ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 8672
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I BACKGROUND:

Until 1965, Michigan operated under a statute commonly known as the "Hutchinson Act" which effectively reduced public employment labor relations to what union adherents contemptuously referred to as "collective begging". While public employee unions did exist they were not widespread, and relied for what little support they had on their powerful private sector brethren who were able to wield political influence with the public employer. Public Act 379 of that year, known as the Public Employment Relations Act, changed all of that. It provided for a system of regulation of public employee unions roughly parelleling that of the National Labor Relations Board in the Private Sector, with the pivotal exception that all Unions in the public sector were absolutely forbidden to strike. However, unlike the Hutchinson act, "PERA", as it is commonly known, provided no mandatory discharge for strikers. Instead, it set up what proved to be a rather elaborate hearing process in the case of any discipline of a striker. With what appears to be amazing naivete with the benefit of fifteen years hindsight, the legislators chose to rely on fact finding. They believed, apparently, that "the shining of the light of public opinion" on the issues in dispute would resolve disputes, making strikes unnecessary. If it worked, it was only briefly, and in only some communities, and public employee strikes, although illegal, proliferated.

In 1968 the Supreme Court of Michigan, in Holland v. Holland Education Association held that strikes by public employees were not automatically enjoinable, but rather required a full "due process" hearing

before an injunction could issue. The effect of this was to make it impossible for any public employer to prevent by court action a strike of at least limited duration, as long, at the least, as it took the employer to find a lawyer, write a complaint, file it, serve it, and hold a hearing, a course of events which often turned out to be time consuming indeed

In 1969 police and firefighters, seeing little opportunity the climate of those times for successful strike action, su[illegible]rted and obtained the passage of Public Act 312, which provides for arbitration of economic disputes between police and fire unions and public employers. Since that time, most public employers contend that the overwhelming number of arbitration settlements have favored the employees, resulting in serious economic consequences for the employer, and serious difficulties in settling labor disputes with other employees not covered by 312, but who believe their wages and benefits should follow the pattern assigned by their fellow employees under 312.

Through the first five (5) years of PERA settlements tended to favor the unions who often overwhelmed public managers with expertise and experience in the collective bargaining process which simply was not present in most governments. However, in the early seventies the tide of events began to turn. The generally high salaries and wages won by Michigan public employees, the entrance into the job market of the post war "baby boom" and the rising level of employer expertise in the collective bargaining process led to a much higher level of confrontation, to a general slowing down of the trend in the level of salary settlements and to many more public employee strikes.

The most significant such confrontation occurred in the Crestwood school district. In Rockwell v Crestwood the Supreme Court of Michigan affirmed the discharge of vitually the entire teaching staff of almost

three hundred (300) teachers and their replacement by new teachers. Although the Court empowered the Michigan Employment Relations Commission, or "MERC" (the agency that administers the Public Employment Relations Act) to intervene and prevent the dismissals, the Commission did not do so. Thus for the first time, a significant number of public employees permanently lost their employment for striking. Equally significant is that the strike in Crestwood had been ordered halted by court order, and the teachers had continued to strike in defiance of the order.

Since 1975, when a bill legalizing strikes for school teachers was passed by the legislature, but vetoed by the governor, there have been calls from many sources for legislative reform of the existing situation, but none have to date succeeded. Public employers of police and firefighters complain bitterly of the unfairness of Act 312. School boards complain bitterly of the fact that school teachers can "make up" salaries lost during a strike due to the mandate that school be kept 180 days per year. Unions complain bitterly that the illegality of strikes and the lackadaisical administration of the unfair labor practice provisions of the Act have led to an absence of meaningful collective bargaining in any unit not so large that sheer numbers would prevent its members from being discharged and replaced. None of these complaints, however, has of yet stimulated successful legislative action.

Overlaying the present legislative ferment is the incipient emergence of collective bargaining at the state level. State police officers have won the right to bargain collectively by electoral referendum, and the Governor's Commission on Civil Service Reform has recommended collective bargaining for state civil service employees.

This is then the present situation, with virtually no interested party satisfied with the status quo, but with no agreement between the major interest groups as to what should be done. To make the situation

even more complex, certain aspects of the situation bother certain unions, and certain types of public employers, much more than others. As a result, any type of consensus is extremely difficult to obtain. What follows is an attempt to cover the major points in dispute from a point of view which reasonably reflects the concerns of municipal officers and managers, but which has a reasonable chance of being supported by other elected officials and the public, and can at least be appreciated, if not agreed to, by the unions.

II DETERMINING WHAT IS, AND WHAT IS NOT, A STRIKE

Problem: Providing merely "the right to strike" gives the employee the right to engage in almost any kind of conduct, without fear of any adverse consequence other than the withholding of pay, plus generating as much conflict over who can get away with what as is generated over the issues of the strike.

Prescription: Any bill regulating the "right" to strike should as clearly as is possible define what a legal strike is, as well as clearly provide the right of the public employer to carry on service in the face of the strike, including the employment of permanent replacements, if necessary. PERA should provide for the right to replace strikers, without hearing, and for the waiver of job protections other than PERA in strike related situations.

PERA presently, in outlawing a strike, uses language which includes every conceivable kind of behavior in which an employer would not want his employees to engage. The result is that every kind of action against the employer is equally illegal, from the flat out refusal to come to work, to slowdowns, vandalism, threatening other employees and the like. As a result, all behavior gets punished, as in Crestwood, or even the most flagrant violations of the rights of fellow employees,

or the public, is condoned. Since in the vast majority of cases the employer's goal is to get the employees back to work, "no reprisal" agreements after illegal strikes are an almost universal rule, and so in most public employee strikes it is "anything goes". The bizarre result therefore in declaring all activity illegal is that there is often no conduct at all which is punished. Furthermore, PERA contemplates that the only response to the unlawful conduct of a striking public employee is to fire him. In the private sector, the NLRB has worked out a system which distinguishes "unlawful" or "unprotected" activity for which a striker may be fired, and "protected" activity during a legal economic strike for which a striker may be "replaced" by a permanent employee who is willing to work during the strike. (The status of the strking employee who is replaced is roughly equivalent to that of an employee on layoff). Given the complexity and the difficulty of discharge procedures under PERA, and the conflicting application of tenure acts, local civil service acts, veterans preference, and the like, it is ironically easier to "replace" a striker in the private sector where striking is legal, than it is in the public sector under PERA, where the strike is illegal!

Another problem in the PERA covered strike situation is that public employers and unions have spent large amounts of time, money and energy unproductively trying to determine who has the right to do what. When the ground rules are not clear, the parties will tend to fight over the ground rules, rather than over the issues at hand. Enraged public employers, responding often to an enraged public, have often focused more energy on suppressing certain forms of unlawful activity than they have on resolving the underlying disputes that caused it. By the same token, enraged public unionists, usually responding

to enraged union members, have continuously attempted to test PERA's vague and unsatisfactory restrictions on strikes in order to find new leverage to move what they regard as implacable managements.

Debate in the legislature, and in public, over legalizing strikes is dominated by two misconceptions. The first is that all private employee strikes are legal. This is not so. Strikes in the private sector must be the subject, in most cases, of notice to the employer, and must be limited to a complete cessation of work and the peaceful picketing of the employers work place. "Sick outs", "blue flue", "hit and run" or "rolling" strikes (strikes of first one and then another of the employers jobs while work resumes at the first job) slowdowns, and other like activity are all classified as "unprotected", which means the employees can be fired for engaging in them.

The second misconception is that all strikes succeed in halting work. This is clearly untrue. While the most heavily publicized strikes, such as those in major industries usually result in shutdowns, strikes in smaller manufacturing concerns, or in service industries, frequently do not. Such major newspapers as the Washington Post have operated during lengthy strikes, for example, because of the inability of the unions to convince sufficient employees to leave their jobs to successfully halt production.

Any legislated change that equates the "right to strike" with the guarantee that the strike will succeed in stopping the provision of services will deal a direct body blow to the fiscal well being of every community in the state. To be sure, major cities will not be able to continue bus service, for example, if the bus drivers strike, but it does not necessarily follow that a smaller community might not be able to do so, if say five or ten bus drivers struck, and there was a supervisor or two on the scene who could also drive a bus.

Similarly, it is unlikely that a major employer would, for example, replace several hundred sanitationmen. It is not unlikely, however, that a smaller unit of government would not at least consider replacing a unit of four or five.

However, the result of collective bargaining negotiations is seldom influenced only by actual pressures used in the particular situation. The possibility that certain actions might be taken often greatly influences the negotiators and their constituents. Thus, the thought that the employer might if put in a desparate enough position, replace strikers, will be sufficient in many cases to modify union demands. By the same token, a union leader anxious to shore up a failing strike by sending some of his workers back to work and suddenly pulling a few of them out again, thereby disrupting the employer's operation but still providing paychecks to his members, might well be deterred if he knew that this could result in the discharge of some of his members.

III BARGAINING PROCESS

Problem: The "ground rules" for negotiations in the public sector in Michigan are in a shambles. Who is included in bargaining, and what they should bargain about are badly defined in ways that make effective bargaining more difficult, and which disadvantage public employers. Furthermore, the agency which is charged with enforcing the ground rules, in large measure is incapable of doing so in a fashion timely enough to have any real influence on the negotiation process.

Prescription: There should be a statutory definition of "supervisor" in the Public Employment Relations Act which should follow the federal model, excluding supervisors from the bargaining process. The scope of bargaining should be limited to wages, hours and term and conditions of employment fairly defined, with no deference given to the fact that public employees cannot strike, since in fact they do. And most critically, the funding structure and operations of the Employment

Relations Commission need to be critically examined, so that whatever legislation is in existence may be effectively enforced so as to limit and bring order to whatever minimum of conflict might occur. Some suggestions for doing so include:

1. Adopting a system for processing Unfair Labor Practice charges which provides for investigation of them and disposition rather than routine issuance of complaints.
2. Making the position of a member of the Employment Relations Commission a full time position, or at least that of the chairman.
3. Refraining from the present practice of operating by office policy rather than promulgated rule.
4. Setting of specific maximum time limits during which a party has a right to obtain the disposition of an unfair labor practice matter.
5. Assigning specific counsel directly to the Commission, rather than indirect reliance on the attorney general's office, so that injunctive relief could be obtained more readily in emergency situations, and including a broader definition of emergency.
6. Separating the function of providing arbitrators and factfinders from the personnel responsible for preliminary handling of unit determination and unfair labor practice charges.

Present bargaining practice under PERA (and under Act 312) varies from the National Labor Relations Act in three major ways. All of them have caused problems with the process, and all of them have led either directly or indirectly to the present clamor for change.

First of these is the question of what is the appropriate "scope" of bargaining. In other words, what issues must management discuss, thereby presumably sharing some control over their ultimate disposition, with the union. Unions, particularly in traditionally public

sector activities such as police protection, school teaching, and medical care service, have sought to obtain what appears to them as control over their destiny, but what appears to public employers as an attempt to gain an illegitmate voice in the determination of ultimate public policy. Unionized employees of all sorts have sought a role in determining who is to be advanced to higher paying, often supervisory, jobs which would typically not be the concern of the private sector unions. Often, to an extent far greater than in the private sector, negotiations have focused on what it is that will be discussed, rather than actually discussing it.

Michigan case law has on several occasions extended the "duty to bargain" to issues not covered in the private sector specifically because the employees covered by PERA do not have the right to strike. The argument is, of course, that if the right to bargain about an issue does not lead to a strike over it, there should not be any harm in discussing it. Of course, since strikes do occur in the public sector with alarming regularity, the argument has limited validity.

The second problem is the question of which employees are entitled to the right to bargain. In the private sector, "supervisors" are clearly excluded from bargaining, and defined not only in terms of a definition written into the law, but by many years of case law. Under PERA in Michigan, however, some supervisors, generally those not involved in the formation of policy, are allowed to bargain, and although Michigan decisions recite the federal definition, there are several cases in which apparently supervisory employees have been classified as general employees by MERC.

The tugging and hauling over supervisors creates several problems. The most significant relates more to operating the government than to labor relations law. If a supervisor and the employee are both

members of the same union, even if they are in different locals, is the supervisor going to be truly effective in representing management interests, or does he really have a greater community of interest with the individual he supervises? Is management going to get effective representation at lower level grievance hearings when both management and labor are members of the same union? The answers are fairly obvious. Furthermore, in the event of any strike situation, legal or illegal, it is very difficult to imagine a unionized supervisor coming to work and maintaining services.

Finally, there is the question of the level of enforcement of those ground rules which do exist. It is not uncommon for cases brought by unions complaining that a management has refused to bargain in good faith with them to take several years to reach even an initial decision as to whether their complaint is valid. In tense, volatile, confrontative situations, such as contract negotiations, the union which will wait that long is rare indeed. Similarly, a management which sincerely believes it is being forced "out of bounds" by union demands has no choice other than to simply say no. There does not exist a realistic method in Michigan of testing, short of strike activity, the willingness of a party to fairly enter into the collective bargaining process.

It bears remembering that strikes and other labor disputes are seldom simple demands for money on the part of employees, and equally simple attempts to protect a budget by employers. Almost every situation has in it a substantial element of emotion, political involvement and personality. Furthermore, it is more likely than not that when a union comes to the table and demands money it is not only seeking economic betterment, but it is translating the employees' frustrations with their job circumstances into the language of negotiation. Irritations

and even passions that may have nothing to do with the wage scale may end up on the bargaining table as economic demands. Noneconomic demands often are more a seeking of personal recognition than a demand for a real remedy.

When a management for whatever reason, good or bad, is viewed by the union as refusing to deal with these issues, unionized employees tend to view it as a denial of the legitimacy of their union, and an attempt to diminish them as human beings. Under the Michigan system when this occurs, as it inevitably does, the only practicable remedy for the employees feeling is for them to strike. It is not a totally unrespectable notion to suggest that the current drive by unions for the right to strike is fueled more by a feeling of frustration over the lack of an effective way to resolve these problems than it is over the general level of economic settlements which Michigan public employees have achieved.

The reasons for this unhappy situation are complex. First, MERC has, through a variety of policies, often announced more through decision than regulation, or simply adopted by administrative practice, attempted to avoid a number of issues which would perhaps best be confronted. For example, MERC routinely issues a complaint and schedules a hearing every time an unfair labor practice charge is filed, regardless of its merits. No investigation is made beforehand. This contrasts with the Federal system in which each charge is investigated on an administrative level, and reported to the regional director of the NLRB. He then determines whether it has sufficient merit to justify proceeding.

The result is that the MERC docket is continuously filled with a large number of frivolous charges, and also with charges which the parties have no incentive to settle, since nothing will happen for months, if not years. Furthermore, all parties are proceeding with a total lack

of knowledge as to the facts, since MERC conducts no investigation, and has uniformly for years refused to allow a party to subpoena evidence from the other party. This compares with a federal system in which the vast majority of charges never end up in hearings because either they have been dismissed by the agency, or the party complained of has settled the complaint in order to avoid needless hearings.

There are a variety of other more particular examples which need not be examined in detail. In essence, a combination of limited budget, limited staff, and a reluctance to take on the complexities of the rule making process, has resulted in a series of actions designed to keep the agency from overextending itself. The result has been that the agency has often, except for its mediation function, become irrelevant to the bargaining process, and thereby been unable to minimize the number of strikes which have occurred or limit their intensity.

The answer to all three of the problems just discussed is the same: a strong, vigorous effective regulatory body, which enforces clear rules which are carefully thought out to enhance the likelihood that the bargaining process will result in dispute resolution without outside intervention. Allowing supervisors to organize and classifying virtually every subject of bargaining as mandatory solves MERC's problem nicely. If all supervisors are employees, and all issues are bargainable then there are no decisions left to be made. However, removing a problem from MERC and dumping it back into the bargaining process simply defeats the purpose of the agency. Rather than provide a well defined arena in which conflict can be resolved, it leads to larger, more bitter confrontations, and is in large measure responsible for the present clamor to change the act.

IV DISPUTE RESOLUTION IN THE ABSENCE OF AGREEMENT.

Problem: The public and the legislature will simply not accept a system in which there is no guaranteed resolution of public employee strikes. However, guaranteeing third party arbitration inherently inflates the settlements, and tends to destroy bargaining, thereby greatly inflating the cost of government.

Prescription: Limit access to arbitration where it is not now provided at most to those situations in which the public employer requests and receives a court order terminating a strike. Where public Act 312 is in effect, provide a right for a municipality to "opt out" by vote of the people into PERA, provide for a fairer selection of arbitrators, and require that unions in fact engage in good faith bargaining prior to 312 arbitrations being convened.

It is now apparent to almost all experienced observers that public employee bargaining inevitably will breed public employee strikes. This fact leads some to the simplistic conclusion that by merely legalizing such strikes they can be easily controlled, and therefore minimized. However, the better view holds that it is not quite that easy.

In the public sector, as well as in the private, it is possible that legitimate differences exist as to what is an affordable and acceptable rate of pay. What the market should require is not always crystal clear. Furthermore, as mentioned above, collective bargaining does not occur in an emotion free laboratory atmosphere, but more often amidst the swirling winds of passion and anger. Collective bargaining is often the outlet for job related tensions and anger that have little or nothing to do with the specific issues before the parties. It is well recognized in the private sector that sometimes strikes serve a necessary air-clearing function, and it is not unrealistic to presume that this sometimes happens in the public sector as well.

However, there are significant differences. In the private sector the application of the law of supply and demand is more obvious; there are plenty of examples of companies who have gone out of business because they entered into labor agreements they could not afford. Public employers do not have that option as a weapon at the bargaining table. Also, they face the fact that bargaining in the public sector is to some extent always public, influenced by the politics of the community and the legitimate self-expressions of the interest of the citizens and taxpayers.

Finally, it should recognize that, at least as a practical matter, public employee strikes of unlimited duration are politically intolerable. The legislature simply is not going to support legislation that allows all public employees to strike indefinitely.

There exists a widespread belief that somehow the problem can be wished away through the waving of a magic wand called "arbitration". Many people seem to feel that if a public employee negotiation becomes troublesome, with emotions running high and tempers flaring, the automatic availability of arbitration will resolve the problem. Of course, in police and fire situations, arbitration now exists at the request of either party, and to date resort to formalized strike activity has been rare among these employees. Experience has proven, however, that arbitration and collective bargaining as they are practiced in the United States, do not easily mix.

In a negotiation in which the availability of arbitration is a previously known quantity, one side or the other will tend to view it as to its advantage to arbitrate, believing that its ability to persuade a third party is greater than its power, persuasive or otherwise, at the

bargaining table. The result is to either make arbitration an issue in the negotiation, or perhaps in a strike resulting from the negotiation, or conversely, if arbitration is mandated beforehand, to reduce the bargaining to a meaningless exchange of formalities, sort of an appetizer before the main course of arbitration.

Under Act 312 in Michigan the advantage has been decidedly with the public employee unions, and against the employer. There are a variety of possible reasons for this, some of which can be explained by the system, and some of which cannot:

a) Public Act 312 arbitrators tend to be people who make their livings as arbitrators, either in whole or significant part. Under the voluntary rules of the American Arbitration Association, a participant in arbitration has what is tantamount to an absolute veto over a particular arbitrator. Under Act 312, the party does not have such a veto. The result is that unions, particularly the members of federations such as the AFL-CIO are in a position to "punish" an arbitrator who finds favorably to management in a 312 arbitration, by "blacklisting" him in future arbitrations with private employers who are not particularly concerned about his findings in public pay disputes. While there is no evidence that this goes on in a blatantly organized fashion, and certainly the vast majority of arbitrators are people of integrity, it is undeniable that a continuous subtle pressure is exerted by this situation.

b) 312 arbitration presentations by unions tend to be given either by in house arbitration specialists, or by attorneys who concentrate in the area. Too often, 312 presentations by employers are given by city attorneys or others who, while quite competent, simply are

not able to keep pace with persons who are immersed in the process on a day to day basis.

c) Many 312 arbitrators have interpreted the criteria for selecting which position to choose very narrowly. In considering, for example, the finances of the municipality, they tend to ignore the pattern setting nature of a police or fire award with regard to other groups, and therefore tned to underestimate costs.

d) Political realities sometimes require an employer to espouse a public position which cannot be maintained through negotiations. If the city council for example, budgets a five (5%) percent salary increase in circumstances in which the prevailing salary pattern is eight (8%) percent, city bargainers can hardly take a position in which they would voluntarily pay more than the city budget. This, however, provides a bonus for the union. Since 312 arbitrations are "last best offer" arbitrations, meaning that the arbitrator may not "split the difference" between the proposals for the parties but must pick that one which is closest to being fair, the union can inflate its offer, knowing that the city cannot move beyond its authorized maximum. Thus, the union, in this example, can with relative safety obtain an arbitrated award of ten (10%) percent, even though eight (8%) percent is fair, because ten (10%) percent is closer to eight (8%) percent than to five (5%) percent.

In spite of these obvious problems with Act 312, it is apparent that the notion of simply allowing strikes to go on forever, even though it is not likely to happen in practice, is theoretically unacceptable to the public, or at least to its legislative representatives. Crestwood and similar situations indicate that absent the imposition of harsh measures which are not feasible in the Michigan political climate, court orders simply will not stop strikes absent some provision for the ultimate resolution of the dispute at hand.

The best answer, although not a totally satisfactory one, is to allow the employer to determine exclusively whether he wishes court intervention to prevent a strike from continuing, with the understanding that only if he so determines, may he be subject to third party arbitration of the dispute. (A possibility which should be explored in such circumstances is partial, but not total limitation of the strike, so that the public employer is impaired but not disabled from providing essential services, so that the strike can run its course without permanently damaging the community.)

Under this form of access to arbitration, no public employee group could be certain that the result will be arbitration. They must be prepared to strike, and to accept the consequences of striking including replacement by other employees before they could enter into an arbitration proceeding. This would hopefully introduce an element of realism into negotiation that is absent when arbitration is a foregone conclusion.

With regard to those employees who are already mandated into arbitration by Act 312, there are a number of procedural reforms which might at least help the situation. One obvious change would be to install full time 312 arbitrators, who did not engage in private practice, and who therefore would not be as susceptible to the kind of pressure which 312 arbitrators now endure. Another would be to allow municipalities by local option to be exercised some time before a contract expires to vote themselves out of 312 and into PERA. The possibility that this might occur might well have a steadying effect on both arbitrators and unions, as neither would wish to "kill the goose that lays the golden egg". Another possible reform would be to provide greater control by the parties over the selection of the arbitrator, either by permitting a

certain number of "strikes" from the total panel of arbitrators eligible for 312 arbitrations, or greater opportunity for cities to complain about appearance of a particular arbitrator on a final panel.

There are in addition several steps that cities can take on their own initiative. Maximum possible attention should be paid to the preparation of a 312 arbitration case. Greater efforts should be made to share information, both as to the presentation of cases, and also as to particular arbitrators (many lawyers in the private sector spend more time studying and selecting an arbitrator than they do actually preparing the facts of the case once he is selected.) Greater efforts should be made to insist, through unfair labor practice charges if necessary, that unions in fact engage in good faith bargaining before going to arbitration. As a practical matter, it is unlikely that changes in Act 312 can be brought about as long as the unions regard it as a form of salvation. Decisive action by employers to insure that it is something less than that will go a long way towards creating an atmosphere in which change can realistically be considered.

V CONCLUSION

There are a number of other matters which deserve mention in passing. There is not one word of Michigan law dealing with the internal regulation of Public Employee unions. Such unions, if they do not represent private employees, are not covered by the Landrum Griffin Act. Such a union is perhaps the most unregulated institution in our entire society. The public employee union member has no guarantee that his union will operate democratically, that it will manage his money fairly, or that it will honor his wishes with regard to striking or accepting offers.

Similarly, Michigan makes no provisions for some of the more vicious forms of union organizing, which have been outlawed at the Federal level. These include organizational picketing, secondary boycotts, and other activities which involve innocent third parties in labor disputes, particularly when a union is attempting to organize employees who may not wish to be organized. However, it has to be recognized that it will be difficult to convince the legislature to act in any major fashion with regard to these issues because there is no major history of difficulty relating to them.

PERS

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September 26, 1980

Ms. Betty Dillman
Office of the Governor
Pouch A
Juneau, Alaska 99811

Dear Betty:

I welcomed the opportunity to be in Alaska and to meet with the Blue Ribbon Commission and I hope that my contribution may have assisted the Commission in what I believe to be a very important responsibility.

As requested, I am enclosing the following:

1. A listing of mandatory, permission and illegal subjects of bargaining decided under New York's Taylor Law.

2. Copies of the provisions of a number of state statutes regarding the treatment of management rights and scope of bargaining. It is my understanding that you will reproduce these and give them to each of the Commission members.

If I can be of further help to the Commission, do not hesitate to let me know.

Sincerely,

Robert D. Helsby

Funded by Carnegie Corporation: Fiscal Agent, American Arbitration Association

nnotations: This provision doesn't require a school board to ide release time to teachers for the purpose of organizational paigns and elections [Richmond Unified Sch. Dist. (PERB, 7) No. SF-R-55].

District violated release time provision by refusing to meet at any time during the instructional day [Magnolia Educators Assn. and Magnolia Sch. Dist. (PERB, 1977) No. LA-CE-31.

¶16,213 Membership dues; deduction.] (d) All employee organizations shall have the right to have membership dues ucted pursuant to Sections 13532 and 13604.2 of the Education Code, until such time as an employee organization is gnized as the exclusive representative for any of the employees in an appropriate unit, and then such deduction as to employee in the negotiating unit shall shall not be permissible except to the exclusive representative.

¶16,214] Sec. 3543.2. Scope of representation. The scope of representation shall be limited to matters relating to es, hours of employment, and other terms and conditions of employment. "Terms and conditions of employment" n health and welfare benefits as defined by Section 53200, leave, transfer and reassignment policies, safety conditions mployment, class size, procedures to be used for the evaluation of employees, organizational security pursuant to Sec- 3546, procedures for processing grievances pursuant to Sections 3548.5, 3548.6, 3548.7, and 3548.8, and the layoff of ıationary certificated school district employees, pursuant to Section 44959.5 of the Education Code. In addition, the usive representative of certificated personnel has the right to consult on the definition of educational objectives, the rmination of the content of courses and curriculum, and the selection of textbooks to the extent such matters are in the discretion of the public school employer under the law. All matters not specifically enumerated are reserved to public school employer and may not be a subject of meeting and negotiating, provided that nothing herein may be strued to limit the right of the public school employer to consult with any employees or employee organization on any ter outside the scope of representation.

nnotations: State law entitled them to same paid holidays as fied employees (teachers), but school calendar gave two paid lays to teachers which were working days for classified emees. So classified employees were entitled to regular pay plus r 1½ times regular pay or comp time of 1½ days for each such worked, but school district could decide method of overtime [CSEA v. New Haven Unif. Sch. Dist. (Calif. Ct. of App.,) 154 Cal. Rptr. 479].

emporary teachers laid off for lack of work or funds aren't led to pretermination hearings [Calif. Tchrs. Assn. v. Pasa- Unif. Sch. Dist. (Calif. Ct. of App., 2nd Dist., Div. 5, 1978) .A. 3d 556].

hough district failed to comply with its regulation that ers be notified of complaints against them and be given prearv decisions on complaints in 2 days, district could still mand teachers since after teacher strike meeting deadline was ssible and since no serious prejudice resulted to teachers f. Tchrs. Assn. v. Nielson, et al. (Calif. Ct. of App., 1st Dist., 3, 1978) 149 Cal. Rptr. 728].

ontracting out of driver training courses as allowed by state [Ed. Code §41913] not an unconstitutional delegation of of public school system or of public funds to private schools se district keeps authority over program [Calif. Tchrs. Assn., et al. v. Bd. of Trustees, Fullerton Union H.S. Dist. (Calif. Ct. of App., 4th Dist., Div. 2, 1978) 87 C.A. 3d 249].

Where services provided were above those required by law, school board could eliminate those provided beyond minimum [Campbell Elem. Tchrs. Assn. v. Abbot (Calif. Ct. of App., 1st Dist., Div. 4, 1978) 76 C.A. 3d 796].

Where state laws don't compel reclassification of teacher's status, neither length of service, expectation of employment or fact that teacher is taking place of specific teacher on leave can force district to grant teachers knowingly hired as temporary probationary status [Santa Barbara Fed. of Tchrs. v. Santa Barbara H.S. Dist. (Calif. Ct. of App., 2nd Dist., Div. 3, 1977) 76 C.A.3d 223].

Where contract provided extra pay for teachers performing special duties district couldn't eliminate extra pay after contracts were renewed [A.B.C. Fed. of Tchrs., et al. v. A.B.C. Unif. Sch. Dist. (Calif. Ct. of App., 2nd Dist., Div. 3, 1977) 75 C.A.3d 332].

Where state law allowed paid leave for personal necessity, school board had power to decide what was necessity and didn't abuse its discretion in refusing to allow paid leave for religious observance [Calif. Tchrs. Assn. v. Bd. of Trustees of Cucamonga Elem. Sch. Dist. (Calif. Ct. of App. 4th Dist., 1977) 70 C.A. 3d 431].

¶16,215] Sec. 3543.3. Duty of employer to negotiate. A public school employer or such representatives as it may nate who may, but need not be, subject to either certification requirements or requirements for classified employees orth in the Education Code, shall meet and negotiate with and only with representatives of employee organizations ed as exclusive representatives of appropriate units upon request with regard to matters within the scope of represen- n.

nnotations: Though layoffs affected employment conditions ormal sequence requiring school board to meet and confer o yield to allow employer to make final decision in time to legal deadline for notifying teachers of terminations [Camp- lem. Tchrs. Assn. v. Abbot (Calif. Ct. of App., 1st Dist., Div. 78) 76 C.A. 3d 796].

ference to be drawn from provisions of Act is that negosessions are to be closed to public unless parties agree otherwise [Ross Sch. Dist. Tchrs. Assn. v. Ross Sch. Dist. Bd. of Trustees, PERB, 2-21-78].

As long as school board doesn't meet and negotiate with minority union to disadvantage of the exclusive representative, minority union's first amendment right to speak at public school board meetings must be recognized [Chula Vista Elem. Ed. Assn., CTA/NEA v. Chula Vista City Sch. Dist., PERB, 10-25-77].

¶16,216] Sec. 3543.4. Representation of persons in management or confidential positions. No person serving in a gement position or a confidential position shall be represented by an exclusive representative. Any person serving in a position shall have the right to represent himself individually or by an employee organization whose membership is posed entirely of employees designated as holding such positions, in his employment relationship with the public l employer, but, in no case, shall such an organization meet and negotiate with the public school employer. No repre-

Annotations: City labor negotiator made agreement with firefighters that there'd be parity between salaries of police and firefighters. City was made aware of agreement after police contract was negotiated at pay increase 1% above that of firefighters and honored it. Since neither police nor city knew of agreement during negotiations they hadn't violated duty to bargain in good faith [City of Middletown and Middletown Police Union, Local 1361 and Council 15, AFSCME, SBLR, 8-14-78].

Even if city acted in good faith and out of economic reasons, it was an unfair practice to change working conditions (giving patrol boats which had been manned by police for 30 years to CETA employees supervised by park dept.) without prior bargaining [City of Bridgeport and Bridgeport Police Emps., Local 1159, SBLR, 7-7-78].

Not all unilateral action of employer, even on mandatory bargaining subjects, is refusal to bargain in good faith. Union had notice of city plan to reduce pensions and passed up an opportunity to bargain over it, so city could put change into effect [City of Norwich v. Norwich Fire Fighters (Conn. S. Ct., 1977) 377 A.2d 290].

Though new shift schedule's impact would normally have to be bargained to impasse, police chief could make change unilaterally because union president had said union would never agree to change. Chief could rely on this statement to mean change would have to be made unilaterally [City of Milford and Milford Police Union Local 899 and Council 15, AFSCME, SBLR, 4-7-79].

Even discharge of employee not covered by MERA may be a prohibited practice if it occurs out of anti-union sentiment, but here position was eliminated for economic reasons [Borough of Jewitt City and Nat'l. Assn. of Municipal Emps., SBLR, 4-4-77].

Employer's refusal to comply with a grievance settlement is unlawful [South Fire Dist. of Middletown and Local 1073, IAFF (SBLR, 1977) Case No. MPP-3886].

After contract expires, employer can't withhold increments automatically granted when contract was in effect, but can change work hours if it previously had done so during the contract's life [Stratford Library Assn. and Stratford Fed. of Library Emps., Local 136, Int'l. Fed. of Professional and Technical Engineers (SBLR, 1977) Case No. U-3549].

Passage of charter amendments allowing pension changes wasn't a prohibited practice though police and fire contracts promised no pension changes before 7-1-78. Amendments said changes in benefits would be bargained and though they allowed city to replace pension trustees there wasn't proof such changes wouldn't be bargained [City of Bridgeport and Bridgeport Police Emps., Local 1159, AFSCME; City of Bridgeport and Fire Dept. Emps., Local 834, IAFF, SBLR, 3-11-77].

Unilateral reduction in tuition reimbursements for police a prohibited act because change was substantial and union hadn't waived right to negotiate over it [Wethersfield Police Dept. and IBPO, Local 391, SBLR, 7-13-76].

Employer, who unilaterally reduced employees' working hours, was guilty of a prohibited labor practice [Town of Newington Bd. of Ed. and Local 1303, AFSCME (SBLR, 1973) Case No. MPP-2383].

A town's refusal to change its position on the duration of a contract may not be a prohibited practice if done in good faith and not for the purpose of frustrating the bargaining process [Town of New Canaan v. SBLR (Conn. S. Ct., 1971) 278 A.2d 761].

When the subject of a dispute is a mandatory bargaining item, adamant insistence on one bargaining position is not necessarily a refusal to bargain in good faith [Town of New Canaan v. SBLR (Conn. S. Ct., 1971) 278 A.2d 761].

[¶13,109 Employee organizations] [§7-470] (b) Employee organizations or their agents are prohibited from: (1) Restraining or coercing (A) employees in the exercise of the rights guaranteed in subsection (a) of section 7-468, and (B) a municipal employer in the selection of his representative for purposes of collective bargaining or the adjustment of grievances; (2) refusing to bargain collectively in good faith with a municipal employer, if it has been designated in accordance with the provisions of sections 7-467 to 7-477, inclusive, as the exclusive representative of employees in an appropriate unit; (3) refusing to comply with a grievance settlement, or arbitration settlement, or a valid award or decision of an arbitration panel or arbitrator rendered in accordance with the provisions of section 7-472.

Annotations: Union demanded agency shop fees retroactive to date of resignment from rejoining police officers who had resigned from union before contract setting up agency shop was negotiated. This was unfair practice because fees from other members had been retroactive only to date of contract and officers had had no reason to think resignation would lead to penalties [AFSCME, Police Local 1361, et al. and Aresco, SBLR, 5-15-78].

Union not guilty of unfair labor practice in insisting, after impasse, on taking board of education to binding arbitration over minimum manning requirements for school engineers, because such requirements are mandatory bargaining subjects. Under the law if impasse results from bargaining of mandatory subject, arbitration panel is to resolve the conflict [AFSCME, Local 287 and New Haven Bd. of Ed., SBLR, 3-28-78].

Union demand for arbitration followed by request for another bargaining session didn't indicate refusal to bargain in good faith. Union negotiator had mistakenly believed union's right to demand arbitration would expire, and union did make some concessions during the session in attempt to reach agreement [Police Local 789, AFSCME and Town of Enfield, SBLR, 8-1-77].

Use of strikes or job actions to coerce a result during collective bargaining is failure to bargain in good faith. Here boycott of extra duty assignments was economic coercion [Police Union Local 530 and Council 15, AFSCME and City of New Haven, SBLR, 7-5-77].

Using tape recorders in bargaining sessions is a negotiable ground rule, but union's insistence on its use, over employer's objection was a refusal to bargain [City of New London and New London Police Union, Local 724 and Council #15, AFSCME (SBLR, 1976) Case No. MEPP-3562].

[¶13,110 To bargain collectively] [§7-470] (c) For the purposes of said sections, to bargain collectively is the performance of the mutual obligation of the municipal employer or his designated representatives and the representative of the employees to meet at reasonable times, including meetings appropriately related to the budget-making process, and confer in good faith with respect to wages, hours and other conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation shall not compel either party to agree to a proposal or require the making of a concession.

(3) If any person misbehaves during a proceeding or so near the place thereof as to obstruct the same, or neglects to produce, after having been ordered to do so, any pertinent book, paper, record, or document, or refuses or fails to appear after having been subpoenaed, or upon appearing refuses to take oath or affirmation as a witness, or after having taken the oath refuses to be examined according to law, the commission shall certify the facts to the circuit court having jurisdiction in the county where the proceeding is taking place which shall thereupon in a summary manner hear the evidence as to the acts complained of, and, if the evidence so warrants, punish such person in the same manner and to the same extent as for a contempt committed before the court, or commit such person upon the same conditions as if the doing of the forbidden act had occurred with reference to the process or order of or in the presence of the court.

(4) Any subpoena, notice of hearing, or other process or notice of the commission issued under the provision of this part shall be served personally or by certified mail. A return made and verified by the individual making such service and setting forth the manner of such service is proof of service and a returned post office receipt, when certified mail is used, is proof of service. All process of any court to which application may be made under the provisions of this part shall be served in the county wherein the persons required to be served reside or may be found.

(5) The commission shall adopt rules as to the qualifications of persons who may serve as mediators and special masters, *and shall*[1] maintain lists of such qualified persons who are not employees of the commission. *The commission may*[1] initiate dispute resolution procedures by special masters, pursuant to the provisions of this part.

(6) Pursuant to its established procedures, the commission shall resolve questions and controversies concerning claims for recognition as the bargaining agent for a bargaining unit, determine or approve units appropriate for purposes of collective bargaining expeditiously process charges of *unfair*[2] *labor* practices, and *violations*[3] *of s.447.505* by public employees, and resolve such other questions and controversies as it may be authorized herein to undertake. *The*[1] *petitioner, charging party, respondent, and any intervenors shall be the adversary parties before the commission in any adjudicatory proceeding conducted pursuant to this part. Any commission statement of general applicability that implements, interprets, or prescribes law or policy, made in the course of adjudicating a case pursuant to s. 447.307 or s. 447.503 shall not constitute a rule within the meaning of s. 120.52(14).*

Annotations: PERC's failure to determine appropriate unit or order election within statutory 90 days after hearing officer's report didn't invalidate subsequent election because city hadn't suffered as result [City of Panama City and PERC, et al. (Fla. Dist. Ct. of App., 1st Dist., 1978) 363 So. 2d 135].

PERC was able to determine appropriateness of including sergeants in unit without hearing if enough evidence was already on record [City of Panama City and PERC, at al. (Fla. Dist. Ct. of App., 1st Dist., 1978) 363 So. 2d 135].

(7) The commission shall provide by rule a procedure for the filing and prompt disposition of petitions for *a*[1] *declaratory statement* as to the applicability of any statutory provision or any rule or order of the commission. Such rule, or rules shall provide for, but not be limited to an expeditious disposition of petitions posing questions relating to *potential*[4] *unfair labor* practices. Commission disposition of petitions shall be final agency action *and*[1] *shall not constitute a rule as defined in s. 120.54(14).* [Am. L. 1977, Ch. 343.]

Annotation: In genuine unfair labor practice cases, the courts should defer to the commission, but in breach of collective bargaining agreement cases, the state courts may decide the issues [Maxwell v. Sch. Bd. of Broward Cnty. (Fla. Dist. Ct. of App., 1976) 330 So. 2d 1977].

[¶11,105] Sec. 447.209. Public employer's rights.—It is the right of the public employer to determine unilaterally the purpose of each of its constituent agencies, set standards of services to be offered to the public, and exercise control and discretion over its organization and operations. It is also the right of the public employer to direct its employees, take disciplinary action for proper cause, and relieve its employees from duty because of lack of work or for other legitimate reasons. However, the exercise of such rights shall not preclude employees or their representatives from raising grievances, should decisions on the above matters have the practical consequence of violating the terms and conditions of any collective bargaining agreement in force or civil or career service regulation.

Annotations: School boards can dismiss nontenured teachers without basing dismissal on proper cause regardless of proper cause provision in bargaining agreement [Lake Cnty. Ed. Assn. v. Sch. Bd. of Lake Cnty. (Fla. Dist. Ct. of App., 2nd Dist., 1978) 360 So. 2d 1280].

School calendar not a managerial decision that can be unilaterally changed by school board [Polowitch, et al. and Orange Cnty. Sch. Bd., PERC, 10-25-77].

[¶11,106] Sec. 447.301. Public employees' rights; organization and representation.—(1) Public employees shall have the right to form, join, and participate in, or to refrain from forming, joining, or participating in, any employee organization of their own choosing.

Annotations: Since mechanic consulted union officials before complaining to newspaper about city's decision to limit tool allowances, his action was protected as participation in employee organization [AFSCME v. City of Venice, PERC, 1-27-78].

Dept. head's interrogation of assistants about union accompanied by threats interfered with exercise of their rights [Laborers Intl. Union, Local 666 v. Jess Parrish Memorial Hosp., PERC, 12-12-77].

[Footnote ¶11,104 cont'd.] (2) L. 1979, Ch. 85, eff. 7-1-79, substituted italicized material for "engagement in prohibited."

(3) L. 1979, Ch. 85, eff. 7-1-79, substituted italicized material for "charges of striking."

(4) L. 1979, Ch. 85, eff. 7-1-79, substituted italicized material for "the scope of negotiations or to possible prohibited."

Fair share plan requiring nonunion employees to contribute proportional fee for union services violates state constitutional provision establishing right not to join union [Fla. Ed. Assn./United v. PERC (Fla. Dist. Ct. of App., 1st Dist.) No. BB-246, 1-26-77].

(2) Public employees shall have the right to be represented by any employee organization of their own choosing, to negotiate collectively through a certified bargaining agent with their public employer in the determination of the terms and conditions of their employment, excluding any provisions of the Florida Statutes or appropriate ordinances relating to retirement. Public employees shall have the right to be represented in the determination of grievances on all terms and conditions of their employment. Public employees shall have the right to refrain from exercising the right to be represented.

(3) Public employees shall have the right to engage in concerted activities not prohibited by law, for the purpose of collective bargaining or other mutual aid or protection. Public employees shall also have the right to refrain from engaging in such activities.

Annotations: Teacher fired for failing to discuss job performance with principal was refused presence of union representative and claimed principal prevented concerted activities for mutual aid and protection. Since provision was adopted after grievance arose, teacher had no right to refuse to appear before principal [Seitz v. Duval Cnty. Sch. Bd. and PERC (Fla. Dist. Ct. of App., 1st Dist., 1979) 366 So. 2d 119].

Since mechanic's action in complaining to newspapers about city decision to eliminate tool allowance was approved by fellow mechanics after it happened and since it was in furtherance of fellow employees' working conditions, it was protected by this provision [AFSCME v. City of Venice, PERC, 1-27-78].

(4) Nothing in this part shall be construed to prevent any public employee from presenting, at any time, his own grievances, in person or by legal counsel, to his public employer, and having such grievances adjusted without the intervention of the bargaining agent, if the adjustment is not inconsistent with the terms of the collective bargaining agreement then in effect and if the bargaining agent has been given reasonable opportunity to be present at any meeting called for the resolution of such grievances.

Annotations: An employer's photographic surveillance of employees' lawful, informational picketing interferes with the employees' rights of participation in protected activities [Escambia Ed. Assn. and Sch. Bd. of Escambia Cnty., PERC, 5-13-76].

The dismissal or demotion of teachers because of their union activities violates this section and is remediable by reinstating the teachers at their former salary levels with backpay and interest [Pasco Classroom Tchrs. Assn. and Sch. Bd. of Pasco Cnty., PERC, 4-1-76].

An agency shop or "fair share" plan requiring each employee who isn't a union member to contribute a proportional fee for union services would violate this section protecting the right of public employees not to participate in any employee organization [Fla. Ed. Assn./United, PERC, 2-27-76].

(5) In negotiations over the terms and conditions of service and other matters affecting the working environment of employees or the learning environment of students in institutions of higher education, one student representative selected by the council of student body presidents may, at his discretion, be present at all negotiating sessions which take place between the Board of Regents and the bargaining agent for an employee bargaining unit. In the case of community colleges, the student government association of each college shall establish procedures and shall select a student representative to be present, at his discretion, at negotiations between the bargaining agent of the employees and the board of trustees. Each student representative shall have access to all written draft agreements and all other written documents pertaining to negotiations exchanged by the appropriate public employer and the bargaining agent, including a copy of any prepared written transcripts of any negotiating session. Each student representative shall have the right at reasonable times during the negotiating session to comment to the parties and to the public upon the impact of proposed agreements on the educational environment of students. Each student representative shall have the right to be accompanied by alternates or aides, not to exceed a combined total of two in number. Each student representative shall be obligated to participate in good faith during all negotiations and shall be subject to the rules and regulations of the Public Employees Relations Commission. The student representatives shall have neither voting nor veto power in any negotiation, action, or agreement. The state or any branch, agency, division or agent or any institution of the state shall not expend any moneys from any source for the payment of reimbursement for travel expenses or per diem to aides, alternates, or student representatives participating in, observing, or contributing to any negotiating sessions between the bargaining parties; provided that this limitation shall not apply to the use of student activity fees for the reimbursement of travel expenses and per diem to the university student representative, aides or alternates participating in the aforementioned negotiations between the Board of Regents and the bargaining agent for an employee bargaining unit. [Am. L. 1977, Ch. 343.]

[¶11,107] Sec. 447.303. Dues; deduction and collection.—Any employee organization which has been certified as a bargaining agent shall have the right to have its dues and uniform assessments deducted and collected by the employer from the salaries of those employees who authorize the deduction of said dues and uniform assessments. However, such authorization is revocable at the employee's request upon thirty (30) days' written notice to the employer and employee organization. Said deductions shall commence upon the bargaining agent's written request to the employer. Reasonable costs to the employer of said deductions shall be a proper subject of collective bargaining. Such right to deduction, unless

(b) "Employer" means the state of Indiana or any political subdivision of the state, including without limitation, any town, city, county, public institution of higher education or vocational education, social service or welfare agency, public and quasi-public corporation, housing authority or other authority or public agency established by law, and any person or persons designated by the employer to act in its interest in dealing with the employees.

(c) "Employee" means any employee of an employer, and shall not be limited to the employees of a particular employer, and shall include any employee of an employer, whether or not in the classified service of the employer, except officials appointed or elected pursuant to a statute to a policy-making position, and shall include any individual whose work has ceased as a consequence of, or in connection with, any unfair labor practice or concerted employee action. "Employee" does not mean policemen, firemen, professional engineers, faculty member of any university or certificated employees of school corporations or confidential employees or municipal or county health care institution employees.

(d) The term "municipal or county health care institution" shall include any hospital, convalescent hospital, health maintenance organization, health clinic, or any other institution devoted to the prevention of disease and maintenance of the public health or to the care of sick, infirm, or aged persons which is a wholly-owned municipal or county governmental agency, unit or corporation.

(e) "Employees' organizations" means any organization of any kind in which employees participate and which exists for the purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of employment.

(f) "Exclusive representative" means the employees' organization which has been certified for the purposes of this chapter by the Indiana education employment relations board, or recognized by an employer pursuant to the provisions of section 7(b) of this chapter, or recognized by an employer before July 1, 1975, as the exclusive representative of the employees in an appropriate collective bargaining unit. No unit which includes supervisors with other employees shall be deemed appropriate.

(g) "Board" means the Indiana education employment relations board.

(h) "Unfair labor practice" means any unfair labor practice listed in section 5.

(i) "Labor dispute" includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment.

(j) "Supervisor" means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

(k) "Bargain collectively" shall mean the performance of the mutual obligation of the employer through its chief executive officer or his designee and the designees of the exclusive representative to meet at reasonable times, including meetings in advance of the budget-making process, and negotiate in good faith with respect to wages, hours and other terms and conditions of employment, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession.

(l) "Deficit financing" with respect to any budget year shall mean expenditures in excess of monies legally available to the employer.

(m) "Strike" means concerted failure to report for duty, willful absence from one's position, stoppage of work, or abstinence in whole or in part from the full, faithful and proper performance of the duties of employment, without the lawful approval of the employer, or in any concerted manner interfering with the operation of the employer as defined in subsection (b) of this section for any purpose.

(n) "Certificated employee" means a person whose contract with the school corporation requires that he hold a license or permit from the state board of education or a commission thereof as provided in IC 1971, 20-6.

(o) "Confidential employee" means an employee whose unrestricted access to confidential personnel files or whose functional responsibilities or knowledge in connection with the issues involved in dealings between the employer and its employees would make his membership in an employee organization incompatible with his official duties.

[¶11,103] Sec. 2. Rights of Employees and Organizations. Employees shall have the right to form, join, or assist employee organizations, to participate in collective bargaining with employers through representatives of their own choosing and to engage in other legal activities, individually or in concert, for the purpose of establishing, maintaining, or improving terms and conditions of employment.

[¶11,104] Sec. 3. Rights of Public Employers. Public employers shall have the responsibility and authority to manage and direct in behalf of the public the operations and activities of the public agency to the full extent authorized by law. Such responsibility and activity shall include but not be limited to the right of the public employer to:

(1) direct the work of its employees;

(2) establish policy;

(3) hire, promote, demote, transfer, assign and retain employees;

(4) suspend or discharge its employees in accordance with applicable law;

(5) maintain the efficiency of public operations;
(6) relieve its employees from duties because of lack of work or other legitimate reason; and
(7) take actions necessary to carry out the mission of the public agency as provided by law.

[¶11,105] Sec. 4. Dues Deduction. The employer shall, on receipt of the written authorization of an employee, deduct from the pay of that employee any fees designated or certified by the appropriate officer of an employees' organization, and shall remit those fees to the employees' organization: Provided, that if an exclusive representative has been designated, the employer may not entertain a written or oral authorization on behalf of any other employees' organization from an employee in the bargaining unit: Provided, further that any such assignment may be revoked on a sixty (60) day written notice to the employer.

[¶11,106] Sec. 5. Unfair Labor Practices. (a) It shall be an unfair labor practice for an employer to:
(1) interfere with, restrain or coerce employees in the exercise of the rights guaranteed in section 2 of this chapter;
(2) dominate, interfere with or assist in the formation or administration of any employees' organization, or contribute financial or other support to it: Provided, that subject to rules and regulations made and published by the board pursuant to section 8 of this chapter, an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay;
(3) discriminate in regard to hiring or condition of employment to encourage or discourage membership in any employees' organization;
(4) discharge or otherwise discriminate against an employee because he has filed a complaint, affidavit, petition or given any information or testimony under this chapter;
(5) refuse to bargain collectively in good faith with an exclusive representative, including a representative recognized under the circumstances of section 7(b) of this chapter; or
(6) fail or refuse to comply with any provision of this chapter.
(b) It shall be an unfair labor practice for an employees' organization or its agents to:
(1) restrain or coerce employees in the exercise of the rights guaranteed in section 2 of this chapter;
(2) restrain or coerce an employer in the selection of his representative for the purpose of collective bargaining or the adjustment of grievances;
(3) cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a)(3) of this section;
(4) refuse to bargain collectively in good faith with an employer, if the employees' organization is the exclusive representative; or
(5) fails or refuses to comply with any provision of this chapter.

[¶11,107] Sec. 6. Strikes. (a) It is unlawful for any public employee, public employee organization, or any affiliate, including but not limited to state or national affiliates, to take part in, assist, or advocate a strike against a public employer.
(b) Any public employer may in an action at law, suit in equity, or other proper proceeding, take action against any public employee organization, any affiliate thereof, or any person aiding or abetting in a strike, for redress of such unlawful act.
(c) Where any exclusive representative engages in a strike, or aids or abets therein, it shall lose its dues deduction privilege for a period of one (1) year.
(d) A public employer shall not pay any public employee for any day when the public employee fails as a result of a strike to report for work.

[¶11,108] Sec. 7. Collective Bargaining Units. (a) Whenever, in accordance with such regulations as may be prescribed by the board, a petition has been filed:
(1) by an employees' organization alleging that thirty percent (30) of the employees in an appropriate unit wish to be represented for collective bargaining by an exclusive representative, or assert that the designated exclusive representative is no longer the representative of the majority of employees in the unit;
(2) by the employer alleging that one (1) or more employees' organizations have presented to it a claim to be recognized as the exclusive representative in an appropriate unit; or
(3) by an employee or group of employees alleging that thirty percent (30%) of the employees assert that the designated exclusive representative is no longer the representative of the majority of employees in the unit, the board shall investigate the petition, and if it has reasonable cause to believe that a question of representation exists, it shall provide for an appropriate hearing within thirty (30) days. If the board finds upon the record of the hearing that a question of representation exists, it shall direct an election by secret ballot within thirty (30) days and shall certify the results within ten (10) days. The board may also certify an employees' organization as an exclusive representative if it determines that a free and untrammeled election cannot be conducted because of the employer's unfair labor practices.
(b) Notwithstanding the provisions of section 7(a) of this chapter, an employer is required to recognize as the exclusive representative of its employees within an appropriate unit an organization which presents to the employer evidence of its

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

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

[¶11,107] 20.7 Public employer rights. Public employers shall have, in addition to all powers, duties, and rights established by constitutional provision, statute, ordinance, charter, or special act, the exclusive power, duty, and the right to: 1. Direct the work of its public employees.

2. Hire, promote, demote, transfer, assign, and retain public employees in positions within the public agency.

3. Suspend or discharge public employees for proper cause.

4. Maintain the efficiency of governmental operations.

5. Relieve public employees from duties because of lack of work or for other legitimate reasons.

6. Determine and implement methods, means, assignments and personnel by which the public employer's operations are to be conducted.

7. Take such actions as may be necessary to carry out the mission of the public employer.

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

9. Exercise all powers and duties granted to the public employer by law.

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

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

2. Negotiate collectively through representatives of their own choosing.

3. Engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection insofar as any such activity is not prohibited by this Act or any other law of the state.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Annotation: Though Civil Service Law for deputy sheriffs could be superseded by bargaining agreement negotiated under PERA, civil service procedures for discipline would prevail [OAG No. 77-2-14, 2-23-77].

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

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

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

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

A second final offer during arbitration constitutes a refusal to negotiate in good faith [Southwestern Comm. Coll. Ed. Assn. and Southwestern Comm. Coll., PERB Hearing Officer, 9-1-77].

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

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

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

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

Annotation: Superintendent released survey and memo to teachers outlining consequences of wage increases. PERB found release of survey, along with release of portions of memo, to be coersive and an attempt at individual bargaining [Akron Ed. Assn. and Akron Comm. Sch. Dist., PERB, 7-5-78].

b. Dominate or interfere in the administration of any employee organization.

c. Encourage or discourage membership in any employee organization, committee, or association by discrimination in hiring, tenure, or other terms or conditions of employment.

d. Discharge or discriminate against a public employee because he has filed an affidavit, petition, or complaint or given any information or testimony under this Act, or because he has formed, joined, or chosen to be represented by an employee organization.

e. Refuse to negotiate collectively with representatives of certified employee organizations as required in this Act.

f. Deny the rights accompanying certification or exclusive recognition granted in this Act.

g. Refuse to participate in good faith in any agreed upon impasse procedures or those set forth in this Act.

Annotation: A second final offer during arbitration is a refusal to participate in good faith in agreed-upon impasse procedures [Southwestern Comm. Coll. Ed. Assn. and Southwestern Comm. Coll., PERB Hearing Officer, 9-1-77].

h. Engage in a lockout.

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

a. Interfere with, restrain, coerce, or harass any public employee with respect to any of his rights under this Act or in order to prevent or discourage his exercise of any such right, including, without limitation, all rights under section eight (8) of this Act.

b. Interfere, restrain, or coerce a public employer with respect to rights granted in this Act or with respect to selecting a representative for the purposes of negotiating collectively on the adjustment of grievances.

c. Refuse to bargain collectively with a public employer as required in this Act.

d. Refuse to participate in good faith in any agreed upon impasse procedures or those set forth in this Act.

e. Violate section twelve (12) of this Act.

f. Violate the provisions of chapter seven hundred thirty-six B (736B), sections one (1), two (2) and three (3) of the Code, which are hereby made applicable to public employers, public employees and public employee organizations.

elections shall be posted at the request of the commission ten days prior to a hearing in a conspicuous place where the affected employees are employed. [Am. L. 1978, Ch. 562].

The commission, upon receipt of an employer's petition alleging that one or more employee organizations claims to represent a substantial number of the employees in a bargaining unit, or upon receipt of an employee organization's petition that a substantial number of the employees in a bargaining unit wish to be represented by the petitioner, or upon receipt of a petition filed by or on behalf of a substantial number of the employees in a unit alleging that the exclusive representative therefor no longer represents a majority of the employees therein, shall investigate, and if it has reasonable cause to believe that a substantial question of representation exists, shall provide for an appropriate hearing upon due notice. If, after hearing, the commission finds that there is a controversy concerning the representation of employees, it shall direct an election by secret ballot or shall use any other suitable method to determine whether, or by which employee organization the employees in an appropriate unit desire to be represented, and shall certify any employee organization which received a majority of the votes in such election as the exclusive representative of such employees.

Except for good cause no election shall be directed by the commission in an appropriate bargaining unit within which a valid election has been held in the preceding twelve months, or a valid collective bargaining agreement is in effect. The commission shall by its rules provide an appropriate period prior to the expiration of such agreements when certification or decertification petitions may be filed.

Nothing in this section shall be construed to prohibit a stipulation, in accordance with regulations of the commission, by an employer and an employee organization for the waiving of hearing and the conducting of a consent election by the commission for the purpose of determining a controversy concerning the representation of employees.

Any hearing under this section may be, when so determined by the commission, conducted by a member or agent of the commission. The decisions and determinations of such member or agent shall be final and binding unless, within ten days after notice thereof, any party requests a review by the full commission. If a review is requested, the member or agent shall file with the commission and with the parties a written statement of the case. In addition any party may, within ten days from the receipt of such statement, file a supplementary statement with the commission. A review by the commission shall be made upon such statement of the case by the member or agent and upon such supplementary statements filed by the parties, if any, together with such other evidence as the commission may require

Annotations: During year following certification, employer must bargain with union even if it has lost majority status unless employer presents unusual circumstances that would excuse its legal obligation to bargain [City of Cambridge Hospital House Officers Assn., LRC, 6-13-77].

LRC order to conduct a representation election is not final, therefore it is not subject to judicial review; judicial review is available after a request for review has been denied [Worcester Ind. Tech. Institute Instructors Assn. Inc. v. LRC (Mass. S. Jud. Ct., 1970) 256 N.E. 2d 287].

LRC can (1) order a representation election to determine whether fire department officers would prefer to be included in a unit with uniformed firefighters; and (2) has the power to order an election to determine the appropriate bargaining unit even though a city had voluntarily recognized a union [City Manager of Medford v. LRC (Mass. S. Jud. Ct., 1968) 233 N.E. 2d 310].

[¶11,105 Fair representation; right to present own grievance] Sec. 5. The exclusive representative shall have the right to act for and negotiate agreements covering all employees in the unit and shall be responsible for representing the interests of all such employees without discrimination and without regard to employee organization membership.

An employee may present a grievance to his employer and have such grievance heard without intervention by the exclusive representative of the employee organization representing said employee, provided that the exclusive representative is afforded the opportunity to be present at such conferences and that any adjustment made shall not be inconsistent with the terms of an agreement then in effect between the employer and the exclusive representative.

[¶11,106 Scope of bargaining] Sec. 6. The employer and the exclusive representative shall meet at reasonable times, including meetings in advance of the employer's budget-making process and shall negotiate in good faith with respect to wages, hours, standards of productivity and performance, and any other terms and conditions of employment, but such obligation shall not compel either party to agree to proposal or make a concession.

Annotations: Union can't bargain away rights that deal with individual opportunities for equal employment and are unconnected with economic matters and bargaining process, such as right to sick pay for pregnancy disability [Sch. Committee of Brockton v. Mass. Commission Against Discrimination (Mass. S. Jud. Ct., 1979) 386 N.E. 2d 1240].

Power to select principals is within school committee's managerial prerogative over educational policy and can't be bargained away [Berkshire Hills Regional Sch. Dist. Committee v. Berkshire Hills Ed. Assn., et al. (Mass. S. Jud. Ct., 1978) 377 N.E. 2d 940].

Requirement that new hires become city residents within one year is a working condition and a mandatory bargaining subject [City of Worcester and Local 495, SEIU, LRC, 11-20-78].

Requirement of continued state residency after hire is a mandatory bargaining subject [Bd. of Trustees of Lowell U. and Mass. Society of Professors, LRC, 5-24-78].

Moonlighting is an item within scope of bargaining [City of Pittsfield and Pittsfield Permanent Firemen's Assn., LRC, 4-26-78].

Power to abolish supervisory posts is a managerial prerogative of school committee and not bargainable [Sch. Committee of Hanover v. Curry (Mass. S. Jud. Ct., 1976) 343 N.E. 2d 144, Sch. Committee of Braintree v. Raymond (Mass. S. Jud. Ct., 1976) 343 N.E. 2d 145].

Teaching load, class size and number of substitute teachers to be hired are proper subjects of collective bargaining [Boston Tchrs. Union, Local 66 v. Sch. Committee of Boston (Mass. Sup. Jud. Ct., 1976) 350 N.E. 2d 707].

When a school committee and a teacher association have agreed on amendments to an existing collective bargaining contract, a subsequent claim by the committee that it cannot perform one of the amendments, a retirement salary adjustment, because the amendment was not budgeted, will not release the committee's obligation to pay [Fitchburg Tchrs. Assn. v. Sch. Committee of Fitchburg (Mass. S. Jud. Ct., 1971) 271 N.E. 2d 646]

bar such mergers of interest [Lansing Sch. Dist. and Mich. Council 11, AFSCME, MERC, 9-14-78].

Any contract or extension which is offered as a bar to an election must be in writing and properly signed by the parties [Crosswell-Lexington Community Schs., Mich. Council 11, AFSCME, and Teamsters Local 214 (MERC, 1976) Case No. R76, H-385].

[¶11,116] **Sec. 423.215 Public employer to bargain collectively; definition. Sec. 15.** A public employer shall bargain collectively with the representatives of its employees as defined in section 11, and is authorized to make and enter into collective bargaining agreements with such representatives. For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract, ordinance or resolution incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession. [Added L. 1965, No. 379.]

Annotations: Although pension benefits are generally a mandatory subject for bargaining, where a state law has a specific provision governing an aspect of pensions for public employees, the law governs over conflicting provisions in a contract negotiated under PERA [City of Dearborn Heights and Dearborn Heights Firefighters Assn., Local 1355, IAFF, MERC, 9-27-79].

The Governor, or his appointed designee, is the state's bargaining representative in dealing with state trooper's unions [Mich. OAG No. 5430, 1-9-79].

Since faculty evaluations would have a bearing on the terms and conditions of professors' employment—i.e. promotions, tenure and dismissal—a state college couldn't impose a new evaluation policy without first bargaining it with the union [Central Mich. Univ. Faculty Assn. v. Central Mich. Univ. (Mich.S.Ct., 1978) 273 N.W.2d 21].

PERA doesn't require the employer to give time off for employees to bargain. As long as bargaining takes place during convenient times, the employer can insist on bargaining during nonworking hours [Birmingham Pub. Schs. and Teamsters, Local 214, MERC, 10-10-78].

The grievance based on a contract doesn't lapse after that contract expires. Once the arbitration of that grievance begins, the arbitrator may make an award even though the old contract's provisions may be made moot by a new contract Community Coll. Dist. of Parts of the Cntys. of Oakland, Washtenaw, Livingston and Lapeer v. Teamsters Local 214 (Mich. Ct. of Apps.) No. 77-5072, 10-6-78].

Since school employee retirement systems are governed by a specific state statute, the school district can't agree to a higher negotiated benefit system than provided by that law [Mich. OAG 5314, 6-14-78].

Where the village had given the union adequate notice and bargained in good faith over the subcontracting of police services, the village wasn't guilty of an unfair practice when it went ahead with the subcontracting plan when no negotiated settlement could be reached [Village of Dundee and IUOE, Local 547, MERC, 3-1-77].

Where a contract doesn't provide a "just cause" provision for termination, the nonrenewal of a probationary teacher isn't arbitrable under PERA [Brown v. Holton Pub. Sch. (Mich. S.Ct., 1977) 258 N.W.2d 51].

Grievance and discipline procedures are mandatory subjects for bargaining. Therefore, a city must bargain over such procedures despite conflicting procedures existing in the city charter. State law prevails over the city charter in the labor relations field [Pontiac v. City of Pontiac (Mich. S.Ct., 1976) 246 N.W.2d 831].

Rules concerning an employee's outside employment affect the employee's terms and conditions of employment and are, therefore, mandatory subjects for bargaining [Mich. OAG No. 4975, 4-26-76].

A city must bargain over grievance arbitration and other disciplinary procedures; this duty to bargain under the act prevails over conflicting provisions of a city charter setting up police disciplinary procedures [Pontiac POA v. City of Pontiac (Mich. S. Ct., 1976) 246 N.W. 2d 831].

Binding arbitration under the act isn't required for removal of a probation officer; compliance with the earlier and more specific probation officer removal law is sufficient [Council 23, Local 1905, AFSCME v. Recorder's Ct. Judges (Mich. S. Ct., 1976) 248 N.W.2d 220].

A city doesn't have to bargain with a union over nonunion employees and can pay them higher wages where there is no proof that the difference is based on any employer anti-union sentiment [City of Detroit and Council 77, AFSCME (MERC, 1977) Case No. C74, K-262].

It's an unfair labor practice for city to ignore contract seniority provisions in promoting minorities and to refuse to bargain over an affirmative action program [City of Detroit Fire Dept. and Detroit Firefighters Assn., (MERC, 1976) Case No. C76, A-22].

It is an unfair labor practice to refuse to bargain before subcontracting out services done by unionized public employees [Van Buren Public Sch. Dist. v. Wayne Cnty. Circuit Judge (Mich. Ct. of Apps., 1975) 232 N.W. 2d 278].

The city's unilateral change in its formula for determining pension and retirement benefit was unfair labor practice [Mt. Clemens Fire Fighters Union, Local 838, IAFF v. City of Mt. Clemens (Mich. Ct. of Apps., 1975) 228 N.W. 2d 500].

Policy rule requiring school administrators to reside in school district was not unconstitutional [Park v. Lansing Sch. Dist. (Mich. Ct. of Apps., 1975) 233 N.W. 2d 592; review denied (U.S. S.Ct., 1976) 96 S.Ct. 1494].

A bona fide financial inability to afford benefits will excuse an employer from complying with the full terms of a collective bargaining agreement without violating PERA [City of Highland Park and Mich. Dist. Council 77, AFSCME, MERC, 11-13-75].

It's an unfair practice for an employer to refuse to supply the union all *relevant* information that would expedite collective bargaining, including employees' overtime records and petty cash fund accounts. However, a community college's state Bureau of Budget forms weren't relevant to collective bargaining and were denied from the union [Gogebic Community Coll. and Gogebic Community Coll. Dist. MAHE, MERC, 8-4-75].

When a contract provides that teachers couldn't be deprived of "professional advantage" without just cause, the nonrenewal of a probationary teacher was arbitrable under the contract [Kaleva-Norman-Dickson Sch. Dist. No. 6 v. Kaleva-Norman-Dickson Tchrs. Assn. (Mich.S.Ct., 1975) 227 N.W.2d 500].

Unilaterally imposed residency requirements are valid on the day of hire, but after that they become "conditions of employment," subject to the duty to bargain [Detroit POA v. City of Detroit (Mich. S. Ct., 1974) 214 N.W. 2d 803].

Pension plans are conditions of employment and must be bargained for [Detroit POA v. City of Detroit (Mich. S. Ct., 1974) 214 N.W. 2d 803].

University of Michigan is a public employer and must bargain

collectively with its interns and residents except as to those matters within the sphere of educational policies [Univ. of Mich. v. MERC and Univ. of Mich. Interns-Residents Assn. (Mich. S. Ct., 1973) 204 N.W. 2d 218].

A free-parking privilege was not subject to the contract grievance procedure since, even if it had been a past practice, it was revoked by management and not included in a later collective bargaining agreement [Local 1390 and Mich. Council No. 55 of AFSCME v. City of Lansing (Mich. Ct. of Apps., 1973) 207 N.W. 2d 479].

Even though a prior statute sets firefighters' maximum hours and minimum time off under the collective bargaining law, they can bargain for fewer hours as the prior statute does not prohibit firefighters and their employers from mutually agreeing to fewer hours [Flynn v. City of Fraser (Mich. Ct. of Apps., 1973) 206 N.W. 2d 448].

Installation of a time clock is not a condition of employment and does not have to be bargained collectively [Hurley Hospital (City of Flint) and Medical Technologists Organization (MERC, 1973) Case No. C72, G-130].

A county car-use policy is a condition of employment; it is a mandatory subject of bargaining [Genesee Cnty. Bd. of Commissioners and Lodge 145, F.O.P. (MERC, 1973) Case No. CF3A-1].

The opening day of school as well as the entire school calendar is a condition of employment [Westwood Community Schs. and Ed. Assn. (MERC, 1972) Case No. C701-152].

The county road commission was not an employer separate and distinct from the county; the county is the public employer [CSC, Cnty. of Wayne v. Wayne Cnty. Bd. of Supervisors (Mich. S. Ct., 1971) 184 N.W. 2d 201].

Racing Commission is not under the jurisdiction of MERA and thus does not have to bargain collectively with assistant veterinarians employed by the Racing Commission [SEIU, Local 79, AFL-CIO v. State Racing Commissioner (Mich. Ct. of Apps., 1970) 183 N.W. 2d 854].

An agency is a public employer within the meaning of this act if it hires and/or fires, pays wages, has power to control employees' conduct and controls methods by which employees carry out their work [CSC, Cnty. of Wayne v. Wayne Cnty. Bd. of Supervisors (Mich. Ct. of Apps., 1970) 177 N.W. 2d 449].

University was a public employer and thus required to bargain in good faith on matters within the scope of bargaining [Regents of the Univ. of Mich. and Bd. of Control of Central Mich. Univ. v. Labor Mediation Bd. (Mich. Ct. of Apps., 1969) 171 N.W. 2d 477].

[¶11,117] Sec. 423.216 Unfair labor practices, remedy; notice, procedure and limitation. Sec. 16. Violations of the provisions of section 10 shall be deemed to be unfair labor practices remediable by the commission in the following manner:

Annotations: MERC has jurisdiction to hear unfair labor practice charges against judges of a judicial district [Judges of the 74th Judicial District v. Cnty. of Bay, MERC, and International Union of Allied and Technical Workers of the U.S. and Canada (Mich. S. Ct., 1971) 190 N.W.2d 219].

LMB [now MERC] is subject to provisions of the Administrative Procedures Act in unfair labor practice cases [North Dearborn Heights Fed. of Tchrs. v. Sch. Dist. of North Dearborn (Mich. S. Ct., 1969) 168 N.W. 2d 219].

[¶11,118 Unfair labor practices; complaint] [§423.216] (a) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the commission, or any agent designated by the commission for such purposes, may issue and cause to be served upon the person a complaint stating the charges in that respect, and containing a notice of hearing before the commission or a commissioner thereof, or before a designated agent, at a place therein fixed, not less than 5 days after the serving of the complaint. No complaint shall issue based upon any unfair labor practice occurring more than 6 months prior to the filing of the charge with the commission and the service of a copy thereof upon the person against whom the charge is made, unless the person aggrieved thereby was prevented from filing the charge by reason of service in the armed forces, in which event the 6-month period shall be computed from the day of his discharge. Any complaint may be amended by the commissioner or agent conducting the hearing or the commission, at any time prior to the issuance of an order based thereon. The person upon whom the complaint is served may file an answer to the original or amended complaint and appear in person or otherwise and give testimony at the place and time fixed in the complaint. In the discretion of the commissioner or agent conducting the hearing or the commission, any other person may be allowed to intervene in the proceeding and to present testimony. Any proceeding shall be conducted pursuant to chapter 4 of Act No. 306 of the Public Acts of 1969, as amended, being sections 24.271 to 24.287 of the Michigan Complied Laws. [Am. L. 1976, No. 18.]

Annotations: MERC won't defer a matter to arbitration (1) unless deferral is asked for early in the unfair practice proceedings; (2) unless the parties are willing to arbitrate and will waive procedural objections to arbitration; (3) where the dispute involves issues of unit representation or election and hasn't yet been arbitrated; (4) where the dispute concerns an inter-union rivalry; (5) where the issue involves scope of bargaining and not contract interpretation; (6) where the union wouldn't fairly or adequately represent employees bringing the matter to MERC; and (7) where there is no contractual provision for final or binding arbitration. The key is whether the question can be solved through contract interpretation rather than interpreting PERA, and whether the bargaining relationship is stable [City of Detroit Fire Dept. and Detroit Firefighters Assn., Local 344, IAFF, MERC, 4-4-77].

MERC couldn't refuse to hear objections to a representation election just because employer didn't formally notify union of those objections within 5 days of filing with MERC [Metro. Council 23, AFSCME v. Redford Twnship. (Mich. Ct. of Apps., 1976) 246 N.W. 2d 156].

MERC refused to hear a charge of unfair practice against a county that had unilaterally withdrawn its car-use policy, since the six month time limit in which the charge must be brought had passed [Genesee Cnty. Bd. of Commissioners and Lodge 145, F.O.P. (MERC 1973) Case No. CF3A-1].

[¶11,119 Unfair labor practices; hearing, order] [§423.216] (b) The testimony taken by the commissioner, agent or the commission shall be reduced to writing and filed with the commission. Thereafter the commission upon notice may take further testimony or hear argument. If upon the preponderance of the testimony taken the commission is of the opinion that any person named in the complaint has engaged in or is engaging in the unfair labor practice, then it shall

Annotation: This provision doesn't violate state constitution (which makes certain state officers independent of executive branch) or R.C.M., Title 82A (which recognizes independence of constitutionally created executive agencies) in granting governor authority to bargain with public employees. Bargaining is administrative function, not interference with policy [OAG, No. 168, 11-15-78].

[¶11,126] Sec. 39-31-302. Participation by student representative when public employer is board of regents. When the board of regents is the public employer defined in 39-31-103, the student government at an institution of higher education may designate an agent or representative to meet and confer with the board of regents and the faculty bargaining agent prior to negotiations with the professional educational employees, to observe those negotiations and participate in caucuses as part of the public employer's bargaining team, and to meet and confer with the board of regents regarding the terms of agreement prior to the execution of a written contract between the regents and the professional educational employees. The student observer is obliged to maintain the confidentiality of these negotiations.

[¶11,127] Sec. 39-31-303. Management rights of public employers. Public employees and their representatives shall recognize the prerogatives of public employers to operate and manage their affairs in such areas as, but not limited to:

(1) direct employees;

(2) hire, promote, transfer, assign, and retain employees;

(3) relieve employees from duties because of lack of work or funds or under conditions where continuation of such work be inefficient and nonproductive;

(4) maintain the efficiency of government operations;

(5) determine the methods, means, job classifications, and personnel by which government operations are to be conducted;

(6) take whatever actions may be necessary to carry out the missions of the agency in situations of emergency;

(7) establish the methods and processes by which work is performed.

Annotation: Teacher selection (renewal of nontenured teachers) isn't negotiable [Wilbaux Ed. Assn. v. Wibaux Cnty. High Sch. (Mont. S. Ct., 1978) 35 St. Rep. 93].

[¶11,128] Sec. 39-31-304. Negotiable items for school districts. Nothing in this chapter shall require or allow boards of trustees of school districts to bargain collectively upon any matter other than matters specified in 39-31-305(2).

Annotations: State law governs sick leave and vacation benefits for nonteaching employees in school districts and vocational schools [MCA 2-18-601 et seq.), so collective bargaining can't vary these terms set out by law [OAG, No. 38-20, 6-14-79].

Provision excludes teacher selection (renewal of nontenured teachers) as matter for bargaining [Wilbaux Ed. Assn. v. Wibaux Cnty. High Sch. (Mont. S. Ct., 1978) 35 St. Rep. 93].

[¶11,129] Sec. 39-31-305. Duty to bargain collectively—good faith. (1) The public employer and the exclusive representative, through appropriate officials or their representatives, shall have the authority and the duty to bargain collectively. This duty extends to the obligation to bargain collectively in good faith as set forth in subsection (2) of this section.

(2) For the purpose of this chapter, to bargain collectively is the performance of the mutual obligation of the public employer or his designated representatives and the representatives of the exclusive representative to meet at reasonable times and negotiate in good faith with respect to wages, hours, fringe benefits, and other conditions of employment or the negotiation of an agreement or any question arising thereunder and the execution of a written contract incorporating any agreement reached. Such obligation does not compel either party to agree to a proposal or require the making of a concession.

(3) For purposes of state government only, the requirement of negotiating in good faith may be met by the submission of a negotiated settlement to the legislature in the executive budget or by bill or joint resolution. The failure to reach a negotiated settlement for submission is not, by itself, prima facie evidence of a failure to negotiate in good faith.

[¶11,130] Sec. 39-31-306. Collective bargaining agreements. (1) Any agreement reached by the public employer and the exclusive representative shall be reduced to writing and shall be executed by both parties.

(2) An agreement may contain a grievance procedure culminating in final and binding arbitration of unresolved grievances and disputed interpretations of agreements.

(3) An agreement between the public employer and a labor organization shall be valid and enforced under its terms when entered into in accordance with the provisions of this chapter and signed by the chief executive officer of the state or political subdivision or commissioner of higher education or his representative. A publication of the agreement is not required to make it effective.

(4) The procedure for the making of an agreement between the state or political subdivision and a labor organization provided by this chapter is the exclusive method of making a valid agreement for public employees represented by a labor organization.

[¶11,131] Sec. 39-31-307. Mediation of disputes. If, after a reasonable period of negotiation over the terms of an agreement or upon expiration of an existing collective bargaining agreement, a dispute concerning the collective bargaining agreement exists between the public employer and a labor organization, the parties shall request mediation.

found that such dismissal was a retaliatory measure because of the teachers' organizational activities [Bd. of Ed., Central Sch. Dist. No. 1 of the Town of Grand Island, Erie Cnty. v. Helsby (N.Y. App. Div., 1971) 326 N.Y.S.2d 452, affirmed (N.Y. Ct. of Apps. 1973) 32 N.Y. 2d 660].

Courts should liberally construe Taylor Law for purposes of good public employee-employer relationships and protection of public by smooth government operation [CSEA v. Helsby (N.Y. App. Div., 1969) 300 N.Y.S. 2d 424, affirmed (N.Y. Ct. of App. 1969) 303 N.Y.S. 2d 690].

[¶11,102] **Sec. 201. Definitions.** As used in this article:

1. The term "board" means the public employment relations board created by section two hundred five of this article.

2. (a) The term "membership dues deduction" means the obligation or practice of a government to deduct from the salary of a public employee with his consent an amount for the payment of his membership dues in an employee organization. Such term also means the obligation or practice of a government to transmit the sum so deducted to an employee organization.

(b) The term "agency shop fee deduction" means the obligation or practice of a government to deduct from the salary of a public employee who is not a member of the certified or recognized employee organization which represents such employee for the purpose of collective negotiations conducted pursuant to this article, an amount equivalent to the amount of dues payable by a member. Such term also means the obligation or practice of a government to transmit the sums so deducted to an employee organization. [Added L. 1977, Ch. 677.]

⇛ EXPIRATION DATE → The agency shop fee deduction provisions in subsection 2(b) and subsection 4 will expire 7-1-81 [L. 1977, Ch. 677, eff. 7-1-77, as amended by L. 1979, Ch. 618, eff. 7-10-79].

3. The term "chief legal officer" means (a) in the case of the state of New York or a state public authority, the attorney general of the state of New York, (b) in the case of a county, city, town, village or school district, the county attorney, corporation counsel, town attorney, village attorney or school district attorney, as the case may be, and (c) in the case of any such government not having its own attorney, or any other government or public employer, the corporation counsel of the city in which such government or public employer has its principal office, and if such principal office is not located in a city, the county attorney of the county in which such government or public employer has its principal office.

4. The term "terms and conditions of employment" means salaries, wages, hours, agency shop fee deduction and other terms and conditions of employment provided, however, that such term shall not include agency shop fee deduction for negotiating units comprised of employees of the state or any benefits provided by or to be provided by a public retirement system, or payments to a fund or insurer to provide an income for retirees, or payment to retirees or their beneficiaries. No such retirement benefits shall be negotiated pursuant to this article, and any benefits so negotiated shall be void. [Am. L. 1979, Ch. 677.]

Annotations: Though good faith abolition of positions to reduce workforce doesn't have to be negotiated, abolition of jobs in order to subcontract may be a term or condition of employment that does have to be negotiated. Since PERB has discretion to determine terms and conditions of employment and it hadn't abused that discretion, its ruling that school bus contracting must be bargained was upheld [Saratoga Springs City Sch. Dist. v. PERB, et al. (N.Y. App.Div., 1979) 416 N.Y.S. 2d 415, App. Den. (N.Y. Ct. of Apps.)No. 659, 7-10-79].

Demand that employer pay wages to employee facing disciplinary charges and demand for safety clause, including provision that officer not be penalized for refusing to operate unsafe equipment, are mandatory bargaining subjects. Use of various lie detector tests in monitoring unit members' activities wasn't a mandatory subject [PBA and City of White Plains, PERB, 5-8-79].

Practice of giving free tuition to children of teachers who live outside district was condition of employment and its discontinuance was arbitrable because broad arbitration clause satisfied *Liverpool* requirement of clear and unequivocal agreement to arbitrate [Bd. of Ed. of New Paltz Cent. Sch. Dist. v. New Paltz United Tchrs. (N.Y.Ct. of Apps., 1978) 44 N.Y.2d 890].

Just cause for firing and types of penalties imposed against employees are terms and conditions of employment [Binghamton Civ. Serv. Forum v. City of Binghamton (N.Y. Ct. of Apps., 1978) 403 N.Y.S.2d 482].

Union demand for contract disciplinary procedure that would modify and supplement procedure in section 75 of Civil Service Law is negotiable [Auburn Police Local 195, Council 82 AFSCME v. Helsby, et al. (App. Div. 3rd Dept., 1978) 404 N.Y.S.2d 396, app. granted (N.Y. Ct. of Apps., 1978) 408 N.Y.S.2d 1023].

Though minimum manning requirements were management's prerogative, hazardous duty pay, safety committee and favored nation's clause (saying salary issue should be reopened if other city unit gained significant increases) were mandatory bargaining subjects [IAFF, Local 189 and City of Newburgh, PERB, 10-19-78].

Agreement between city's central board of education and teacher union to shorten school week by two periods as cost saving measure is legal despite objections from local community boards. Central board has power to establish policies, bargain with teachers and supervise overall educational budget [Matter of NYC Sch. Bds. Assn. Inc., et al. v. Bd. of Ed. of City Sch. Dist. of City of N.Y., et al. (N.Y.Ct. of Apps., 1976) 383 N.Y.2d 208].

This provision made it illegal for county to unilaterally suspend all employees for 10 days as an economy move [Koenig v. Morin and Monroe Cnty. Legislature (N.Y. S. Ct., Monroe Cnty., 1976) 393 N.Y.S.2d 653].

Though parity clause (requiring salary increases equivalent to those in neighboring cities) isn't expressly forbidden, it's implicitly illegal since Taylor Law arbitration provision [N.Y. ¶11,111(4)-(c)(2)] allows consideration of wages in comparable communities *so far as panel deems applicable* [Voigt v. Bowen (N.Y. App. Div., 1976) 385 N.Y.S.2d 600].

Employees are bound by agreement's provision for arbitration of disciplinary matters and arbitration procedure may voluntarily waive due process protection [Antinore v. State of N.Y., et al. (N.Y. App. Div., 1975) 371 N.Y.S. 2d 213].

Class size was not a term and condition of employment and was not bargainable; however, once determined, its impact on teachers and whether benefits should vary with the ultimate size was negotiable [In the Matter of West Irondequoit Tchrs. Assn. (N.Y. Ct. of Apps. 1974) 358 N.Y.S.2d 720].

Since sick leave rights are general, not personal, a sick leave bank is a fringe benefit and a negotiable term and condition of em-

ployment [Syracuse Tchrs. Assn. v. Bd. of Ed. (N.Y. App. Div., 1973) 41 A.D.2d 73].

Provisions dealing with the reimbursement of teachers for job-related personal property damage, reimbursement for approved graduate courses and salary increments during the last year of service are terms and conditions of employment [Bd. of Ed. of Union Free Sch. Dist. No. 3, Town of Huntington v. Assoc. Tchrs. of Huntington (N.Y. Ct. of Apps. 1972) 282 N.E.2d 109].

Providing for arbitration in cases when tenured teachers are being disciplined by dismissal is a term and condition of employment [Bd. of Ed. of Union Free School Dist. No. 3, Town of Huntington v. Assoc. Tchrs. of Huntington (N.Y. Ct. of Apps. 1972) 282 N.E.2d 109].

Retroactive wage increase is not gift or gratuity contrary to N.Y. constitution [In re AFSCME, Local 788 v. City of Plattsburgh (N.Y. S. Ct., 1971) 340 N.Y.S.2d 18].

Payments to Teamster union health and welfare fund which in turn would purchase insurance for its members is a term and condition of employment which can be collectively negotiated for [Local 456, Teamsters v. Town of Cortlandt (N.Y. S. Ct., Westchester Cnty., 1971) 327 N.Y.S.2d 143].

Pensions, vacations, military and sick leave and similar items are terms and conditions of employment [Tchrs. Assn., Central High Sch. Dist. No. 3 v. Bd. of Ed., Central High Sch. Dist. No. 3, Nassau Cnty. (N.Y. App. Div., 1970) 312 N.Y.S.2d 252].

5. The term "employee organization" means an organization of any kind having as its primary purpose the improvement of terms and conditions of employment of public employees, except that such term shall not include an organization (a) membership in which is prohibited by section one hundred five of this chapter, (b) which discriminates with regard to the terms or conditions of membership because of race, color, creed or national origin, or (c) which, in the case of public employees who hold positions by appointment or employment in the service of the board and who are excluded from the application of this article by rules and regulations of the board, admits to membership or is affiliated directly or indirectly with an organization which admits to membership persons not in the service of the board, for purposes of any provision of this article other than sections two hundred ten and two hundred eleven of this article.

Annotations: The N.Y State Teachers' Assn., a statewide organization, is an employee organization and thus cannot cause, instigate, encourage or condone a strike [N.Y. State Tchrs.' Assn. v. Helsby (N.Y. S. Ct., 1968) 294 N.Y.S.2d 381].

PERB has jurisdiction to determine whether organization is an employee organization within the Act [Potsdam Central Sch. Dist. No. 2 v. Frank (N.Y. S. Ct., 1968) 56 Misc. 2d 605].

6. (a) The term "government" or "public employer" means (i) the state of New York, (ii) a county, city, town, village or any other political subdivision or civil division of the state, (iii) a school district or any governmental entity operating a public school, college or university, (iv) a public improvement or special district, (v) a public authority, commission, or public benefit corporation, or (vi) any other public corporation, agency or instrumentality or unit of government which exercises governmental powers under the laws of the state.

(b) Upon the application of any government, the board may determine that the applicant shall be deemed to be a joint public employer of public employees in an employer-employee negotiating unit determined pursuant to section two hundred seven of this chapter, if such determination would best effectuate the purposes of this chapter.

Annotations: Water authorities are employers within the Act [Local 930, AFSCME v. Erie Cnty. Water Auth. (N.Y. App. Div., 1972) 330 N.Y.S.2d 695].

Since county sheriff appoints and employs deputy sheriffs, he is a public employer. Since the county fixes and pays the salaries of the deputy sheriffs, the county is also a public employer [Cnty. of Ulster and Ulster Cnty. Sheriff's Office v. CSEA and PERB (N.Y. App. Div., 1971) 316 N.Y.S.2d 706].

Free public library, not county, is public employer of librarians under the Act [Cnty. of Erie v. Bd. of Trustees of Buffalo and Erie Cnty. Public Library (N.Y. S. Ct., 1970) 308 N.Y.S.2d 515].

Whoever controls employee's work, appointments, duties and salary within limits of appropriations is his employer under the Act [Cnty. of Erie v. Bd. of Trustees of Buffalo and Erie Cnty. Public Library (N.Y. S. Ct., 1970) 308 N.Y.S.2d 515].

When public benefit corporation supplies management personnel for city transit system, but city supplies operation personnel and has exclusive control over labor-management relations, city is employer [Regional Transit Service Rochester-Genesee Regional Transportation Dist., Inc. v. Local 282, ATU (N.Y. S. Ct., 1970) 316 N.Y.S.2d 325].

7. (a) The term "public employee" means any person holding a position by appointment or employment in the service of a public employer, except that such term shall not include for the purposes of any provision of this article other than sections two hundred ten and two hundred eleven of this article, persons holding positions by appointment or employment in the organized militia of the state and persons who may reasonably be designated from time to time as managerial or confidential upon application of the public employer to the appropriate board in accordance with procedures established pursuant to section two hundred five or two hundred twelve of this article, which procedures shall provide that any such designations made during a period of unchallenged representation pursuant to subdivision two of section two hundred eight of this chapter shall only become effective upon the termination of such period of unchallenged representation. Employees may be designated as managerial only if they are persons (i) who formulate policy or (ii) who may reasonably be required on behalf of the public employer to assist directly in the preparation for and conduct of collective negotiations or to have a major role in the administration of agreements or in personnel administration provided that such role is not of a routine or clerical nature and requires the exercise of independent judgment. Employees may be designated as confidential only if they are persons who assist and act in a confidential capacity to managerial employees described in clause (ii).

(b) For the purposes of this article, assistant attorneys general, assistant district attorneys, and law school graduates employed in titles which promote to assistant district attorney upon admission to the bar of the state of New York shall

bargain on wages, hours, terms and conditions of employment: Provided, That any individual employe or a group of employes shall have the right at any time to present grievances to their employer and to have them adjusted without the intervention of the bargaining representative as long as the adjustment is not inconsistent with the terms of a collective bargaining contract then in effect: And, provided further, That the bargaining representative has been given an opportunity to be present at such adjustment.

Annotations: County commissioners, not judges, are the management representative for the purposes of bargaining with court clerks [Bucks Cnty. Bd. of Judges v. Bucks Cnty. Commissioners, et al. (Pa.S.Ct., 1978) 388 A.2d 744].

Where contract allowed individual employee to bring grievance through first four steps of contractual procedure but allowed the union alone to initiate fifth step, arbitration, employee was bound by contract and couldn't require employer to submit to arbitration. Employee's only recourse was unfair labor practice against union on breach of duty of fair representation [McCluskey v. Cmwlth. of Pa., Dept. of Trans. (Pa. Cmwlth. Ct., 1978) 391 A.2d 45].

State employee must base a charge of breach of duty of fair representation upon state law and not upon duty set out in NLRA as amended [Nelson v. Southeastern Transp. Auth. (ED Pa., 1976) 420 F. Supp. 1374].

[¶11,114] Sec. 1101.607 Petition for decertification. If there is a duly certified representative: (i) a public employe or a group of public employes may file a petition for decertification provided it is supported by a thirty per cent showing of interest, or (ii) a public employer alleging a good faith doubt of the majority status of said representative may file a petition in accordance with the rules and regulations established by the board, subject to the provisions of clause (7) of section 605.

ARTICLE VII. SCOPE OF BARGAINING

[¶11,115] Sec. 1101.701 Matters subject to bargaining. Collective bargaining is the performance of the mutual obligation of the public employer and the representative of the public employes to meet at reasonable times and confer in good faith with respect to wages, hours and other terms and conditions of employment, or the negotiation of an agreement or any question arising thereunder and the execution of a written contract incorporating any agreement reached but such obligation does not compel either party to agree to a proposal or require the making of a concession.

Annotations: Residency requirements are mandatory subjects for bargaining. The union didn't waive the right to bargain on the issue when it included contract clause barring reopening contract since residency requirements were never discussed during negotiations [PLRB v. Sch. Dist. of City of Erie (Pa. Ct. of Cmn. Pleas, Erie Cnty.) No. 2357-A, 3-8-79].

Fringe benefits are mandatory subjects for bargaining and can't be unilaterally changed or terminated after a contract expires and while negotiations continue [Cumberland Valley Sch. Dist. v. PLRB (Pa. S. Ct., 1978) 394 A.2d 946].

Replacement of teacher aides with unpaid volunteers must be bargained [PLRB v. Mars Area Sch. Dist. (Pa. S. Ct., 1978) 389 A.2d 1073].

Parties can bargain benefits in excess of maximums in other state laws as long as the other law didn't specifically prohibit higher rate [Cnty. of Dauphin v. Pa. Social Service Union (Pa. Cmwlth. Ct., 1978) 382 A.2d 999].

Suspension has a substantial impact on wages, hours and terms of employment. Therefore, a collective bargaining agreement providing for arbitration to decide if suspensions were proper will be enforced [Rylke and Portage Area Ed. Assn. v. Portage Area Sch. Dist. (Pa. S. Ct.) No. 43, 2-28-77].

School district has authority and duty to bargain collectively with its employees on matters relating to wages, hours and other terms and conditions of employment [Pa. State Ed. Assn. v. Baldwin Whitehall Sch. Dist. (Pa. Cmwlth. Ct., 1977) 372 A.2d 960].

Maintenance-of-membership provision may be proper subject of collective bargaining between public employer and employee organization if such a provision doesn't violate an existing statute [Dauphin Cnty. Voc.-Tech. Sch. Ed. Assn. v. Dauphin Cnty. Voc.-Tech. Sch. Bd. (Pa. Cmwlth. Ct., 1976) 357 A.2d 721].

Bargaining on wages, hours and other terms and conditions of employment is not required if a proposal also involves inherent managerial policy. For this reason, a school board was not required to bargain with respect to 21 disputed items including calendar, class size and preparation periods [State Coll. Ed. Assn. v. PLRB (Pa. Cmwlth. Ct., 1973) 306 A.2d 404].

City had duty to pay disability benefits bargained for by nonuniformed public employees although funds appropriated for this purpose were exhausted. But until city council appropriated sufficient funds, executive officers of city had not duty to continue payment of benefits [Tate v. Antosh (Pa. Cmwlth. Ct., 1971) 281 A.2d 192].

Unskilled and semiskilled employees of State Department of Transportation, who were hired by one state administration for patronage jobs and who were fired by next administration solely because of their political sponsorship or affiliation, had no protected right to their jobs or to notice or hearing before discharge. Governor had power to discharge them at will [AFSCME v. Shapp (Pa. S. Ct.,1971) 280 A.2d 375].

[¶11,116] Sec. 1101.702 Matters not subject to bargaining. Public employers shall not be required to bargain over matters of inherent managerial policy, which shall include but shall not be limited to such areas of discretion or policy as the functions and programs of the public employer, standards of services, its overall budget, utilization of technology, the organizational structure and selection and direction of personnel. Public employers, however, shall be required to meet and discuss on policy matters affecting wages, hours and terms and conditions of employment as well as the impact thereon upon request by public employe representatives.

Annotations: Replacement of teacher aides with unpaid volunteers isn't part of inherent managerial policy since it affects terms and conditions of employment. It must be bargained [PLRB v. Mars Area Sch. Dist. (Pa. S. Ct., 1978) 389 A.2d 1073].

Employer not required to arbitrate demotion of employee who was promoted on probationary basis and then returned to original job when things didn't work out [Barroner v. Blair Cnty. Bd. of Assistance, et al. (Pa. Cmwlth. Ct., 1978) 386 A.2d 171].

OVER

Once school board agreed to negotiate matters that were inherently managerial, even though not required by law to do so, it could not later attempt to take a different position [Scranton Sch. Bd. v. Scranton Fed. of Tchrs., Local 1147, AFT (Pa. Cmwlth. Ct., 1976) 365 A.2d 1339].

This section means that if a matter involves wages, hours and other terms and conditions of employment and also involves policy, bargaining is not required, although, upon request, the employer must "meet and discuss." Also an employer is not required to bargain on any policy matter notwithstanding the "impact" it may have on wages, hours and terms and conditions of employment [State Coll. Ed. Assn. v. PLRB (Pa. Cmwlth. Ct., 1973) 306 A.2d 404].

Bargaining on sabbatical leaves for teachers is limited to issues specifically allowed by Public School Code [OAG No. 31, 4-9-73].

Eliminating jobs and subcontracting are matters affecting wages, hours and terms and conditions of employment [PLRB and City of Clairton (PLRB, 1973) PERA Case No. C-3438-W].

Employer is required, upon request of union, to meet and discuss eliminating jobs and subcontracting [PLRB and City of Clairton, supra].

Rearrangement of work week is not a matter of inherent managerial policy since it does not concern redirecting operations or improving quality or work [PLRB and City of Philadelphia (PLRB, 1973) PERA Case No. C-2547-E].

Since rearrangement of work week affected wages and hours, employer was required to fulfill its bargaining obligation by meeting and discussing rearrangement with union [PLRB v. City of Philadelphia, supra].

Christmas bonuses are temporary wage increases and are proper subjects of negotiation [PLRB and Borough of Berwick (PLRB, 1973) PERA Case No. C-2778-C].

[¶11,117] Sec. 1101.703 Implementation of provisions in violation of, or inconsistent with statutes or home rule charters. The parties to the collective bargaining process shall not effect or implement a provision in a collective bargaining agreement if the implementation of that provision would be in violation of, or inconsistent with or in conflict with any statute or statutes enacted by the General Assembly of the Commonwealth of Pennsylvania or the provisions of municipal home rule charters.

Annotations: Since Municipal Authorities Act [53 P.S. §301 et seq.] doesn't give municipal governments *exclusive* authority to hire and fire, there is no conflict with Act which allows arbitration of dismissals [PLRB v. Franklin Township Munic. Sanitary Auth. (Pa. Cmwlth. Ct., 1978) 395 A.2d 606].

Parties can negotiate terms and conditions of employment in excess of maximums set in other state laws as long as the other law didn't specifically prohibit employer from agreeing to a higher rate. Since County Code's 12¢/mile maximum mileage rate didn't specifically prohibit bargaining a higher rate, PERA will allow bargaining the higher rate [Cnty. of Dauphin v. Pa. Social Service Union (Pa. Cmwlth. Ct., 1978) 382 A.2d 999].

Where the underlying validity of a mutually agreed-upon contract provision is in question, the case can be brought directly to court. Disputes over negotiation and implementation of a contract are labor relations disputes and are under PLRB exclusive jurisdiction. Disputes over the legality of a contract clause itself is a question of general contract law and needn't be brought to PLRB first [Parents Union for Pub. Schs. in Philadelphia, et al. v. Bd. of Ed. of Sch. Dist. of Philadelphia, et al. (Pa. S. Ct., 1978) 389 A.2d 577].

Since no applicable law explicitly prohibited school district from agreeing to retirement allowance provisions, collective bargaining clause that provided for retirement allowance for professional employees based on unused accumulated sick leave wasn't void because of this section [Pa. State Ed. Assn. v. Baldwin-Whitehall Sch. Dist. (Pa. Cmwlth. Ct., 1977) 372 A.2d 960].

Items bargainable under the PERA are only excluded where other laws definitively prohibit a public employer from agreeing to that term or condition of employment [PLRB v. State Coll. Area Sch. Dist. (Pa. Cmwlth. Ct., 1975) 337 A.2d 262].

County commissioners can't prevent the district attorney, register of wills, and clerk of orphans' court from representing the employer in bargaining on new labor contract with employees in their offices [Fischer v. Rzymek (Pa. Cmwlth. Ct., 1974) 324 A.2d 836].

Since the Public School Code gives school boards broad inherent managerial powers to operate the public schools and determine policy, such duties and powers are not appropriate subjects of bargaining under this section [State Coll. Ed. Assn. v. PLRB (Pa. Cmwlth. Ct., 1973) 306 A.2d 404].

[¶11,118] Sec. 1101.704 Bargaining with units of first level supervisors. Public employers shall not be required to bargain with units of first level supervisors or their representatives but shall be required to meet and discuss with first level supervisors or their representatives, on matters deemed to be bargainable for other public employes covered by this act.

Annotation: The requirement that an employer meet and discuss with first level supervisors doesn't require the employer to enter into a written agreement with those employees [PLRB and Southeastern Pa. Transp. Auth. (PLRB, 1976) PERA Case No. C-7363-E].

[¶11,119] Sec. 1101.705 Dues deductions, maintenance of membership; subjects of bargaining. Membership dues deductions and maintenance of membership are proper subjects of bargaining with the proviso that as to the latter, the payment of dues and assessments while members, may be the only requisite employment condition.

Annotations: A teacher can't be dismissed for refusing to authorize dues deductions as permitted in this section and as required under the contract. The court ruled that PERA didn't specifically call for dismissal for nonpayment of dues and, therefore, for an employee to be terminated for refusing to authorize the deductions, the contract must specifically provide for it [Dauphin Cnty. Tech. Sch. Ed. Assn. v. Dauphin Cnty. Area Voc.-Tech. Sch. Bd. (Pa. S. Ct.) No. 37, 10-5-78].

Where the maintenance-of-membership clause had as a remedy for noncompliance the termination of professional employee services, and where clause was found invalid, it couldn't be used as the basis for an unfair labor practice charge [PLRB v. Uniontown Area Sch. Dist. (Pa. Cmwlth. Ct., 1977) 367 A.2d 738].

Maintenance-of-membership provision may be the proper subject in a collective bargaining agreement between a public employer and an employee organization if such provision doesn't violate an existing statute [Dauphin Cnty. Voc.-Tech. Sch. Ed. Assn. v. Dauphin Cnty. Sch. Bd. (Pa. Cmwlth. Ct., 1976) 357 A.2d 721].

RECORDS CERTIFICATION

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

James O. Smith
Signature of Camera Operator

9/5/89
Date

02-5[illegible] (REV 8/78)

HB

138

March 7, 1985 Thursday 1:15 pm Room 102 Capitol Bldg.

HOUSE LABOR AND COMMERCE COMMITTEE AGENDA

1) CALL MEETING TO ORDER

2) NOTE TIME/DAY/YEAR

3) NOTE MEMBERS PRESENT, ABSENT, TARDY

4) RECOGNIZE ANY VIP's OR GUESTS PRESENT

5) REMIND EVERYONE PRESENT TO SIGN IN AS EITHER A WITNESS OR AS AN OBSERVOR

6) EXPLAIN THE ORDER OF BILLS BEFORE THE COMMITTEE

There is a statewide teleconference to all LIOs, which was primarily set up for HB 6; you may want to announce that we will be taking limited testimony first on the other two bills:

a. HB 251: Continuation of the Board of Vet. Examiners-- see Committee Memo: we will be taking brief testimony from Bd. Chairman Stuve in Fairbanks, Bd. Member Tuomi in Anchorage, and possibly Bd. Member Ray Preston from Juneau. No opposition I know of.

b. HB 138: Time-Share Securities: We will be getting input from Linda O'Bannon at Consumer Protection Section in Anchorage, + James McGowan with Real Estate Comm. here in Juneau; but also from Mitch Gravo and others in Real Estate Industry because they are in town for the Real Estate Comm. meetings, so this may take more time than we thought.

c. HB 6: Workers Comp bill. All LIO sites; will probably be more workers providing input, including Jack Anderson and other members of Ad Hoc Committee.

d. HB 130 & HB 90: Announce you will hold them over until Monday for another whole day of hearings.

7) ANNOUNCE FIRST BILL BEFORE COMMITTEE, THEN SECOND, ETC.

8) MAKE SURE ALL MEMBERS SIGN ANY BILL THAT IS PASSED OUT OF COMM.

9) ANNOUNCE TIME OF ADJOURNMENT

Note: As each witness comes forth, please request that they state their name and who they represent for the record, and if they are not speaking loudly enough, ask them to speak up.

M E M O R A N D U M

TO: All Members, House Labor and Commerce Committee

FROM: Roger Poppe, Committee Staff

DATE: February 28, 1985 Thursday

SUBJECT: Overview, HB 138

On Thursday, February 28, at 1:15 pm, the House Labor and Commerce Committee held a hearing in Room 102 of the Capitol Bldg. on HB 138: "An Act relating to the sale of time-share programs...etc."

This bill was not submitted to the legislature before this year. It has no companion piece in the Senate. However, a great deal of the material in it will be covered by SB 44, by Senator Halford, which is currently being heard in Senate Judiciary.

The primary originator of the bill was the Consumer Protection Section of the Department of Law. To prevent this bill from coming into conflict with SB 44 if that bill should also pass, The Consumer Protection Section has written a proposed amendment in the file which would in effect say that if the two bills come into conflict, HB 138 would take precedent in law.

However, SB 44 also meets many of the concerns of the Dept. of Law, but they are concerned that if SB 44 does not pass, that at least they could push to get HB 138 through the House to the Rules Committee, so that it could move rapidly to the Senate in case SB 44 bogs down. This same concern has already been expressed on SB 44 with regards to HB 155, the proposed Mobile Home Parks act that is in committee. Further, HB 138 has 3 House Committees of referral; the next committee being Judiciary. And, since HB 138 and SB 44 are not absolutely identical, the end result from the Consumer Protection Agency's point of view would be that both bills should be passed.

James Magowan of the Real Estate Commission supports the bill, and is providing both written testimony in your file and will be talking via teleconference. However, it is important to know that the Real Estate Commission has a committee that is working on overhauling the entire set of statutes dealing with real estate, not just time-shares. Consequently, the realtors may oppose this bill, not because of the issue per se, but because it could be considered a band-aid approach, and they may wish to wait and see what their committee comes up with, with the possible end result of a major piece of legislation being submitted to next year's legislature to rewrite the real estate laws.

However, if this proposed re-write is not submitted next year, it could cause some problems. Interest and fraud in time-sharing in Alaska is increasing. Under this bill, time-shares sold in Alaska by outside companies would have to go through a licensed Alaskan broker, which would of course help the realtors in Alaska. But, it is possible that this could be determined unconstitutional. A second problem could be a large draw on the Surety Fund, but this is also at present not a strong possibility, and James Magowan could elaborate further on it if need be.

HB 138 File Contents
House Labor and Commerce Committee

1) Bill Summary -- Legislative Reporting Service

2) Overview -- R. Poppe, Committee Staff

3) Sectional Analysis -- Consumer Protection Agency, Dept. of Law

4) Letter of Transmittal -- Governor

5) Fiscal Note & Fiscal Analysis -- Real Estate Commission, DCED

6) Fiscal Note & Fiscal Analysis -- Dept. of Law

7) Memo from James L. Magowan to Katie Wallen -- February 7, 1985

8) Proposed Amendment -- Linda O'Bannon, Consumer Protection Agency (February 27, 1985)

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ILLINOIS AND WASHINGTON
NOT ADMITTED IN ALASKA

May 14, 1984

Mr. Bob Arwezon
Investment Properties
of Alaska
540 L Street, Suite 204
Anchorage, Alaska 99501

Re: S.B. 494 - Time Shares

Dear Bob:

I have carefully reviewed S.B.494, the bill which I understand is designed to protect purchasers of time share properties. While the purpose of the bill may be laudable, the bill itself is a disaster and should not pass for the following reasons:

1. It violates anti-trust laws - Under present federal and state anti-trust law, state governments and their agencies may not create monopolies unless there is a compelling public purpose for so doing. The bill grants to real estate licencees the exclusive and monopoly right to sell time share estates. The owner is stripped of his right to sell his own property! There are no findings or legislative history to support this extraordinary provision. This is no different from saying that a homeowner must hire a licensed real estate person to sell his or her house.

2. The bill is unconstitutional - It takes from the property owner a distinct property right, the right to sell. The U.S. and Alaska constitutions prohibit the taking of property rights without compensation.

3. There will be terrible jurisdictional disputes - The bill requires registration of time share offerings under regulations to be promulgated by the Real Estate Commission but violation of the bill's provisions and the regulations is a violation of the Consumer Protection Act. Consumer Protection will be enforcing Real Estate Commission regulations. Common sense and case law tell us this will

not work. If registration is desired, a time share offering should simply be defined as a security and then the existing statutes and regulations can achieve the desired result.

4. The "supplemental bond fee" provisions are unworkable - The bill does not define the conditions under which the supplemental portion of the surety fund may be used. Appallingly, the existing surety fund can apparently be "hit" with time share claims which would destroy the fund.

There are a number of other problems with the bill. Its definitions are circular, its regulation provisions are redundant, it contradicts the common law and it is ambiguous. I doubt that time shares will be sold if the bill is enacted.

Sincerely,

BAILY & MASON

Julian L. Mason

JLM:cam

cc: Dea Turner
Trish Hurley-Smith
Grayce Oakley

M E M O R A N D U M

TO: All Members, House Labor and Commerce Committee

FROM: Roger Poppe, Committee Staff

DATE: February 28, 1985 Thursday

SUBJECT: Overview, HB 138

On Thursday, February 28, at 1:15 pm, the House Labor and Commerce Committee held a hearing in Room 102 of the Capitol Bldg. on HB 138: "An Act relating to the sale of time-share programs...etc."

This bill was not submitted to the legislature before this year. It has no companion piece in the Senate. However, a great deal of the material in it will be covered by SB 44, by Senator Halford, which is currently being heard in Senate Judiciary.

The primary originator of the bill was the Consumer Protection Section of the Department of Law. To prevent this bill from coming into conflict with SB 44 if that bill should also pass, The Consumer Protection Section has written a proposed amendment in the file which would in effect say that if the two bills come into conflict, HB 138 would take precedent in law.

However, SB 44 also meets many of the concerns of the Dept. of Law, but they are concerned that if SB 44 does not pass, that at least they could push to get HB 138 through the House to the Rules Committee, so that it could move rapidly to the Senate in case SB 44 bogs down. This same concern has already been expressed on SB 44 with regards to HB 155, the proposed Mobile Home Parks act that is in committee. Further, HB 138 has 3 House Committees of referral; the next committee being Judiciary. And, since HB 138 and SB 44 are not absolutely identical, the end result from the Consumer Protection Agency's point of view would be that both bills should be passed.

James Magowan of the Real Estate Commission supports the bill, and is providing both written testimony in your file and will be talking via teleconference. However, it is important to know that the Real Estate Commission has a committee that is working on overhauling the entire set of statutes dealing with real estate, not just time-shares. Consequently, the realtors may oppose this bill, not because of the issue per se, but because it could be considered a band-aid approach, and they may wish to wait and see what their committee comes up with, with the possible end result of a major piece of legislation being submitted to next year's legislature to rewrite the real estate laws.

However, if this proposed re-write is not submitted next year, it could cause some problems. Interest and fraud in time-sharing in Alaska is increasing. Under this bill, time-shares sold in Alaska by outside companies would have to go through a licensed Alaskan broker, which would of course help the realtors in Alaska. But, it is possible that this could be determined unconstitutional. A second problem could be a large draw on the Surety Fund, but this is also at present not a strong possibility, and James Magowan could elaborate further on it if need be.

STATE OF ALASKA

DEPARTMENT OF LAW
OFFICE OF ATTORNEY GENERAL
CONSUMER PROTECTION SECTION

BILL SHEFFIELD, GOVERNOR

XX REPLY TO

1031 W. 4th, SUITE 110
ANCHORAGE, ALASKA 99501
PHONE (907) 279-0428

1ST NATIONAL CENTER
100 CUSHMAN, SUITE 400
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S.S. FULLER BLDG
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JUNEAU, ALASKA 99811
PHONE (907) 465-3692

STATE COURTHOUSE, ROOM 25
P.O. BOX 671
VALDEZ, ALASKA 99686
PHONE (907) 835-2462

February 27, 1985

The Honorable Representative Mike Navarre
Chairman, House Labor and Commerce Committee
Alaska State Legislature
Attn: Roger Poppy
Pouch V
Mail Stop 3100
Juneau, Alaska 99811

Re: SB 44 and HB 138

Dear Representative Navarre:

Since the Senate Judiciary hearing on February 26, 1985, on SB 44 I have had an opportunity to review SB 44 and the Uniform Common Interest Ownership Act including the comments of the National Conference of Commissioners on Uniform State Laws and to determine its possible interplay with HB 138 which proposes regulation of timeshares in our state for the first time. Upon close review of both bills it appears that both types of legislation could be passed by the legislature without conflict. In the comments to the Uniform Interest Common Ownership Act section 4-105, the commissioners noted:

> 1. Time sharing has become increasingly important in recent years, particularly with respect to resort common interest communities. In recognition of this fact, this section requires the disclosure of certain information with respect to timesharing.
>
> 2. Virtually all existing states statutes dealing with condominiums, planned communities or cooperatives are silent with respect to time-share ownership. The inclusion of disclosure provisions for certain forms of timesharing in this Act, however, does not imply that other law regulating timesharing is affected in any way in a state merely because that state enacts this Act.
>
> The Uniform Law Commissioners' Model Real Estate Time-share Act specifies more extensive disclosures for time-share properties. A

> "timeshare property" may include part or all of the common interest community, and section 1-109 of the Model Act governs conflicts between this Act and time-share legislation. [Emphasis added]

Section 4-105 of the Uniform Common Interest Ownership Act is identical to SB 44 § AS 34.08.550 TIMESHARES (beginning on page 64 at line 29) except that SB 44 adds additional provisions for disclosures in timeshare sales in subparagraph (5), (6) and (7).

In sum SB 44 (or the Uniform Common Interest Ownership Act) does not preclude the passage of specific timeshare legislation.

There should, however, be an amendment to HB 138 or any proposed timeshare legislation which would be similar to the Uniform Law Commissioners Model Real Estate Timeshare Act section 1-109 "Conflicts with Other Statutes" which would provide:

> In the event of any conflict between this act and the Horizontal Property Regimes Act AS 34.07.010 - 34.07.460 [and the Uniform Common Interest Act AS 34.08.010 - 34.08.995, if SB 44 passes]. The provisions of this Act prevail, but this Act does not invalidate or otherwise affect rights or obligations vested under those statutes before the effective date of this Act, or the manner of their exercise or enforcement.

Thus, we would propose an amendment to HB 138 as follows:

> Sec. 45.50.656 CONFLICTS WITH OTHER STATUTES. In the event of any conflict between the Act and the Horizontal Property Regimes Act AS 34.07.010 - 34.07.460, the provisions of this Act prevail, but this Act does not invalidate or otherwise affect

rights or obligations vested under those statutes before the effective date of this Act, or the manner of their exercise or enforcement.

Sincerely,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By: Linda M. O'Bannon
Linda M. O'Bannon
Assistant Attorney General
Chief, Consumer Protection Section

LMO/ssr
cc: Norman Gorsuch
Art Peterson

HOUSE BILL 138
Sectional Summary

The heart of this bill is sec. 4, which establishes safeguards relating to the sale of time-shares. Secs. 1, 2, and 3 of the bill amend existing state law on real estate licensing and regulation, to accommodate the provisions of sec. 4. Secs. 5 and 6 of the bill provide for effective dates. For ease of understanding the following summary will first address sec. 4.

Sec. 4 of the bill adds a new article 7 to AS 45.50 which regulates the sale of time-shares.

Sec. 45.50.630. REAL ESTATE BROKER AND REGISTRATION. This section places two requirements on those who offer time-shares. First, time-shares may be offered to buyers only through licensed real estate brokers, associate brokers, or salespersons. Second, before any time-shares may be offered, the offering must be registered with the Real Estate Commission. These provisions enable defrauded time-share buyers to make claims for reimbursement from the Real Estate Surety Fund.

Sec. 45.50.635. DISCLOSURE STATEMENT. Those who offer time-shares are required to give a written disclosure statement to prospective buyers before any contract is signed. Among the information which must be disclosed are a description of the time-share units; the developer's schedule for completion of all construction; the buyer's total financial obligation; notice of suits or liens; a good-faith estimate of dues, maintenance fees, and other periodic expenses; a description of any time-share exchange program; and notice of the buyer's right to cancel under sec. 45.50.640.

Sec. 45.50.640. ESCROW AND CANCELLATION. This section gives time-share buyers a "cooling-off period" during which they can cancel a purchase transaction. The period is 3 days if the buyer has personally inspected a completed unit and 10 days otherwise. This section also requires deposits to be held in escrow until the cooling-off period has expired. Slightly different rules apply when the buyer is residing in the unit.

Sec. 45.50.650. ENFORCEMENT AND REMEDIES. This section specifies that a violation of this article's requirements is an unfair or deceptive trade practice under the existing Unfair Trade Practices and Consumer Protection Act, so that both the Attorney General and injured private parties can obtain remedies in court.

Sec. 45.50.655. SALES REVOCABLE FOR VIOLATION OF AS 45.50.630 - 45.50.660. This section gives time-share buyers the right to revoke a sa[illegible] if it involved a violation of this article's requirement

Sec. 45.50.657. STATUTORY OR COMMON LAW REMEDIES. The purpose of this section is to make clear that all existing statutory and common law remedies that may be available to persons regarding time-share transactions will remain in effect.

Sec. 45.50.658. TIMESHARE PROGRAMS REAL PROPERTY. This section provides that time-shares may be created and transferred as real property under present condominium law.

Sec. 45.50.659. PARTITION. The purpose of this section is to prevent involuntary partition of time-share property; i.e., court-ordered sale and division of the proceeds at the request of a time-share owner.

Sec. 45.50.660. DEFINITIONS. Among the more important definitions set out in this section is one providing that a "time-share" can be either an ownership interest in real property or merely a right to occupy a

Sec. 1 of the bill amends AS 08.88.111, pertaining to Real Estate Commission regulations. It gives the Real Estate Commission the authority to regulate registration of time-shares as required under AS 45.50.630 above. Registration must include the written disclosure statement required under AS 45.50.635 and the name of the licensed real estate broker to be used. A reasonable registration fee is required. This section also clarifies that the Real Estate Commission has general authority to adopt regulations necessary to carry out the purposes of the statute it administers, AS 08.88.

Sec. 2 of the bill amends AS 08.88.455 to provide for a supplemental surety fund fee or a supplemental bond from real estate brokers or salespersons who market time-shares. The purpose of this provision is to enable the Real Estate Surety Fund to respond to claims by time-share purchasers without depleting funds needed to protect other claimants.

Sec. 3 of the bill amends AS 08.88.475 to authorize the Real Estate Commission to adjust the Real Estate Surety Fund's maximum liability when supplemental fees have been paid in connection with time-shares. Currently the maximum liability is set by statute at $50,000 for any one broker or salesperson; this provision would authorize the Commission to increase the limit in response to supplemental fees or bonds under AS 08.88.455(b) above.

Sec. 5 of the bill provides that the Real Estate Commission's authority to adopt regulations under AS 08.88.111(c) above will take effect immediately.

Sec. 6 of the bill provides that the remainder of the bill's provisions will take effect January 1, 1986.

Mike

HB 136 (cont'd)

dividend to the campaign financing fund. Larger amounts could be donated if the applicant so stated. A candidate for governor, lieutenant governor, or the state legislature could apply for a campaign grant from the fund.

In order for a candidate to receive a grant from the fund the candidate would first have to file a statement with the Alaska Public Offices Commission (APOC) promising to limit campaign expenditures, and have already received contributions for the campaign of at least 10 percent of the spending limit. APOC would then match amounts the candidate has raised at the time of application, not in excess of 10 percent of the spending limit established for the specified office.

Limits spending for gubernatorial and lieutenant governor candidates to $500,000; state senate to $75,000; and state house to $35,000. Candidates would not be allowed to rescind an agreement, and candidates who makes or permit's his campaign treasurer to exceed agreed upon limits would be guilty of a misdemeanor (a drafting error appears in this section, so it is not clear whether it would be simply a misdemeanor or a class of misdemeanor).

Amends AS 43.20.013 (Individual Tax Credits) to state that an individual is "...entitled to a tax credit not to exceed a total of $100 ..." for donations to political campaigns and adds language allowing the credit for donations to the campaign financing fund.

Does not provide for an effective date (takes effect 90 days after Governor signs bill).

Introduced January 28 and referred to State Affairs, Judiciary, then Finance.

Aggravation of Sentencing (death/injury to fetus)

HOUSE BILL NO. 137, by Rep. Binkley. Adds a new factor to those which may be considered by the sentencing court and which may aggravate a presumptive term. The new paragraph allows consideration if the "(27) defendant's conduct during the commission of the offense resulted in the death or serious physical injury of an embryo or fetus being carried by the victim." No effective date (takes effect 90 days after Governor signs bill).

Introduced January 28 and referred to Judiciary.

Real Estate Commission (time share programs & regulations)

HOUSE BILL NO. 138, by the Rules Committee by Request of the Governor. Gives Real Estate Commission authority to establish regulations for time-sharing programs for residential property, and clarifies the Commission's authority to adopt regulations (see Governor's message). Varying effective dates.

Introduced January 28 and referred to Labor & Commerce, Judiciary and Finance.

In his letter transmitting the bill to the House, Governor Sheffield stated:

HB 138 (cont'd)

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the sale of time-share programs for use, occupancy, or possession of residential property. The bill also clarifies the Real Estate Commission's authority to adopt regulations necessary for administration of the entire real estate chapter.

The most common time-share offer is to sell to individuals, for a one- to two-week period, the use of a vacation "home" in a popular vacation spot. For example, a person would "own" a period of two weeks of time in an apartment on the beach in Hawaii.

The bill has several main components: a time-share offered for sale in Alaska must be registered with the Real Estate Commission and sold through a real estate broker or salesperson licensed in the state; certain disclosures must be made to potential purchasers by a time-share offeror; unfair methods of competition and deceptive acts or practices in the sale of time-shares are prohibited; a time-share purchaser has 10 days to cancel a time-share purchase contract if the purchaser has not inspected the time-share unit before purchase; enforcement powers are granted the attorney general; and authorization to bring a private action is specified for individuals.

In addition, the commission is empowered to set by regulation additional fees for registration of these time-shares, including supplemental bond payments to the real estate surety fund to allow adequate compensation to victims of time-share sales fraud. Supplemental payments to the surety fund were considered necessary to ensure that these large projects did not deplete the rest of the surety fund.

Finally, the bill clarifies the Real Estate Commission's authority to adopt regulations necessary to carry out the purposes of AS 08.88, relating to real estate.

A detailed discussion follows:

The main thrust of the bill is contained in sec. 4. That section of the bill requires the Real Estate Commission to set up registration requirements for all time-shares offered in the state regardless of whether the property is located in the state. Specific registration requirements would be adopted by the Real Estate Commission. In addition, a time-share offer made in this state must be made through a real estate broker or salesperson licensed in Alaska. The effect of this requirement would be to give purchasers of time-shares recourse to the real estate surety fund (AS 08.88.450 - 08.88.500) for misrepresentation by a real estate broker, associate real estate broker, or real estate salesperson.

These provisions would offer the people of Alaska protection against an outside entity that opens an office in this state or holds sales presentations in a hotel suite to sell time-shares located outside the state. Requiring time-share sales to be made by an agent licensed in this state would discourage "fly-by-night" or fraudulent operations because the local brokers would be cautious about risking their licenses or exposure to claims by dissatisfied purchasers. Thus, brokers would have the incentive to screen, and refuse to serve as agents for, risky time-share concerns. The definition of "offeror" in new AS 45.50.660(6) exempts from the requirements of AS 45.50.630 -- 45.50.660 an individual who is re-selling his or her own interest in a time-share program.

The bill requires registration with the Real Estate Commission. Some time-shares actually are interests in real property, others are just agreements to use a time-share unit. The bill would require registration of all time-share offers to be made in the state, whether the offeror sells an interest in real property or merely a contractual right to use residental property. This registration requirement should not be burdensome to the commission as it is not anticipated that numerous time-shares will be marketed in the state. Fees charged should offset any cost of the registration. Under new AS 08.88.111(b)(1), in sec. 1 of the bill, the commission will set the registration fee.

HB 138 (cont'd)

The bill requires persons selling time-shares to disclose in writing significant facts about the offer to potential purchasers. The written disclosure statement must be filed with the Real Estate Commission as part of the registration. In other states, disclosure requirements have helped to prevent sales pitches that suggest that the time-share is an "investment," and helped cure other abuses such as the failure to inform the purchaser of the total cost of the time-share over the full term of the time-share. Adequate written disclosure enables a consumer to make an informed purchase decision. While there is some evidence that purchasers in high-pressure sales situations do not fully read disclosure statements, the provision of written disclosures coupled with the cancellation period allows a purchaser the opportunity to carefully consider a time-share purchase.

Another significant portion of the bill makes it clear that deceptive acts or practices in the sale of time-shares are violations of the Unfair Trade Practices and Consumer Protection Act. Experience in other states (e.g., Hawaii, Florida, Colorado, Arizona) where time-shares have been marketed aggressively for some years shows that many purchasers are induced to attend sales presentations through deceptive promises of prizes or awards, and are unable to resist the fast sales pitch. The time-share industry itself criticizes this type of sales approach and suggests that sales should be geared to persons who want to purchase time-shares for the features of the units themselves and as a hedge against future inflation in vacation costs. The consumer protection section of the Department of Law has received inquiries and complaints from persons induced to believe that they would win a car or color television if they attended a sales presentation only to actually receive a cheap set of luggage as their "prize."

Perhaps the most important provision in the bill is the one for a "cooling-off" period for a purchaser to cancel the time-share purchase. Other states have enacted cooling-off periods ranging from 3 to 15 days. A cancellation period will allow a purchaser more time to fully review written materials, consult an attorney, accountant, or other professional, and investigate representations made during the time-share presentation. If the purchaser has inspected the unit, a 3-day cancellation period is allowed. A greater cancellation period, 10 days, is allowed if a purchaser had no opportunity to inspect the time-share unit before purchase. Escrow of purchaser deposits until after the cancellation period has expired assures that the purchaser will receive a refund of any payments made if the purchaser decides to cancel.

Enforcement powers identical to the enforcement powers in the Consumer Protection Act (AS 45.50.495 -- 45.50.521) are granted to the attorney general by this bill.

A private cause of action is specifically set out in the bill, providing that for violations of this bill the purchaser may void the sale. However, if the purchaser has received some value, such as using the time-share unit for a period of time, the value of that use would be deducted from any amount the purchaser could recover. The customer's cause of action under this bill would be in addition to all other remedies presently available.

Sections 1, 2, and 3 of the bill contain provisions allowing the Real Estate Commission to set, by regulation, special fees for the registration of time-share offerings. The fees may include supplemental payments by the time-share offeror, through its real estate broker or licensed salesperson, to the real estate surety fund. Section 4 amends the statute that sets the maximum liability of the surety fund for any one broker or salesperson at $50,000 so that if a supplemental bond fee for higher liability has been filed by a time-share offeror, the consuming public could file claims up to the higher maximum liability amount of the bond fees. The commission will be authorized to establish, by regulation, a schedule of adequate supplemental payments to the surety fund to protect the public and the integrity of the fund.

In preparing this bill, other state agencies -- the division of banking, securities and corporations in the Department of Commerce and Economic Development, and the Real Estate Commission -- were consulted. Legislation from many states, as well as the National Timesharing Council's

HB 138 (cont'd)

> Model Timeshare Act and Exchange Program Act, were reviewed. Discussions were held with industry representatives, Federal Trade Commission attorneys, and with assistant attorneys general from other states. The time-share industry has recognized the need for reasonable regulation of the industry and it is not anticipated that there will be any significant industry opposition to this bill.

Administration of Grants (ground rules)

HOUSE BILL NO. 139, by the Rules Committee by Request of the Governor. Would establish a separate method of administering certain grants to municipalities, named recipients, and unincorporated communities.

Introduced January 28 and referred to Community & Regional Affairs and Finance.

In his letter transmitting the bill to the House, Governor Sheffield stated:

> Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the administration of certain grants passed by the legislature.
>
> The bill was requested by the Department of Administration to provide specific authority to establish a separate method of administering certain grants to municipalities under AS 37.05.315, named recipients under AS 37.05.316, and to unincorporated communities under AS 37.05.317. Under current procedures, all grants are administered by the Department of Administration in the same manner as professional services contracts. The nature of a grant is more often akin to a unilateral contract than a bilateral contract. This difference warrants the adoption of a body of administrative law that sets out the ground rules under which the grants will be expended. Certainly, this distinction between a grant and a contract can only be implemented if the department has the power to provide for adequate safeguards to assure that grantees and the state operate in the public interest.
>
> This bill reverses the provisions of AS 37.05.318, to permit the creation of safeguards through the adoption of administrative regulations. Under existing law, the adoption of regulations to interpret and make specific the grant statutes is prohibited. I know that many members of the legislature are becoming increasingly alarmed at the lack of responsiveness of grantees to expeditiously accomplish the intent of the legislature. This bill offers an opportunity for a change that will result in the speedy accomplishment of legislatively assigned purposes of grant appropriations.

Use of Teleconferencing

HOUSE BILL NO. 140, by the Rules Committee by Request of the Governor. Confirms and clarifies that teleconferencing is a legal means for increasing public access and input to government bodies (see Governor's message). No effective date (takes effect 90 days after Governor signs bill).

Introduced January 28 and referred to the House Special Committee on Telecommunications, Judiciary and Finance.

In his letter transmitting the bill to the House, Governor Sheffield stated:

> Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the use of teleconferencing for meetings and hearings held under the

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 28, 1985

The Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the sale of time-share programs for use, occupancy, or possession of residential property. The bill also clarifies the Real Estate Commission's authority to adopt regulations necessary for administration of the entire real estate chapter.

The most common time-share offer is to sell to individuals, for a one- to two-week period, the use of a vacation "home" in a popular vacation spot. For example, a person would "own" a period of two weeks of time in an apartment on the beach in Hawaii.

The bill has several main components: a time-share offered for sale in Alaska must be registered with the Real Estate Commission and sold through a real estate broker or salesperson licensed in the state; certain disclosures must be made to potential purchasers by a time-share offeror; unfair methods of competition and deceptive acts or practices in the sale of time-shares are prohibited; a time-share purchaser has 10 days to cancel a time-share purchase contract if the purchaser has not inspected the time-share unit before purchase; enforcement powers are granted the attorney general; and authorization to bring a private action is specified for individuals.

In addition, the commission is empowered to set by regulation additional fees for registration of these time-shares, including supplemental bond payments to the real estate surety fund to allow adequate compensation to victims of time-share sales fraud. Supplemental payments to the surety fund were considered necessary to ensure that

these large projects did not deplete the rest of the surety fund.

Finally, the bill clarifies the Real Estate Commission's authority to adopt regulations necessary to carry out the purposes of AS 08.88, relating to real estate.

A detailed discussion follows:

The main thrust of the bill is contained in sec. 4. That section of the bill requires the Real Estate Commission to set up registration requirements for all time-shares offered in the state regardless of whether the property is located in the state. Specific registration requirements would be adopted by the Real Estate Commission. In addition, a time-share offer made in this state must be made through a real estate broker or salesperson licensed in Alaska. The effect of this requirement would be to give purchasers of time-shares recourse to the real estate surety fund (AS 08.88.450 -- 08.88.500) for misrepresentation by a real estate broker, associate real estate broker, or real estate salesperson.

These provisions would offer the people of Alaska protection against an outside entity that opens an office in this state or holds sales presentations in a hotel suite to sell time-shares located outside the state. Requiring time-share sales to be made by an agent licensed in this state would discourage "fly-by-night" or fraudulent operations because the local brokers would be cautious about risking their licenses or exposure to claims by dissatisfied purchasers. Thus, brokers would have the incentive to screen, and refuse to serve as agents for, risky time-share concerns. The definition of "offeror" in new AS 45.50.660(6) exempts from the requirements of AS 45.50.630 -- 45.50.660 an individual who is re-selling his or her own interest in a time-share program.

The bill requires registration with the Real Estate Commission. Some time-shares actually are interests in real property, others are just agreements to use a time-share unit. The bill would require registration of all time-share offers to be made in the state, whether the offeror sells an interest in real property or merely a contractual right tc use residental property. This registration requirement should not be burdensome to the commission as it is not anticipated that numerous time-shares will be marketed in the state. Fees charged should offset any cost

of the registration. Under new AS 08.88.111(b)(1), in sec. 1 of the bill, the commission will set the registration fee.

The bill requires persons selling time-shares to disclose in writing significant facts about the offer to potential purchasers. The written disclosure statement must be filed with the Real Estate Commission as part of the registration. In other states, disclosure requirements have helped to prevent sales pitches that suggest that the time-share is an "investment," and helped cure other abuses such as the failure to inform the purchaser of the total cost of the time-share over the full term of the time-share. Adequate written disclosure enables a consumer to make an informed purchase decision. While there is some evidence that purchasers in high-pressure sales situations do not fully read disclosure statements, the provision of written disclosures coupled with the cancellation period allows a purchaser the opportunity to carefully consider a time-share purchase.

Another significant portion of the bill makes it clear that deceptive acts or practices in the sale of time-shares are violations of the Unfair Trade Practices and Consumer Protection Act. Experience in other states (e.g., Hawaii, Florida, Colorado, Arizona) where time-shares have been marketed aggressively for some years shows that many purchasers are induced to attend sales presentations through deceptive promises of prizes or awards, and are unable to resist the fast sales pitch. The time-share industry itself criticizes this type of sales approach and suggests that sales should be geared to persons who want to purchase time-shares for the features of the units themselves and as a hedge against future inflation in vacation costs. The consumer protection section of the Department of Law has received inquiries and complaints from persons induced to believe that they would win a car or color television if they attended a sales presentation only to actually receive a cheap set of luggage as their "prize."

Perhaps the most important provision in the bill is the one for a "cooling-off" period for a purchaser to cancel the time-share purchase. Other states have enacted cooling-off periods ranging from 3 to 15 days. A cancellation period will allow a purchaser more time to fully review written materials, consult an attorney, accountant, or other professional, and investigate representations made

during the time-share presentation. If the purchaser has inspected the unit, a 3-day cancellation period is allowed. A greater cancellation period, 10 days, is allowed if a purchaser had no opportunity to inspect the time-share unit before purchase. Escrow of purchaser deposits until after the cancellation period has expired assures that the purchaser will receive a refund of any payments made if the purchaser decides to cancel.

Enforcement powers identical to the enforcement powers in the Consumer Protection Act (AS 45.50.495 -- 45.50.521) are granted to the attorney general by this bill.

A private cause of action is specifically set out in the bill, providing that for violations of this bill the purchaser may void the sale. However, if the purchaser has received some value, such as using the time-share unit for a period of time, the value of that use would be deducted from any amount the purchaser could recover. The customer's cause of action under this bill would be in addition to all other remedies presently available.

Sections 1, 2, and 3 of the bill contain provisions allowing the Real Estate Commission to set, by regulation, special fees for the registration of time-share offerings. The fees may include supplemental payments by the time-share offeror, through its real estate broker or licensed salesperson, to the real estate surety fund. Section 4 amends the statute that sets the maximum liability of the surety fund for any one broker or salesperson at $50,000 so that if a supplemental bond fee for higher liability has been filed by a time-share offeror, the consuming public could file claims up to the higher maximum liability amount of the bond fees. The commission will be authorized to establish, by regulation, a schedule of adequate supplemental payments to the surety fund to protect the public and the integrity of the fund.

In preparing this bill, other state agencies -- the division of banking, securities and corporations in the Department of Commerce and Economic Development, and the Real Estate Commission -- were consulted. Legislation from many states, as well as the National Timesharing Council's Model Timeshare Act and Exchange Program Act, were reviewed. Discussions were held with industry representatives, Federal Trade Commission attorneys, and with assistant attorneys general from other states. The time-share industry has recognized the need for reasonable

regulation of the industry and it is not anticipated that there will be any significant industry opposition to this bill.

Sincerely,

Bill Sheffield
Governor

Revision Date: November 30, 1984

REQUEST
Bill/Resolution No.:
Title: Regulation of time share projects and salespersons
Sponsor:
Requestor:
Date of Request:

FISCAL DETAIL
Agency Affected: Commerce & Econ. Dev.
Program Category Affected: Public Protection
BRU, Program or Subprogram(s) Affected: Real Estate Commission; Consumer Protection

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES		28.4	29.3	30.2	31.2	32.3
200 TRAVEL		2.0	2.2	2.4	2.6	2.9
300 CONTRACTUAL		5.6	6.9	8.2	9.7	10.3
400 SUPPLIES		.7	.7	.8	.8	.8
500 EQUIPMENT		6.8	-0-	-0-	-0-	-0-
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		43.5	39.1	41.6	44.3	46.3
CAPITAL						
REVENUE		50.0	50.0	60.0	60.0	60.0

FUNDING: (Thousands of Dollars)

GENERAL FUND		43.5	39.1	41.6	44.3	46.3
FEDERAL FUNDS						
OTHER						
TOTAL		43.5	39.1	41.6	44.3	46.3

POSITIONS:

FULL-TIME		1	1	1	1	1
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

See attachment.

Prepared By: James L. Magowan Phone: 563-2169
Division: Real Estate Commission Date:

Approved by Commissioner: Richard A. Lyon Date: 12/5/84
Agency: Commerce & Economic Development

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

7/1/84

1209W113084a

The bill will require that time share projects be registered with the commission. This will produce recordkeeping and review tasks. The commission will need an examiner to review, approve and issue notices of registration. This position will be a range 12, examiner.

There will be limited travel for training, seminars or conferences regarding the regulation of time shares.

The other expenses are the normal expenses that are associated with most positions except that this position will have a particularly high long distance phone bill. Most time shares are in other states. There will be a great deal of inter-state phone traffic - both incoming and outgoing.

The equipment costs are furniture and equipment to set up the position and are first year costs only.

The position will be funded from the general fund. It is anticipated that the cost of the bill (position) will be recovered almost completely - in the form of registration fees paid by the developers or sellers. This assumption is subject to error to the degree that more or less projects that we estimate will be will be interested in selling in Alaska.

Projected Revenues

Original Registration	$500 per project	
Renewal (biennial)	$100 per project	
1986 100 Original Registrations		$50,000
1987 100 Original Registrations		$50,000
1988 100 Renewals		$20,000
80 New Registrations		$40,000
1989 100 Renewals		$20,000
80 New Registrations		$40,000
1990 120 New Registrations		$60,000

1.	POSITION TITLE				RANGE/STEP	BARG. UNIT	PAGE/LINE	COV.	APPROV.
	Time Share Examiner				12A	GGU			
2.	TYPE OF POSITION	STAFF MONTHS	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION	ELECTION DISTRICT	LEG.	
	PFT	12			1	EBA	109		
3.	CONFIRMATION LEVEL	1	ADDITION						

4.	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary	23.7	
6.	Benefits	4.7	
7.	Supplemental Benefits		
8.	Fixed Benefits		
9.	Total PERSONAL SERVICES	01	28.4
10.	Travel	02	2.0
11.	Contractual	03	5.6
12.	Commodities	04	.7
13.	Equipment	05	6.8
14.	Other		
15.	Total COST		43.5

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		C.F. Match	1003	
18.		General Funds	1004	43.5
19.		I-A Receipts	1005	
20.		Program Receipts	1028	
21.		Other		

FOR BSM USE ONLY
KEY NUMBER ___ - ___ - ___ - ___ - ___

JUSTIFICATION

The commission feels that time shares must be regulated to some extent. Other states have run into numerous problems some of which we are already experiencing, that cause severe consumer risks and losses until regulation is established. The commission believes in minimum regulation to protect the public.

The commission has proposed surety fund coverage of time share projects with back up bonding of the project with the surety fund being beneficiary of the bond. This will protect the public and the fund with minimum regulation.

Registration and bonding will prevent many fraudulent developments from being sold in Alaska and will protect Alaskans from losing money by buying misrepresented projects.

The bill will require that time share projects be registered with the commission. This will produce recordkeeping and review tasks. The commission will need an examiner to review, approve and issue notices of registration. This position will be a range 12, examiner.

There will be limited travel for training, seminars or conferences regarding the regulation of time shares. The other expenses are the normal expenses that are associated with most positions except that this position will have a (See Attachment)

REQUEST FOR NEW POSITION

AGENCY COMMERCE & ECONOMIC DEVELOPMENT

PROGRAM PUBLIC PROTECTION

BRU ALASKA REAL ESTATE COMMISSION

COMPONENT

Revised Date

FY 86

1-11361(7/82)-13

1209W113084A

Request for New Position cont.

particularly high long distance phone bill. Most time shares are in other states. There will be a great deal of inter-state phone traffic - both incoming and outgoing. The equipment costs are furni- ture and equipment to set up the position and are first year costs only.

1709W113084A

FISCAL NOTE

Revision Date:

Page 1 of 2

REQUEST

Bill/Resolution No.: HB 138

Title: "...relating to time-share program...of residential property..."

Sponsor: House Rules/Governor

Requestor: Ofc. of Gov./OMB

Date of Request: 12/24/84

FISCAL DETAIL

Agency Affected: Department of Law

Program Category Affected: Public Protection

ERU, Program or Subprogram(s) Affected: Consumer Protection

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

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

ANALYSIS. Attach a separate page if necessary

Richard L. Pegues

Prepared By: Richard I. Pegues, Director Phone: 465-3672

Division: Administrative Services Date: 12/31/84

/Richard L. Pegues/For

Approved by Commissioner: Norman C. Gorsuch Date: 12/31/84

Agency: Department of Law

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

7/1/84

Fiscal Note
Analysis

December 31, 1984

This bill attempts to regulate the sale or offer of "time share" programs in the state. Typically, time share projects are located in areas outside Alaska, such as Hawaii or Mexico. The department has experienced a growing number of complaints involving misrepresentations in either the promise of promotional incentives or in the value actually offered by the time share. the bill provides that a time share offered in Alaska must be registered with the Real Estate Commission and sold through a real estate agent licensed in the state; certain disclosures must be made to potential purchasers by a time share offerer; unfair methods of competition and deceptive acts or practices in the sale of time shares are prohibited; a time share purchaser has 3 days to cancel purchase contract if property is seen and 10 days if the property is unseen;; enforcement powers are granted the attorney general; and authorization to bring a private action is specified for individuals.

Because of the screening process that would be caused by the requirement for registration of time share sales, and because of the requirement that time shares be sold only by state licensed real estate agents, and the provision to authorize private action for individuals, the department does not foresee any significant increase in enforcement activity. Consequently, there will not be a fiscal impact on the department's operations.

The Real Estate Commission will experience some fiscal impact in implementing and administering the registration requirements under this bill. The commission is empowered, however, to adopt regulations requiring payment of registration fees for time share sales to offset the cost of registration.

MEMORANDUM State of Alaska

TO: Katie Wallen
Legislative Liaison
Dept. of Commerce
and Economic Development

DATE: February 7, 1985

FILE NO:

TELEPHONE NO:

FROM: James L. Magowan
Executive Director
Alaska Real Estate Commission

SUBJECT: HB 138

The Real Estate Commission and the Consumer Protection Office have both received numerous inquiries, and complaints regarding time share sales. These complaints fall into several common categories.

1. High pressure sales techniques which rush people into signing agreements before they have thought out the transaction. People often "wake up" the next morning and find that at best they can back out of the transaction and lose their deposit.

   HB 138 addresses this problem with a recission period, an escrow period for the deposit and the requirement that the units be sold through a broker.

2. The property or amenities to it are misrepresented.

   The misrepresentations range from simple misrepresentation of its condition or age to selling units in unbuilt projects. Sometimes projects are not complete and purchasers are not aware that there are not funds to complete the promised amenities and improvements.

   These problems are addressed in several ways in HB 138.

   a) A broker is unlikely to risk losing a license by selling something sight unseen. Even if this is done, the first complaint will alert the broker to the problem and probably stop further sales.

   b) The registration can require accurate property status reporting. This will minimize false reports and the surety fund/bonding requirement will provide recovery when fraud is committed. The use of commercial "back-up" bonding helps to eliminate constant or repeated problems with the same developer because bonding agencies can deny bonds when claims are made against them. Also the bonding companies will impose their own checks or inspections on the property to protect themselves.

c) In many cases loses of less than $5,000 are not feasible for consumers to recover due to high legal costs to do so. Under this bill, the commission can make direct restitution to the consumers and in turn it can take consolidated action to recover from the bond. The practical effect should be that if a major loss occurs the bonding company will cooperate (negotiate) with the commission to minimize its inevitable loss and costs.

3. When consumers are cheated by "fly-by-night" operators, there is often no place for them to go for recovery. HB 138 addresses this with the registration requirement the broker requirement and the surety/bond requirement.

There is often a feeling that "an owner" should not be required to use a broker. In most scams everyone involved is "an owner" when this claim helps them avoid the law. Having an exemption such as this is a fiction. These projects are sold by teams, not by individuals. An exemption would give fraudulent operators a chance to come in and cheat people while legal processes are being initiated. When action is finally taken they leave and the damage is done.

The broker requirement is, therefore, essential to protect the public.

The registration requirement is tied closely to the broker requirement. The name of the broker is a part of the registration. This assures that the commission always has a licensee that can be contacted about a project being sold in Alaska. It should be noted that this is of major importance since most projects are located in other states.

HB 138 also provides a safe means of holding consumer deposits. In virtually all cases these will be in the broker's trust account. This will give the public maximum protection during the recission period.

The recission period gives serious purchasers a chance to think over the purchase and, more importantly, to go and examine the property before losing a deposit.

Unit costs for time shares are relatively low compared to residential housing. Aggregate costs, on the other hand, are very high. In one project that the Florida Real Estate Commission was involved with, the losses were in the neighborhood of $6,000,000. This is the reason that back-up bonding is required.

The commission's activity in the regulation of time share sales is seen essentially as protecting the consumer through two mechanisms.

1. The involvement (mandatory) of a broker. This provides an element of stability and local oversight or control. It prevents the operation from being based totally outside of Alaska.

2. The surety/bonding requirement - This provides consumer recovery when an operation is not honest and fairly represented.

The other measures are support and back-up to these primary requirements.

This bill also "closes" a major loophole in much timeshare legislation. It defines a time share as anything that looks, smells, acts or tastes like one. Fraudulent operators are adept at creating innovative forms of licenses, clubs, etc., to get around less inclusive definitions, thereby leaving regulators and injured public wringing their hands and looking at each other hopelessly after a loss occurs. This "A time share is a time share" approach does not hurt the honest developer who uses various ownership methods for reasons other than to avoid regulation and deceive the public.

This bill accomplishes a great deal of protection with a minimum of regulation and associated costs.

Our experience would support rewording of Section 45.50.640(d) (notice of cancellation). It would be recommended that notice to the broker or the broker and the offeror be required. Since the broker is holding the deposit, it would protect the deposit if the broker is notified. Otherwise an offeror might not tell the broker of the cancellation and gain possession of the deposit. This subjects both consumer and broker to possible loss and at best adds confusion to the process.

The commission had a brief encounter with "addressee only" certified mail. It does not work well.

a) The letter carriers frequently do not deliver to addressee only. In this case, notice has not been received.

b) When the addresee only instruction is followed, if the addressee is not in when the carrier happens to come by, the

letter is not delivered. In many larger firms, this is a real problem when addressee only mail comes to the l ..er and the secretary cannot sign for it.

The commission found that the Administrative Procedure Act requirement for certified mail to the last registered address is most effective and adequate. This gives us effective legal service and puts responsibility for having broker or developer staff properly give notices to the broker or developer, on the broker or developer.

It is a disservice to the consumer to have them lose, at least for a time, their deposit and then have to battle over whether or not the offeror was "notified".

There is a great increase in the number of inquires to the commission from time share developers who are interested in selling their units in Alaska. Alaska appears to have been identified as a major target for these sales in the next few years.

JLM/cw/0014E/59

RECORDS CERTIFICATION

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

James O. Smith
Signature of Camera Operator

9/5/89
Date

02-519 (REV 8/78)

HB

1428

COMMITTEE REPORT

HOUSE

(7)

FURTHER: JUDICIARY

1/30/85

Date: 5-1-85

The Committee on LABOR & COMMERCE has had HB 148

"An Act creating a private cause of action relating to mobile home warranties; and transferring enforcement of mobile warranties."

under consideration and recommends:

[X] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

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

[X] Zero Fiscal Note Attached

Do not mention in Journal

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

To: Mike
From: Roger February 7, 1985

HB 148:

There is no companion legislation in the Senate

There were no versions of this bill in previous years.

Linda O'Bannon, head of the Consumer Protection SEction of the Dept. of Law, will be here to testify in support of the bill.

There is no anticipated opposition to it; it should protect the consumers. Since the manufacturers of mobile homes are located out of state, it is unlikely they will be here to testify one way or the other. I could not locate a lobbyist for them in the lobbyist directory.

If anyone is curious about us approving transfers after the fact, this is a normal procedure in the administration. A transfer of responsibilities is tried out by the Governor's office, and then if it turns out there are problems or it is unsuccessful, they don't have to pester the legislature with another transfer request to still another department or back to the original department; but the legislature still retains the final approval to prevent the Governor from grossly abusing his powers in the matter.

An interesting related legal question arises as to what happens in a case where an agency or section or office that is transferred (like this one) by an internal executive order but has not yet received approval by the legislature ends up in a law suit. Is the state liable? Which department would get sued? You might ask Linda about this, since they deal a lot with lawsuits and she is a lawyer.

The zero fiscal note doesn't mean there are no program expenses--they are simply in the on-going operating budget of the program in the Dept. of Law. You might want to ask how much she estimates that program is costing to run currently, and if there are any sizeable increases anticipated in the future; and also if there are any anticipated litigation expenses that would end up having this state lose money in a lawsuit or too many legal fees (she told me that the program costs about $800,000, but it saves about the same amount in consumer costs through the settlement of cases).

M E M O R A N D U M

TO: All Members, House Labor and Commerce Committee

FROM: Committee Staff

DATE: February 7, 1985

SUBJECT: Overview, HB 148: Mobile Home Warranties

On Thursday, February 7, 1985, the House Labor and Commerce Committee meets in Room 102 of the Capitol Building on House Bill 148: "An Act creating a private cause of action relating to mobile home warranties; and transferring enforcement of mobile warranties."

To understand the bill better, one should look at section 2 first. This bill transfers the responsibilities for the enforcement of the Mobile Homes Warranty Law from the Department of Commerce, Division of Weights and Measures, to the Department of Law. The Dept. of C & ED does not have the administrative and legal mechanisms in place to easily enforce the law in this area, while the Consumer Protection Section in the Department of Law already has the procedures set up to hold hearings, investigate, and go to court, since they are already processing other consumer complaints, including mobile home complaints that fall outside the Warranty Act.

In actuality, this transfer of responsibility and activity for enforcement took place over 18 months ago, and appears to be working successfully, so the legislature is being asked in this bill to give authorization to that transfer. The transfer was initiated in 1983 in a Legislative Budget and Audit report that recommended it take place; and so a support position was transferred on an RSA to do this.

After 18 months of work, the Consumer Protection Section of the Department of Law is just now getting a thorough grasp of the problems and needs in the area of mobile home warranties. Specifically, as the Governor's transmittal letter points out, the Section is sometimes not able to pursue a formal action adequately, because of either limited resources or because the case appears to be weak legally. This gets into section 1 of the bill.

Under current law, the buyer has no further means of pursuing the matter through the state system and has to resort to a private suit in court. Since the manufacturers are located outside of the state, it is prohibitively expensive for a private citizen to pursue such a case.

This bill would give the buyer the extra recourse of recovering all or part of his losses by filing an action against the $25,000 bond that is required of all mobile home manufacturers in Alaska. If the court found in favor of the buyer, the money would be taken from the manufacturers bond, which the manufacturer would then have to replace in order to continue being bonded so he could operate in Alaska. Without this option in place, the state is currently running the risk of liability in a law suit.

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 30, 1985

The Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to mobile home warranties. This bill increases government efficiency in enforcement of mobile home warranties, and encourages private consumer self-help.

The bill has two main components: (1) the creation of a private cause of action in a mobile home buyer against the manufacturer's bond, which AS 45.30.015 requires be posted with the state; and (2) a transfer of warranty enforcement authority from the Department of Commerce and Economic Development (DCED) to the Department of Law.

With regard to the first of the components, it is the understanding of both DCED and the Department of Law that, when the mobile home warranty statute, AS 45.30.011, took effect in 1980, a private buyer injured by a manufacturer who sold a defective home to a buyer in this state would be allowed to make a claim against the bond under AS 45.30.040. However, that statute only provided a procedure for the consumer to petition the state to take administrative action against the bond. Experience in the last few years has shown that a buyer may believe that he or she has a valid claim against the bond in a case in which the state enforcing authority does not agree that administrative action is warranted. Providing a clear, private cause of action against the bond may relieve a burden on the government by reducing the number of administrative hearings, and insure that an individual can choose to enforce his or her own rights, whether or not a state agency agrees with the individual.

The second component of the bill is a transfer of the warranty enforcement powers from DCED to the Department of Law. The April 1983 legislative audit of the division of measure-

ment standards, DCED, studied this issue and recommended

> The Department [of Commerce and Economic Development] should seek legislation to transfer the mobile home warranty enforcement program to the Consumer Protection Section of the Department of Law.

Both departments have agreed that this is a more efficient enforcement pattern, as the Department of Law, consumer protection section, already processes mobile home complaints that fall outside the warranty Act, as well as those that may duplicate warranty Act enforcement by DCED. In FY 84, DCED transferred the one mobile home investigator position to the Department of Law through a reimbursable services agreement.

The bill promotes government efficiency by encouraging private self-help, rather than reliance on government. I feel that it will have the support of both industry and consumers. I urge your affirmative action on this measure.

Sincerely,

Bill Sheffield
Governor

Revision Date:

REQUEST

Bill/Resolution No.:
Title: "An Act relating to.... mobile home warranties..."
Sponsor: House Rules/Governor
Requestor: Ofc. of Gov. - OMB
Date of Request: 12/10/84

FISCAL DETAIL

Agency Affected: Department of Law
Program Category Affected: Public Protection
BRU, Program or Subprogram(s) Affected: Consumer Protection

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING		-				
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary

Richard L. Pegues

Prepared By: Richard I. Pegues, Director Phone: 465-3672
Division: Administrative Services Division Date: 12/10/84

Richard K. Pegues /FOR

Approved by Commissioner: Norman C. Gorsuch Date: 12/10/84
Agency: Department of Law

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

7/1/84

Fiscal Note
Analysis

December 10, 1984

This bill creates a private cause of action relating to mobile home warranties, and transfers responsibility for enforcement of mobile home warranties from the Department of Commerce and Economic Development to the Department of Law. A 1983 legislative audit report recommended transfer of the enforcement process to the Department of Law. The transfer of the existing mobile home warranty enforcement position, including funding, from the Department of Commerce and Economic Development to the Department of Law, was accomplished July 1, 1984. Consequently, enactment of this bill will not require additional funding nor will it cause a fiscal impact.

Revision Date: December 3, 1984

REQUEST

Bill/Resolution No.:
Title: Relating to Mobile Home Warranties
Sponsor:
Requestor:
Date of Request:

FISCAL DETAIL

Agency Affected: Commerce & Econ. Dev.
Program Category Affected: Protection
BRU, Program or Suborogram(s) Affected: Measurement Standards

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	Ø	Ø				
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	Ø	Ø				

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY	Ø	Ø				

ANALYSIS: Attach a separate page if necessary

Prepared By: Joe Swanson Phone: 345-7750
Division: Measurement Standards Date: 12/4/84

Approved by Commissioner: Richard A. Lyon Date: 12.5.84
Agency: Commerce and Economic Development

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

7/1/84

1593M12384A

HB 148 FILE CONTENTS

1) Bill Summary -- Legislative Reporting Service

2) Overview -- Committee Staff

3) Overview -- The Mobile Home Warranty Act, By Consumer Protection Services, Dept. of Law

4) Sectional Analysis -- Committee Staff

5) Transmittal Letter -- Governor's Office

6) Fiscal Note -- Dept. of Law, Administrative Services Division

7) Fiscal Note -- Dept. of Commerce, Div. of Measurement Standards

8) Additional Background Information on Consumer Protection Section, Dept. of Law

   a) Alaska Consumer Protection Laws

   b) Consumer Info

   c) Business Response Information

   d) Consumer Complaint Form

   e) Miscellaneous related materials -- Setting on Committee Table

9) Legislative Budget and Audit Report

SECTIONAL ANALYSIS OF HB 148: "An Act creating a private cause of action relating to mobile home warranties; and transferring enforcement of mobile warranties," by Rules Committee at request of Governor; analysis by Committee Staff--February 7, 1985.

Section 1(a) A mobile home buyer may file an action upon the bond that is required in Alaskan law of all mobile home manufacturers, if the manufacturer fails to fulfill any of the warranty obligations that are listed in the statutes.

Since mobile home manufacturers are all headquartered out of state, the place where a legal action is filed is spelled out for greater clarity.

(b) The above new addition to the law does not exclude the buyer from also pursuing the problem legally through all other avenues currently available to him.

Section 2 Transfers the jurisdiction of all activity under Chapter 30 (The Mobile Homes and Mobile Home Parks) from the Department of Commerce & ED to the Dept. of Law.