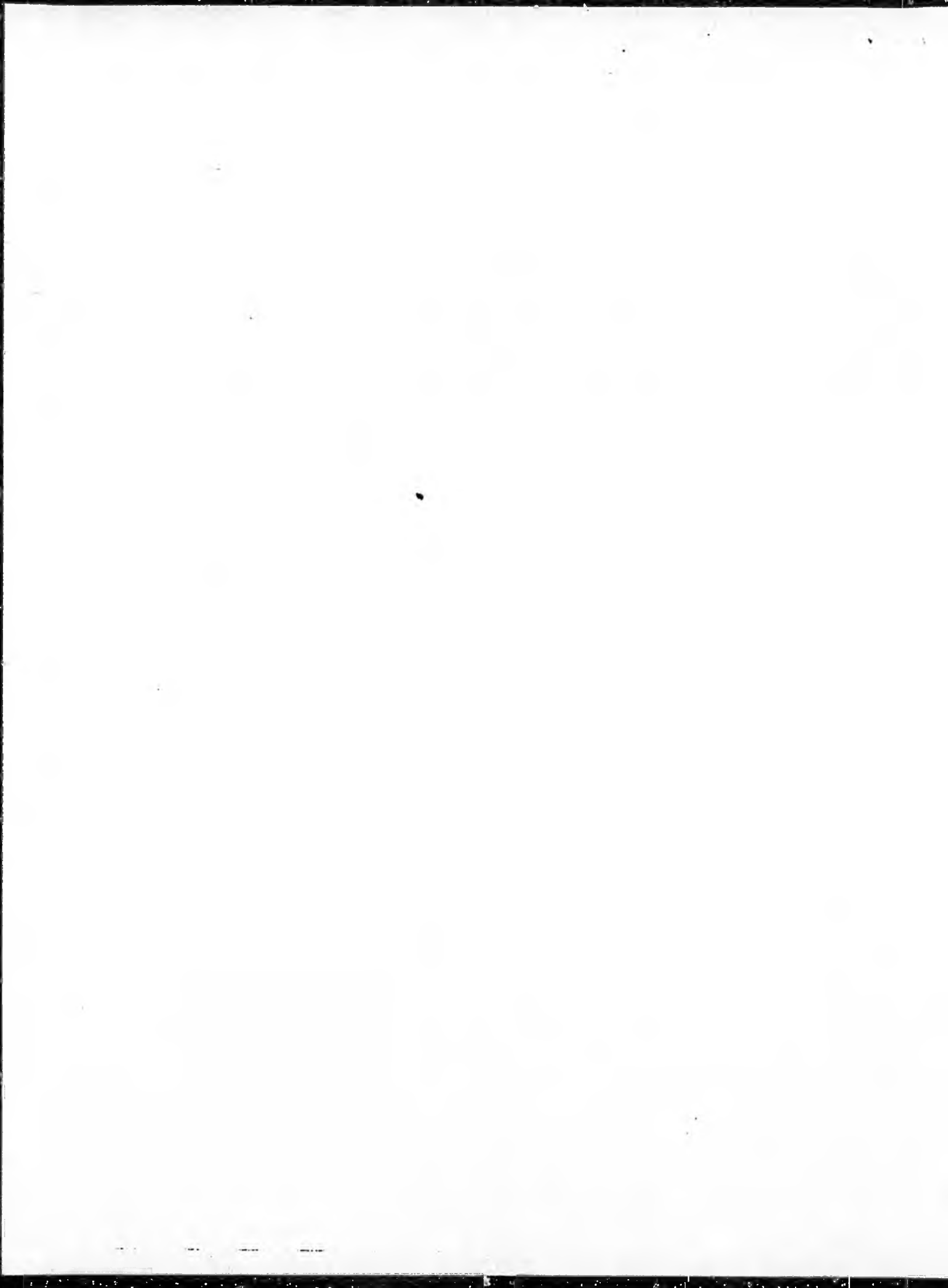
V. LEONARD HANNA  
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Monday, May 4, 1981

Page 10A

RICHARD,  
THIS IS WHERE  
IT STARTED.

Bill



POSITION PAPER ON PUBLIC EMPLOYMENT  
LABOR RELATIONS POLICY  
FOR MICHIGAN

By Louis D. Beer  
Kemp, Kline, Endelman and Beer

A Prescriptive Analysis Prepared On  
Behalf of the Michigan Municipal League

December 4, 1979



# THE LAW OF PUBLIC EMPLOYMENT LABOR RELATIONS IN MICHIGAN

Louis D. Beer

## Synopsis

The major problem, stated concisely, is that Michigan public employee unions have rather artfully structured themselves to get the best of both worlds: they strike and demand all of the rights of private employee unions, yet they seek the job protection of civil service, and systems like civil service, the availability of binding arbitration, and the right to organize employees and bargain about issues that were granted only on the assumption they would not strike. All of this is done under the regulation of an agency which for a variety of reasons has found it necessary to beat several substantial retreats from the field. The problems are many, the issues sharply divide managers and unions, and the solutions in many cases are imperfect, at best. However, it is clear there is room for improvement.

This paper provides the reader with a frame of reference in considering a number of serious difficulties involving public employee labor relations. Part I is a background statement. Part II deals with the issue of strikes by public employees. Part III concerns the collective bargaining process. Part IV covers labor dispute resolution in the absence of agreement.