

ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 86/2

3982 SHEB HB 130 858



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

10/31/89
Date

H B

1 3 0

Senate Health, Education and Social Services Committee

Legislation Checklist

Bill number: HB 130

Sponsor: GOVERNOR

Date referred to committee: 5/6/85

Synopsis completed:

Fiscal note:

Further referrals: ⁴⁵²² STATE AFFAIRS, FINANCE

CONTACTS:

5/6/86 St. Aff. referral added (by request)
5/7/86 HESS referral waived

FREE

file HB 130 ^{NKN}

FEB 11 1966

Federation's Role in our Enterprise Economy

BINDING ARBITRATION IN SCHOOL LABOR DISPUTES

A Position Paper of the Anchorage Woman's Club F.R.E.E.

Binding arbitration is not an acceptable concept in our representative form of government. Local control of schools is a principle which has proven to be a cornerstone of democracy in the United States for over 200 years. American government is designed to be of, by, and for the people, and is our legal basis of government. This freedom, however, which is based on local control, is in danger of being eroded by state federal bureaucracies that continue to extend their power by seeking uniformity, standardization and compliance as they pass laws and allocate funds.

The State Legislature, through titles 14 and 29, has determined that the local school board is an autonomous organization, locally elected and self-determining, subject to federal and state statutes and regulations. The legislature reaffirmed this autonomy a few years ago with the creation of the REEA'S and locally elected regional school boards. We feel that it would be rather ironic if the State should now pass a binding arbitration bill which would dilute that local control.

Our elected representatives, the school board, make decisions and form policies that affect us all. They are held accountable and responsible to us for those decisions. If we disagree with

these decisions, we have the right to replace them in the next election.

An arbitrator, however, is not responsible or accountable to the public. He does not have the responsibility for living with the solutions he orders, since he usually leaves the scene after making the award. Arbitrators are supposed to be impartial, but they have biases just like anyone else and there is no reason to think they are more knowledgeable or possess more wisdom than the elected representatives of the people.

An arbitrator's job is often complicated by the manner by which both sides choose to present their demands. Under item-by-item arbitration, he may jump from side to side, choosing the union's rate of pay increase, management's insurance benefits, etc., without an overall logic or cohesiveness to the entire program.

With last-best-package arbitration, the arbitrator must choose between the entire program of either the union or management, no matter what implausible clauses may be included in either or both.

On the surface, binding arbitration seems rational and reasonable. Third party arbitration has frequently been used in settling private enterprise disputes. Public sector bargaining, however, is different from the private sector. As an example, in the private sector, management can reduce the work force. This option is not available in the public sector. In teacher-school board disputes, the school board represents the taxpayers. In asking that a third party be empowered to set terms of a contract, the union is in effect demanding that taxes be set by that party. To do so is tantamount to taxation without representation.

Labor Disputes

People are misled into thinking binding arbitration is a solution to a strike. Binding arbitration does not eliminate strikes, as there is nothing to stop teachers from striking, if they don't like the decision of the arbitrator. A statistical study which was commissioned by the Public Research Council concludes that "with only two exceptions, Florida and Iowa, the passage of a bargaining law did not result in an overall reduction in strike activity.....In most cases, strike activity was notably higher in the period following legislation." The State of Pennsylvania has conducted a ten year study on this issue and has concluded that binding arbitration does not guarantee there will not be teacher strikes. The president of the AFL-CIO Public Employees Department says, "history teaches that laws prohibiting strikes have never worked in America." (Nations Business, September 1980.)

What can we do to provide our public employees a means to air their grievances and yet maintain representative control of government? First of all, we feel finality steps should be defined to shorten the length of negotiations and eliminate uncertainty. Perhaps 60 days should be allowed to reach agreement. The definition of non-negotiable items, however, must be determined to prevent these from being used to lengthen the session; if after that time no agreement is reached, and all impasse procedures are exhausted, continued negotiations should become a matter of public record.

Or, since negotiations directly affect each citizen, perhaps all sessions should be open to the public. It is misleading to guarantee that union demands will not cost the taxpayer more.

Over 80% of the school budget is for salaries and related benefits and any increase in this area will either mean an increase in taxes or a possible decrease in the funds available for other areas. This could mean reductions in the sports programs, textbooks, music, maintenance, etc. With all demands public, we could then cast a vote as to how we wish the budget divided.

Carrying public awareness and responsibility a further step, why not adapt a form of petit jury system as arbitrators of demands by public employees. Much effort and large sums of money are spent educating each of us to be enlightened and useful citizens. The properly negotiable items under scrutiny in the public sector (salaries, fringe benefits, hours of work and leave, etc.) are not complicated. We deal with these details in our own lives daily and have a good basis for comparison. If we are obligated as patriotic citizens to sit on juries which decide life and death criminal matters and complicated social negligence issues, surely we are able to decide the working conditions of our own neighbors, our public servants.

We realize we have made no suggestions regarding strikes. We feel we cannot deny anyone this right, even if such denial were effective. We strongly feel, however, the inconvenience of strikes is preferable to the erosion of control of our governments and lives which is certain with binding arbitration. Though avoiding strikes is important, it is not as important as the responsibility of the school board and teachers' union to engage in direct bargaining and reach satisfactory conclusions. These powers should not be abdicated to arbitration.

Collective bargaining has established the framework for employers and their employees to find solutions to their own problems. This procedure should continue and we should not dilute it with binding arbitration. The Alaska Statutes clearly give the board the bargaining responsibility:

- (1) "Each city, borough and regional school board shall negotiate with its certificated employees in good faith on matters pertaining to their employment and the fulfillment of their professional duties."
(A.S. 14.20.550.)
- (2) "Nothing in sections 550-600 of this chapter may be construed as an abrogation or delegation of the legal responsibilities, powers, and duties of the School Board including its right to make final decisions on policies." (A.S. 14.20.610)

Our State constitution states in Article 1, Section 2. "all political power is inherent in the people. All government originates with the people, is founded upon their will only, and is instituted solely for the good of the people as a whole."

We believe that binding arbitration is incompatible with our democratic system and further that it is an unconstitutional delegation of the school boards authority to a third party who is not responsible or accountable to the public.

Introduced: 1/25/85
Referred: Labor & Commerce, Health,
Education & Social Services and
Finance

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

1 IN THE HOUSE

2 HOUSE BILL NO. 130

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to educational employees' collective
7 bargaining agreements; and providing for an effective
8 date."

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

10 * Section 1. AS 14.20 is amended by adding a new section to article 6
11 to read:

12 Sec. 14.20.540. DECLARATION OF POLICY. The legislature finds
13 that public school employees are entitled to participate in formulat-
14 ing decisions that pertain to their employment and to the fulfillment
15 of their professional duties. Effective and responsive administration
16 of public schools is most readily obtained through the negotiation of
17 labor agreements that incorporate both managerial and employee per-
18 spectives. The legislature further finds that providing for harmoni-
19 ous and cooperative relations between school boards and employee orga-
20 nizations will promote public education in the state. Accordingly,
21 the legislature declares that it is in the best interests of the state
22 to guarantee educational employees the opportunity to form employee
23 organizations and to negotiate with respect to the terms of their
24 employment.

25 * Sec. 2. AS 14.20.550 is amended to read:

26 Sec. 14.20.550. NEGOTIATION WITH [CERTIFICATED] EMPLOYEES. Each
27 city, borough and regional school board, shall negotiate with its
28 [CERTIFICATED] employees in good faith on matters pertaining to their
29 employment and the fulfillment of their professional duties.

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

2 (a) Negotiations between the [CERTIFICATED] employees of the
3 regional educational attendance areas and the respective regional
4 school boards must [SHALL] be conducted by one team representing all
5 the [CERTIFICATED] employees[, ONE TEAM REPRESENTING ALL THE CERTIFI-
6 CATED ADMINISTRATIVE PERSONNEL IF THEY HAVE JOINED TOGETHER TO NEGOTI-
7 ATE INDEPENDENTLY AS PROVIDED IN AS 14.20.560(f),] and one team repre-
8 senting all the participating regional school boards. If administra-
9 tive personnel or noncertificated employees have joined together to
10 negotiate independently as provided in AS 14.20.560(f), a team repre-
11 senting the independent employee organizations shall participate in
12 the negotiations.

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

14 Sec. 14.20.560. NEGOTIATING UNIT. (a) The educational employ-
15 ees labor relations agency shall, in order to assure to employees the
16 fullest freedom in exercising the rights provided under AS 14.20.-
17 540 -- 14.20.610, decide in each case the unit appropriate for the
18 purposes of negotiation, based on such factors as community of inter-
19 est, wages, hours, and other working conditions of the employees in-
20 volved, the history of negotiating, and the desires of the employees.
21 Negotiating units must be as large as is reasonable; unnecessary
22 fragmenting of the units must be avoided.

23 (b) Upon petition for certification by 30 percent of the employ-
24 ees in a proposed negotiating unit, and if the educational employees
25 labor relations agency has reasonable cause to believe that a question
26 of representation exists, the agency shall provide for an appropriate
27 hearing after reasonable notice. If the educational employees labor
28 relations agency finds that there is a question of representation,
29 that agency shall direct an election by secret ballot to determine

1 whether, or by which organization, the employees desire to be repre-
2 sented, and shall certify the results of the election. This section
3 does not prohibit the waiving of hearings by stipulation for the
4 purpose of a consent election or voluntary certification in conformity
5 with the regulations of the educational employees labor relations
6 agency, or an election in a negotiating unit agreed upon by the
7 parties. The educational employees labor relations agency shall
8 determine who is eligible to vote in an election and shall adopt
9 regulations governing the election. In an election in which none of
10 the choices on the ballot receives a majority of the votes cast, a
11 runoff election must be conducted. The ballot in the runoff election
12 must provide for selection between the two choices receiving the
13 largest and the second largest number of valid votes cast in the
14 election. If an organization receives the majority of the votes cast
15 in the election, it must be certified by the educational employees
16 labor relations agency as the exclusive representative of all the
17 employees in the negotiating unit.

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

21 (d) This section does not prohibit recognition of an organiza-
22 tion as the exclusive representative upon mutual consent of the
23 parties.

24 (e) An election may only be directed by the educational employ-
25 ees labor relations agency in a negotiating unit in which there is in
26 force a valid collective bargaining agreement during the 90-day period
27 preceding the expiration date of the agreement. However, an agreement
28 may not bar an election upon petition of persons in the negotiating
29 unit but not parties to the agreement if more than three years have

1 elapsed since the execution of the agreement or the last timely renew-
2 al, whichever was later.

3 (f) This section does not prohibit noncertificated employees or
4 certificated administrative personnel from choosing by secret ballot
5 to negotiate independently of other personnel. If noncertificated or
6 certificated administrative personnel seek to negotiate independently
7 of other certificated employees, the educational employees labor
8 relations agency shall review the submitted representation petition
9 and, if 30 percent of the employees in a proper negotiating unit sign
10 the petition, the agency shall conduct a representation election.

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

12 Sec. 14.20.565. NEGOTIATION MEETINGS. (a) A school board
13 shall, upon the written request of an employee bargaining organiza-
14 tion, meet with the representative of the organization within 20 days
15 after the request, at a time and place to be agreed upon. In the same
16 manner, representatives of an employee bargaining organization are
17 required to meet with a school board or its representatives within 20
18 days after receiving a written request.

19 (b) Notwithstanding AS 44.62.310, a negotiation meeting may be
20 held in executive session upon agreement of both parties, but all
21 final agreements must be made at a public meeting of the school board.

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

23 (a) Upon [THE] written request for mediation by an employee bar-
24 gaining agency or a school board, and upon certification by the re-
25 questing party that the parties cannot agree on an independent private
26 mediator and that good faith negotiations have terminated in an im-
27 passe, the following procedure must be followed [OCCURS]:

28 (1) Within seven days after [OF] the certification, the
29 requesting party shall ask the United States Federal Mediation and

1 Conciliation Service to serve as the agency to resolve the dispute.
2 The requesting party shall notify the educational employees labor
3 relations agency that the parties have requested a mediator.

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

8 (3) [WITHIN 30 DAYS OF THE INITIAL MEETING OF THE PARTIES
9 TO THE DISPUTE THE MEDIATOR SHALL HAVE REDUCED ALL THE AGREED TERMS,
10 CONDITIONS AND OTHER ITEMS TO A WRITTEN CONTRACT. IF MUTUALLY AGREED
11 THE PERIOD FOR REPORTING THE CONTRACT TO BOTH PARTIES MAY BE EXTEND-
12 ED.]

13 (4) Each party to the dispute may select a team [OF NOT
14 MORE THAN FIVE PERSONS] to present the evidence, thinking, and posi-
15 tion of the group they represent[,] to the mediator.

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

17 Sec. 14.20.580. CONTINUED IMPASSE. The mediator shall notify
18 the educational employees labor relations agency when the parties
19 jointly agree, or when the mediator independently determines, that
20 further mediation would not promote resolution of the dispute. Fol-
21 lowing mediation, the parties shall observe a 10-day cooling-off
22 period.

23 * Sec. 8. AS 14.20 is amended by adding a new section to read:

24 Sec. 14.20.585. ARBITRATION. (a) If the educational employees
25 labor relations agency is notified under AS 14.20.580 that further
26 mediation will not promote resolution of the dispute, the parties
27 shall submit to last-best-offer mediated arbitration. A collective
28 bargaining agreement between a board and an employee group must in-
29 clude a procedure to promptly select an arbitrator. If the parties

1 are unable to agree on a procedure for the selection of an arbitrator,
2 the educational employees labor relations agency shall direct the
3 parties to use the services of and comply with the procedures of the
4 United States Federal Mediation and Conciliation Service or the Ameri-
5 can Arbitration Association in the selection of an arbitrator. An
6 arbitrator selected under this subsection must be a resident of this
7 state.

8 (b) In last-best-offer mediated arbitration under this section,
9 each party shall submit a final offer on all issues in dispute. Each
10 party shall submit to the arbitrator oral or written evidence in sup-
11 port of its position, and must be given an opportunity to respond to
12 the presentation of evidence by the other party. The arbitrator may
13 propose compromises to points in dispute. At the request of either
14 party, or on the motion of the arbitrator, the arbitrator may conduct
15 a public meeting for the purpose of allowing the parties to present
16 and explain their positions and final offers. The arbitrator shall
17 allow each party to revise its last best offer before final submission
18 to the arbitrator for decision.

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

23 (d) The parties shall share the cost of the arbitrator equally.

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

25 Sec. 14.20.590. GRIEVANCE PROCEDURES. Negotiations agreements
26 executed after July 1, 1975, must [SHALL] define "grievances" and must
27 provide for grievance procedures [FOR THE CERTIFICATED STAFF]. The
28 grievance procedures must [SHALL] provide that the final step in the
29 procedure is [SHALL BE] binding arbitration. The negotiations agreeme

1 must [SHALL] provide a method for the selection of an arbitrator to
2 resolve grievances.

3 * Sec. 10. AS 14.20.600 is amended to read:

4 Sec. 14.20.600. INDIVIDUAL RIGHTS [CASES]. (a) Nothing in
5 AS 14.20.550 -- 14.20.590 prohibits an employee from addressing a
6 school board, as an individual, through the regular procedures of the
7 school board for hearing individual cases.

8 (b) The educational employees labor relations agency may adopt
9 regulations setting out procedures consistent with the purposes of
10 AS 14.20.540 -- 14.20.610 to safeguard the rights of nonassociation of
11 employees having bona fide religious convictions.

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

13 Sec. 14.20.605. EDUCATIONAL EMPLOYEES LABOR RELATIONS AGENCY.

14 (a) There is established in the Department of Administration an
15 educational employees labor relations agency that consists of five
16 members. The three members of the state personnel board (AS 39.25.-
17 060) are members of the educational employees labor relations agency.
18 The governor shall appoint two additional members to the agency. The
19 two gubernatorial appointees to the educational employees labor re-
20 lations agency serve at the pleasure of the governor.

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

24 (c) The educational employees labor relations agency may employ
25 staff assistance as it considers necessary to implement the provisions
26 of AS 14.20.540 -- 14.20.610.

27 Sec. 14.20.606. POWER TO IMPLEMENT NEGOTIATIONS. (a) The
28 educational employees labor relations agency shall perform the func-
29 tions described in AS 23.40.120 -- 23.40.180 to carry out the

1 provisions of AS 14.20.540 -- 14.20.610.

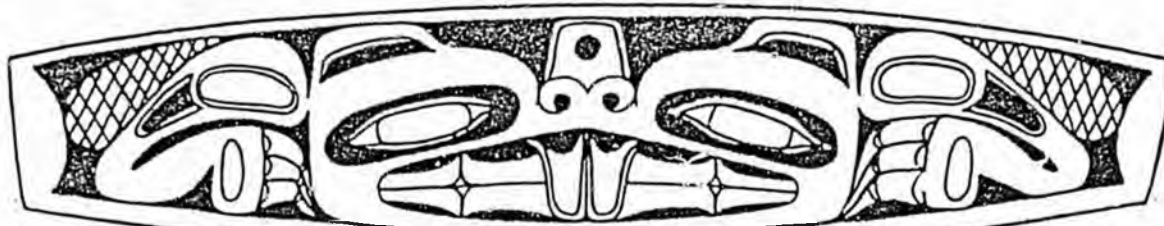
2 (b) The prohibition of unfair labor practices, as described in
3 AS 23.40.110, applies to a school board and an employee organization.

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

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

10 * Sec. 13. This Act does not modify or terminate a negotiating unit or
11 agreement in existence on the effective date of this Act.

12 * Sec. 14. This Act takes effect immediately in accordance with AS 01.-
13 10.070(c).



ASSOCIATION OF ALASKA SCHOOL BOARDS
326 FOURTH ST., SUITE 204 • JUNEAU, ALASKA 99801 • PHONE 586-1083

BINDING ARBITRATION

The Association of Alaska School Boards has, for years, maintained strong opposition to the concept of binding arbitration in the collective bargaining process not primarily because binding arbitration is a bad process for the settlement of disputes, but because of the manner in which the law is written. AASB has grave concerns that the proposed manner of implementation of binding arbitration could cause grave inroads into the instructional processes of school districts.

Alaskans are really "babes in the woods" when it comes to binding arbitration. The general assumption is that either we have it or we don't have it. If we have it, we assume that it should merely be added onto the laws we currently have. It should apply to what now is currently negotiated. This notion is wrong.

The problem is that only recently have we even recognized that there needs to be a definition as to what is negotiable. Our state statutes essentially make everything negotiable and the Alaska Supreme Court has limited this to some degree. However, it is still very much the case that collective bargaining in Alaska can and does involve policy as well as working conditions, wages, and hours. Because binding arbitration removes final decisions from the employer and the employees, it would appear to me that it is premature for us to decide with one swoop to grant binding arbitration to teachers before we determine what it is that we are willing to submit to this process.

Binding arbitration legislation in other states provides a wide variety of options for Alaskans to seek guidance from. Some examples are:

Wisconsin

Both parties must agree to binding arbitration. If the parties do not agree, then employees have the right to strike with advance notice.

Maine

Binding arbitration only on non-money items. Advisory arbitration on all others.

Iowa

Binding arbitration on specific categories of items and clear employer

rights section and clear delineation of:

- mandatory items of bargaining
- optional items of bargaining of the parties agree
- prohibited items of bargaining

New York

Strong limitation on items submitted to arbitration and strike prohibition measures, including prohibiting dues collection by employers for strikers and double pay deductions for every day on the picket line.

Sound legislation dealing with binding arbitration should create a balance between the needs and rights of management and those of labor. Management needs a rights statement that clearly spells out the limits to which binding arbitration can infringe upon the responsibility of a school district to make management decisions. The responsibility of the school district is to provide a quality education for every child. Binding arbitration processes should not infringe upon this responsibility.

The Alaskan efforts at binding arbitration correct none of this. Under this Alaskan version, both teachers and students will ultimately suffer.

FY 84, if Governor Sheffield's proposed level of fiscal support to education is sustained in the legislature, will be the first year in over twelve years where there has been the same level of funding for two years in a row, yet school districts with continuing teacher negotiated agreements will be increasing the dollar expenditure for teacher salaries by something in excess of seven to ten percent.

With the state contributing 100% of the operating funds for REAA's and similarly high figures in the majority of city and borough districts, I find it difficult to comprehend the logic of limiting the operating funds to districts on the one hand and providing binding arbitration on the other. The results of this action are obvious: A larger portion of education dollars will go to teachers while programs and kids will suffer.

AASB's opposition to binding interest arbitration is further substantiated by the fact that, in our opinion, current Alaskan statutes regarding the employment status of teachers are not equipped to provide the implementation of a binding arbitration law. Specifically, should a binding settlement be awarded with sufficient financial impact to cause a reduction in force, we find ourselves in conflict with the law. In order to guarantee employer rights to lay off staff resulting from insufficient funds, the following statutes must be revised:

- Sec. 14.20.140 Notification of Non-retention
- Sec. 14.20.145 Automatic Reemployment
- Sec. 14.20.175 Nonretention
- Sec. 14.20.180 Hearings
- Sec. 14.20.205 Judicial Review

Failure to act on this extremely important problem would be the crux of our opposition to binding arbitration. Failure to provide the ability to reduce certificated staff numbers as a means of restructuring the resource allocation of the district makes all kinds of discriminatory and academically unsound practices necessary. We feel arbitration awards that would require a reduction of classified staff while certificated personnel are protected from the same fate is discriminatory. To protect certificated staff from lay off and thus force reduction in expenditures into the textbook purchase, student activities or maintenance of facilities could be educationally unsound. Binding arbitration, under current legislative proposals will force these conditions upon us eventually.

Given these conditions, elected public officials, the school board, will be prohibited from performing their public charge; that of providing a quality education for every child.

Alternatives to binding arbitration and even alternatives to current negotiating practices, INCLUDING BINDING ARBITRATION, have been proposed in recent years by AASB with little or no success. Teacher unions have argued that the present process is time consuming yet proposals designed to speed up the process have fallen on deaf ears. Proposals to give mediators extra powers over the parties of interest for the purpose of affecting settlements were received with disinterest. Proposals designed after months of serious consideration by a blue ribbon commission created by the Governor have been disregarded. These proposals included the process of binding arbitration on all financial matters. It would appear that only the simplistic approach of adding to what is already in law will be acceptable to teacher groups.

The newest legislative attempt to provide binding arbitration would pattern a process exactly after the process now in effect for public safety personnel in the state. Under that process there is little definition of what is bargainable or what goes to arbitration. There is no built in incentive for negotiating or remaining at the table rather than going to impasse and arbitration. Alaska now has considerable data and a historical perspective relative to the operation of this process with the police negotiations. It has been determined that the collective bargaining process with those groups has been chilled considerably; that the parties spend considerably less time seriously bargaining, and have gone to arbitration every time but once since the law was enacted. It can also be said that, over the long haul, arbitration has increased the salaries and economic benefits of those involved more than increases gained by groups not utilizing arbitration.

Not until the proponents of binding arbitration seriously consider a full fledged mediation process, fact finding complete with the publication of these reports and the limitation of what it is that can go to the arbitrator and other positions expressed in this paper, will AASB be interested in discussing the merits of binding arbitration in teacher collective bargaining laws for Alaska.



NEA - ALASKA

AFFILIATED WITH THE NATIONAL EDUCATION ASSOCIATION

Robert C. Manners
Executive Secretary
Juneau Office

Robert C. Cooksey
Deputy Executive Secretary
Juneau Office

James D. Aller
Field Staff
Juneau Office

Charles L. O'Connell
Deputy Executive Secretary
Anchorage Office

Dianne Anderson
Field Staff
Anchorage Office

Steve Pulkkinen
Field Staff
Anchorage Office

Mary Ann Eininger
Deputy Executive Secretary
Fairbanks Office

JUNEAU OFFICE
147 SOUTH FRANKLIN #207
JUNEAU, ALASKA 99801
PHONE (907) 586-3090

ANCHORAGE REGIONAL OFFICE
1411 WEST 33rd
ANCHORAGE, ALASKA 99503
PHONE: (907) 274-0536

FAIRBANKS REGIONAL OFFICE
825 COLLEGE ROAD
FAIRBANKS, ALASKA 99701
PHONE: (907) 456-4435

February, 1983

NEA-ALASKA STATEMENT RE: Problems attendant to AS 14.20.550-610, Negotiations with Certificated Employees in Public Schools.

The public school teacher bargaining law is in urgent need of revision and reform.

Since 1970 Alaska public school teachers have had the right to negotiate on matters pertaining to their employment and the fulfillment of their professional duties under the above referenced law.

While the process has generally served the interests of teachers and school boards the law has a number of deficiencies, some of which have been particularly troublesome in recent years. The three most prominent are:

- 1) The law does not define an orderly dispute settlement procedure in the event the parties are unable to reach agreement in negotiations.
- 2) As a result of the above, in many school districts the collective bargaining process is being substantially lengthened, in some cases taking well over a year. This burns up valuable time and energy and creates needless frustration.
- 3) The most serious problem is the absence of any provision which establishes finality to the process.

The 1979 Anchorage teacher strike brought dramatic emphasis to all of the problems surrounding the current teacher negotiations law. In its August 1982, decision the Alaska Supreme Court held that public school teachers in Alaska do not have the right to strike.

differ from Governor #B 130

p. 4, line 16 - employees released from work day to negotiate

p. 5, line 13 - Gov section - "cooling off" period

p. 6, line 9 - judicial review to modify/correct

p. 5, line 21 - Gov - arbitrator must be state resident

p. 7, line 4 - Bd. membership - labor relations agency vs. personnel board

p. 5, line 15 - parties may call for arbitration

Gov - parties must submit to arbitration

p. 5, line 17 - total pkg. arbitration (Gov.) vs. item. by item

14-0664
Cramer
2/15/85

Sander

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

IN THE SENATE

BY FAHRENKAMP, RODEY
AND ZHAROFF

Both parties have to ~~sub~~ agree to arbitration (Strike)

Pts. arbitrator must consider.

SENATE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to educational employees' collective bargaining agreements; and providing for an effective date."

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

* Section 1. AS 14.20 is amended by adding a new section to article 6 to read:

Sec. 14.20.540. DECLARATION OF POLICY. The legislature finds that public school employees are entitled to participate in formulating decisions that pertain to their employment and to the fulfillment of their professional duties. Effective and responsive administration of public schools is most readily obtained through the negotiation of labor agreements that incorporate both managerial and employee perspectives. The legislature further finds that providing for harmonious and cooperative relations between school boards and employee organizations will promote public education in the state. Accordingly, the legislature declares that it is in the best interests of the state to guarantee educational employees the opportunity to form employee bargaining organizations and to negotiate with respect to the terms of their employment.

* Sec. 2. AS 14.20.550 is amended to read:

Sec. 14.20.550. NEGOTIATION WITH [CERTIFICATED] EMPLOYEES. Each city, borough and regional school board, shall negotiate with its [CERTIFICATED] employees in good faith on matters pertaining to their employment and the fulfillment of their professional duties.

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

2 (a) The employees [NEGOTIATIONS BETWEEN THE CERTIFICATED EM-
3 PLOYEES] of [THE] regional educational attendance areas and the re-
4 spective regional school boards shall conduct negotiations [BE CON-
5 DUCTED] by one team representing [ALL] the [CERTIFICATED] employees [,
6 ONE TEAM REPRESENTING ALL THE CERTIFICATED ADMINISTRATIVE PERSONNEL IF
7 THEY HAVE JOINED TOGETHER TO NEGOTIATE INDEPENDENTLY AS PROVIDED IN
8 AS 14.20.560(f),] and one team representing all the participating
9 regional school boards. If administrative personnel or noncertif-
10 icated employees have joined together to negotiate independently as
11 provided in AS 14.20.560(f), a team representing each of the employee
12 bargaining organizations shall participate in the negotiations.

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

14 Sec. 14.20.560. NEGOTIATING UNIT. (a) The educational employ-
15 ees labor relations agency shall decide in each case, in order to
16 assure to employees the fullest freedom in exercising the rights pro-
17 vided under AS 14.20.540 - 14.20.610, the unit appropriate for the
18 purposes of negotiation, based on such factors as community of inter-
19 est, wages, hours, and other working conditions of the employees in-
20 volved, the history of negotiating, and the desires of the employees.
21 Negotiating units must be as large as is reasonable; the agency shall
22 avoid unnecessary fragmentation^{ing} of units.

23 (b) Upon petition for certification by 30 percent of the employ-
24 ees in a proposed negotiating unit, and if the educational employees
25 labor relations agency has reasonable cause to believe that a question
26 of representation exists, the agency shall provide for an appropriate
27 hearing after reasonable notice. If the ^{educ. employees labor relations} agency finds that there is a
28 question of representation, the agency shall direct an election by
29 secret ballot to determine whether, or by which bargaining

1 organization, the employees desire to be represented, and shall cer-
2 tify the results of the election. The parties may, in accordance with
3 agency regulations, waive a hearing for a consent election, voluntary
4 certification, or an election in a negotiating unit agreed upon by the
5 parties. The agency shall determine the persons eligible to vote in
6 an election and shall adopt regulations governing the election. In an
7 election in which none of the choices on the ballot receives a ma-
8 jority of the votes cast, the agency shall conduct a runoff election.
9 The ballot in the runoff election shall provide for selection between
10 the two choices receiving the largest and the second largest number of
11 valid votes cast in the election. If a bargaining organization re-
12 ceives the majority of the votes cast in the election, the agency
13 shall certify the organization as the exclusive representative of all
14 the employees in the negotiating unit.

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

18 (d) The parties may, by mutual consent, recognize an organiza-
19 tion as the exclusive representative.

20 (e) In a negotiating unit in which there is in force a valid
21 collective bargaining agreement, the agency may direct an election
22 only during the 90-day period preceding the expiration date of the
23 agreement. However, an agreement does not bar an election upon peti-
24 tion of persons in the negotiating unit but not parties to the agree-
25 ment if more than three years have elapsed since the execution of the
26 agreement or the last timely renewal, whichever was later.

27 (f) Noncertificated employees or certificated administrative
28 personnel may choose by secret ballot to negotiate independently of
29 other personnel. If noncertificated or certificated administrative

1 personnel seek to negotiate independently, the agency shall review the
2 submitted representation petition and, if 30 percent of the employees
3 in a proper negotiating unit sign the petition, the agency shall
4 conduct a representation election.

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

6 Sec. 14.20.565. NEGOTIATION MEETINGS. (a) A school board
7 shall, upon the written request of an employee bargaining organiza-
8 tion, meet with the representative of the organization within 20 days
9 after the request, at a time and place to be agreed upon. In the same
10 manner, representatives of an employee bargaining organization shall
11 meet with a school board or its representatives within 20 days after
12 receiving a written request.

13 (b) Notwithstanding AS 44.62.310, a negotiation meeting may be
14 held in executive session upon agreement of both parties, but all
15 final agreements must be made at a public meeting of the school board.

16 (c) When negotiation sessions are conducted during the employee
17 *added* workday, members of the employee negotiations team shall be released
18 from work assignments without loss of pay or benefits.

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

20 (a) Upon [THE] written request for mediation by an employee bar-
21 gaining organization [AGENCY] or a school board, and upon certifica-
22 tion by the requesting party that the parties cannot agree on an
23 independent private mediator and that good faith negotiations have
24 terminated in an impasse, the following procedure shall be followed
25 [OCCURS]:

26 (1) Within seven days after [OF] the certification, the
27 requesting party shall ask the United States Federal Mediation and
28 Conciliation Service to serve as the agency to resolve the dispute.
29 The requesting party shall notify the educational employees labor

1 relations agency that the parties have requested a mediator.

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

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

10 (4) Each party to the dispute shall [MAY] select a team
11 [OF NOT MORE THAN FIVE PERSONS] to present the evidence, thinking, and
12 position of the group they represent [,] to the mediator.

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

14 Sec. 14.20.580. ARBITRATION. (a) If mediation fails to produce
15 an agreement on all of the issues in dispute, either party may call
16 for arbitration. When arbitration is requested, the parties shall
17 submit to item ^{not in Gov.} by item, last-best-offer arbitration.

18 (b) ^{C.B.A. must include procedure to select arbitrator.} If the parties are unable to agree on a procedure for the
19 selection of an arbitrator, the educational employees labor relations
20 agency shall direct the parties to use the services of and comply with
21 the procedures of the American Arbitration Association. ^(Arbitrator must be state resident.)

22 (c) In last-best-offer ^{mediated} arbitration under this section, "each
23 party shall submit a final offer on each issue in dispute. Each party
24 shall ^{-Gov} may submit to the arbitrator oral or written evidence in support of
25 its position, and shall be given an opportunity to respond to the
26 presentation of evidence by the other party. The arbitrator may
27 propose compromises to points in dispute. ^{at request of either party or on motion of arbitrator} The arbitrator may conduct
28 a public meeting ^{Gov: to allow parties to present & explain positions & final offers.} to take testimony from any interested person on the
29 issues in dispute. The arbitrator shall allow each party to revise

1 its last best offer on each issue before final submission to the
2 arbitrator for decision.

3 (d) The arbitrator shall, without modification, adopt the last
4 best offer of one of the parties on each issue ^{not in Gov.} in dispute, and shall
5 issue a final and binding decision not more than 10 days after the
6 parties have presented their last best offers.

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

8 * Sec. 8. AS 14.20 is amended by adding a new section to read:

9 *not in Gov.* Sec. 14.20.584. JUDICIAL REVIEW. On application of a party, the
10 superior court under AS 09.43.110 - 09.43.130 shall confirm, vacate,
11 modify or correct an award.

12 * Sec. 9. AS 14.20.590 is amended to read:

13 Sec. 14.20.590. GRIEVANCE PROCEDURES. Negotiations agreements
14 must [EXECUTED AFTER JULY 1, 1975 SHALL] define "grievances" and
15 provide for grievance procedures [FOR THE CERTIFICATED STAFF]. The
16 grievance procedures must [SHALL] provide that the final step in the
17 procedure is [SHALL BE] binding arbitration. The negotiations agreement
18 must [SHALL] provide a method for the selection of an arbitrator to
19 resolve grievances.

20 * Sec. 10. AS 14.20.600 is amended to read:

21 Sec. 14.20.600. INDIVIDUAL RIGHTS [CASES]. (a) Nothing in
22 AS 14.20.550 - 14.20.590 prohibits an employee from addressing a
23 school board, as an individual, through the regular procedures of the
24 school board for hearing individual cases.

25 (b) The educational employees labor relations agency shall adopt
26 regulations setting out procedures consistent with the purposes of
27 AS 14.20.540 - 14.20.610 to safeguard the rights of nonassociation of
28 employees having bona fide religious convictions.

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

1 Sec. 14.20.605. EDUCATIONAL EMPLOYEES LABOR RELATIONS AGENCY.

2 (a) There is established in the Department of Administration an
3 educational employees labor relations agency that consists of five
4 members. The three members of the state ^{state personnel board AS 39.25.060} labor relations agency estab-
5 lished under AS ^{PERA} 23.40 are members of the educational employees labor
6 relations agency. The governor shall appoint two additional members
7 to the agency. The two gubernatorial appointees to the educational
8 employees labor relations agency serve at the pleasure of the gover-
9 nor.

10 (b) Members of the educational employees labor relations agency
11 receive no compensation for their services, but are entitled to per
12 diem and travel expenses authorized for boards and commissions under
13 AS 39.20.180.

14 (c) The educational employees labor relations agency may employ
15 staff assistance as it considers necessary to implement the provisions
16 of AS 14.20.540 - 14.20.610.

17 Sec. 14.20.606. POWER TO IMPLEMENT NEGOTIATIONS. (a) The
18 educational employees labor relations agency shall perform the func-
19 tions described in AS 23.40.120 - 23.40.180 to carry out the provi-
20 sions of AS 14.20.540 - 14.20.610.

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

24 * Sec. 12. AS 14.20.610 is amended to read:

25 Sec. 14.20.610. LEGAL RESPONSIBILITIES OF BOARDS. Nothing in
26 AS 14.20.540 - 14.20.600 [AS 14.20.550 - 14.20.600] may be construed
27 as an abrogation or delegation of the legal responsibilities, powers,
28 and duties of the school board [INCLUDING ITS RIGHT TO MAKE FINAL
29 DECISIONS ON POLICIES].

in Gov.
educational

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

* Sec. 13. This Act does not modify or terminate a negotiating unit or agreement in existence on the effective date of this Act.

* Sec. 14. This Act takes effect immediately in accordance with AS 01.-10.070(c).

BILL = CSSB78(HESS)AM
ROOT = 380078
BILL ROOT:
BILL NUMBER: SB0078
CROSS REFERENCE: CSSB78(HESS)AM
INTRODUCED:
REFERRED: 5/11/83
FINANCE
ORIG SPONSOR: KERTTULA, V. FISCHER,
JOSEPHSON, ET AL
SPONSOR: BY THE HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE
BILL HEADING:

IN THE SENATE
CS FOR SENATE BILL NO. 78 (HESS) AM
IN THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE - SECOND SESSION
A BILL

TITLE: FOR AN ACT ENTITLED:
"AN ACT RELATING TO TEACHERS' COLLECTIVE BARGAINING
AGREEMENTS; AND PROVIDING FOR AN EFFECTIVE DATE."
TEXT: BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:
* SECTION 1. AS 14.20.15 IS AMENDED BY ADDING A NEW SECTION
TO ARTICLE 6 TO READ:

SEC. 14.20.540. DECLARATION OF POLICY. THE
LEGISLATURE FINDS THAT CERTIFICATED PUBLIC SCHOOL EMPLOYEES
ARE ENTITLED TO PARTICIPATE IN FORMULATING DECISIONS THAT
PERTAIN TO THEIR EMPLOYMENT AND TO THE FULFILLMENT OF
THEIR PROFESSIONAL DUTIES. EFFECTIVE AND RESPONSIVE
ADMINISTRATION OF PUBLIC SCHOOLS IS MOST READILY OBTAINED
THROUGH THE NEGOTIATION OF LABOR AGREEMENTS THAT
INCORPORATE BOTH MANAGERIAL AND EMPLOYEE PERSPECTIVES.
THE LEGISLATURE FURTHER FINDS THAT PROVIDING FOR
HARMONIOUS AND COOPERATIVE RELATIONS BETWEEN SCHOOL
BOARDS AND EMPLOYEE ORGANIZATIONS WILL PROMOTE PUBLIC
EDUCATION IN THE STATE. ACCORDINGLY, THE LEGISLATURE
DECLARES THAT IT IS IN THE BEST INTEREST OF THE STATE TO
GUARANTEE CERTIFICATED PUBLIC SCHOOL EMPLOYEES THE
OPPORTUNITY TO FORM EMPLOYEE ORGANIZATIONS AND TO
NEGOTIATE WITH RESPECT TO THE TERMS AND CONDITIONS OF THEIR
EMPLOYMENT.

* SEC. 2. AS 14.20.550 IS AMENDED TO READ:
EMPLOYEES. (A) EACH CITY, BOROUGH AND REGIONAL SCHOOL
BOARD, SHALL NEGOTIATE WITH ITS CERTIFICATED EMPLOYEES IN
GOOD FAITH ON MATTERS PERTAINING TO THEIR EMPLOYMENT AND
THE FULFILLMENT OF THEIR PROFESSIONAL DUTIES.
(B) IN AS 14.20.540 - 14.20.610,
"CERTIFICATED EMPLOYEES" INCLUDES TEACHERS, COUNSELORS,

PRINCIPALS, ASSISTANT PRINCIPALS, AND OTHER CERTIFICATED
ADMINISTRATIVE PERSONNEL, BUT DOES NOT INCLUDE
SUPERINTENDENTS, ASSISTANT SUPERINTENDENTS, AND OTHER
CERTIFICATED EXECUTIVE ADMINISTRATIVE PERSONNEL WHOSE
EDUCATIONAL EMPLOYEES LABOR RELATIONS AGENCY DETERMINES TO
BE INAPPROPRIATE MEMBERS OF AN EMPLOYEE NEGOTIATING UNIT.

* SEC. 3. AS 14.20.560 IS REPEALED AND REENACTED TO
READ:
SEC. 14.20.560. NEGOTIATING UNIT. (A) THE
EDUCATIONAL EMPLOYEES LABOR RELATIONS AGENCY SHALL DECIDE
IN EACH CASE, IN ORDER TO ASSURE TO EMPLOYEES THE
FULLEST FREEDOM IN EXERCISING THE RIGHTS PROVIDED UNDER
AS 14.20.540 - 14.20.610. THE UNIT APPROPRIATE FOR THE
PURPOSES OF NEGOTIATION, BASED ON SUCH FACTORS AS COMMUNITY
OF INTEREST, WAGES, HOURS, AND OTHER WORKING CONDITIONS OF
THE EMPLOYEES INVOLVED, THE HISTORY OF NEGOTIATING, AND
THE DESIRES OF THE EMPLOYEES. NEGOTIATING UNITS SHALL BE
AS LARGE AS IS REASONABLE AND UNNECESSARY FRAGMENTING
SHALL BE AVOIDED.

(B) UPON PETITION FOR CERTIFICATION BY 25 PERCENT
OF THE EMPLOYEES IN A PROPOSED NEGOTIATING UNIT AND IF THE
EDUCATIONAL EMPLOYEES LABOR RELATIONS AGENCY HAS REASONABLE
CAUSE TO BELIEVE THAT A QUESTION OF REPRESENTATION EXISTS,
THE AGENCY SHALL PROVIDE FOR AN APPROPRIATE HEARING UPON
DUE NOTICE. IF THE EDUCATIONAL EMPLOYEES LABOR RELATIONS
AGENCY FINDS THAT THERE IS A QUESTION OF REPRESENTATION,
THE EDUCATIONAL EMPLOYEES LABOR RELATIONS AGENCY SHALL
DIRECT AN ELECTION BY SECRET BALLOT TO DETERMINE WHETHER
OR BY WHICH ORGANIZATION THE EMPLOYEES DESIRE TO BE
REPRESENTED AND SHALL CERTIFY THE RESULTS OF THE ELECTION.
THIS SECTION DOES NOT PROHIBIT THE WAIVING OF HEARINGS BY
STIPULATION FOR THE PURPOSE OF A CONSENT ELECTION OR
VOLUNTARY CERTIFICATION IN CONFORMITY WITH THE REGULATIONS
OF THE EDUCATIONAL EMPLOYEES LABOR RELATIONS AGENCY OR AN
ELECTION IN A NEGOTIATING UNIT AGREED UPON BY THE PARTIES.
THE EDUCATIONAL EMPLOYEES LABOR RELATIONS AGENCY SHALL
DETERMINE WHO IS ELIGIBLE TO VOTE IN AN ELECTION AND SHALL
ADOPT RULES GOVERNING THE ELECTION. IN AN ELECTION IN
WHICH NONE OF THE CHOICES ON THE BALLOT RECEIVES A
MAJORITY OF THE VOTES CAST, A RUNOFF ELECTION SHALL BE
CONDUCTED. THE BALLOT IN THE RUNOFF ELECTION SHALL PROVIDE
FOR SELECTION BETWEEN THE TWO CHOICES RECEIVING THE
LARGEST AND THE SECOND LARGEST NUMBER OF VALID VOTES CAST
IN THE ELECTION. IF AN ORGANIZATION RECEIVES THE MAJORITY
OF THE VOTES CAST IN THE ELECTION, IT SHALL BE CERTIFIED BY
THE EDUCATIONAL EMPLOYEES LABOR RELATIONS AGENCY AS THE
EXCLUSIVE REPRESENTATIVE OF ALL THE EMPLOYEES IN THE
NEGOTIATING UNIT.

(C) AN ELECTION MAY NOT BE HELD IN A NEGOTIATING
UNIT OR IN A SUBDIVISION OF A NEGOTIATING UNIT IF A VALID
ELECTION HAS BEEN HELD WITHIN THE PRECEDING 12 MONTHS.
(D) THIS SECTION DOES NOT PROHIBIT RECOGNITION OF
AN ORGANIZATION AS THE EXCLUSIVE REPRESENTATIVE BY A BOARD
BY MUTUAL CONSENT.
(E) AN ELECTION MAY NOT BE DIRECTED BY THE
EDUCATIONAL EMPLOYEES LABOR RELATIONS AGENCY IN A

NEGOTIATING UNIT IN WHICH THERE IS IN FORCE A VALID
AGREEMENT, EXCEPT DURING THE 90-DAY PERIOD PRECEDING THE
EXPIRATION DATE OF THE AGREEMENT. HOWEVER, AN AGREEMENT MAY
NOT BAR AN ELECTION UPON PETITION OF PERSONS IN THE
NEGOTIATING UNIT BUT NOT PARTIES TO THE AGREEMENT IF MORE
THAN THREE YEARS HAVE ELAPSED SINCE THE EXECUTION OF THE
AGREEMENT OR THE LAST TIMELY RENEWAL, WHICHEVER WAS LATER.
(F) THIS SECTION DOES NOT PROHIBIT CERTIFICATED
ADMINISTRATIVE PERSONNEL GROUPS FROM CHOOSING BY SECRET
BALLOT TO NEGOTIATE INDEPENDENTLY OF OTHER PERSONNEL. IF
CERTIFICATED ADMINISTRATIVE PERSONNEL SEEK TO NEGOTIATE
INDEPENDENTLY OF OTHER CERTIFICATED EMPLOYEES, THE
EDUCATIONAL EMPLOYEES LABOR RELATIONS AGENCY SHALL
REVIEW THE SUBMITTED REPRESENTATION PETITION AND, IF 25
PERCENT OF THE EMPLOYEES IN A PROPER NEGOTIATING UNIT SIGN
THE PETITION, THE AGENCY SHALL CONDUCT A REPRESENTATION
ELECTION.

* SEC. 4. AS 14.20 IS AMENDED BY ADDING A NEW SECTION
TO READ:
SEC. 14.20.565. NEGOTIATION MEETINGS. (A) A
SCHOOL BOARD SHALL, UPON THE WRITTEN REQUEST OF AN
EMPLOYEE BARGAINING ORGANIZATION, MEET WITH THE
REPRESENTATIVE OF THE ORGANIZATION WITHIN 20 DAYS AFTER THE
REQUEST AT A TIME AND PLACE TO BE MUTUALLY AGREED UPON. IN
THE SAME MANNER, REPRESENTATIVES OF AN EMPLOYEE BARGAINING
ORGANIZATION ARE REQUIRED TO MEET WITH A SCHOOL BOARD OR
ITS REPRESENTATIVES WITHIN 20 DAYS AFTER RECEIVING A
WRITTEN REQUEST.

(B) NOTWITHSTANDING AS 14.62.310, A NEGOTIATING
MEETING MAY BE HELD IN EXECUTIVE SESSION UPON MUTUAL
AGREEMENT OF BOTH PARTIES, BUT ALL FINAL AGREEMENTS SHALL
BE MADE AT A PUBLIC MEETING OF THE SCHOOL BOARD.
* SEC. 5. AS 14.20.570(A) IS AMENDED TO READ:
(A) UPON THE WRITTEN REQUEST FOR MEDIATION BY AN
EMPLOYEE BARGAINING AGENCY OR A SCHOOL BOARD, AND UPON
CERTIFICATION BY THE REQUESTING PARTY THAT THE PARTIES
CANNOT AGREE ON AN INDEPENDENT PRIVATE MEDIATOR AND THAT
GOOD FAITH NEGOTIATIONS HAVE TERMINATED IN AN IMPASSE,
THE FOLLOWING SHALL OCCUR:

(1) WITHIN SEVEN DAYS OF THE CERTIFICATION
THE REQUESTING PARTY SHALL ASK THE UNITED STATES FEDERAL
MEDIATION AND CONCILIATION SERVICE TO SERVE AS THE AGENCY
TO RESOLVE THE DISPUTE. THE REQUESTING PARTY SHALL NOTIFY
THE EDUCATIONAL EMPLOYEES LABOR RELATIONS AGENCY THAT THE
PARTIES HAVE REQUESTED A MEDIATOR.
(2) THE MEDIATOR SHALL CHAIR ALL MEDIATION
MEETINGS BETWEEN THE DISPUTING PARTIES AND ATTEMPT TO
RESOLVE THE DIFFERENCES BETWEEN THE DISPUTING PARTIES
AND REACH COMMON ACCEPTANCE OF TERMS AND CONDITIONS OR
OTHER ITEMS IN DISPUTE WHEREVER POSSIBLE.

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

SELECT A TEAM OF NOT MORE THAN FIVE PERSONS TO PRESENT
THE EVIDENCE, THINKING, AND POSITION OF THE GROUP THEY
REPRESENT TO THE MEDIATOR.
* SEC. 6. AS 14.20.580 IS REPEALED AND REENACTED TO
READ:
SEC. 14.20.580. CONTINUED IMPASSE. THE MEDIATOR
SHALL NOTIFY THE EDUCATIONAL EMPLOYEES LABOR RELATIONS
AGENCY WHEN THE PARTIES JOINTLY AGREE, OR WHEN THE
MEDIATOR INDEPENDENTLY DETERMINES, THAT FURTHER MEDIATION
WOULD NOT PROMOTE RESOLUTION OF THE DISPUTE. FOLLOWING
MEDIATION, THE PARTIES SHALL OBSERVE A 10-DAY
COOLING-OFF PERIOD.
* SEC. 7. AS 14.20 IS AMENDED BY ADDING NEW SECTIONS TO
READ:

SEC. 14.20.581. LOCAL OPTION. (A) A SCHOOL
BOARD AFTER PUBLIC HEARING SHALL BY WRITTEN RESOLUTION
DECIDE WHETHER LAST BEST OFFER MEDIATED ARBITRATION OR
THE RIGHT TO STRIKE SHALL FOLLOW THE MEDIATION PROCEDURE
DESCRIBED IN AS 14.20.570. THE RESOLUTION SHALL BE ADOPTED
BEFORE THE MEDIATION PROCESS BEGINS.
(B) A RESOLUTION ADOPTED IN ACCORDANCE WITH
THIS SECTION IS BINDING UNTIL AN AGREEMENT IS REACHED.
HOWEVER, THE PARTIES MAY MUTUALLY AGREE TO MODIFY THE
OPTION SELECTED UNDER THIS SECTION.

SEC. 14.20.582. EMPLOYEE STRIKES. (A) IF THE
BOARD ADOPTS A RESOLUTION THAT AUTHORIZES EMPLOYEES TO
ENGAGE IN A STRIKE, THE EMPLOYEES MAY ENGAGE IN A STRIKE
IF A MAJORITY OF THE EMPLOYEES WHO ARE MEMBERS OF THE
BARGAINING AGENCY ELECT TO DO SO.
(B) IF THE EMPLOYEES ELECT NOT TO STRIKE, THE
SCHOOL BOARD IS NOT REQUIRED TO PARTICIPATE IN
ARBITRATION. THIS SUBSECTION DOES NOT PROHIBIT THE PARTIES
FROM REQUESTING CONTINUED ASSISTANCE FROM THE
EDUCATIONAL EMPLOYEES LABOR RELATIONS AGENCY IN THE
RESOLUTION OF THE DISPUTE.

(C) DURING A STRIKE DESCRIBED IN (A) OF
THIS SECTION, AN AGGRIEVED PERSON MAY APPLY TO THE
SUPERIOR COURT IN THE JUDICIAL DISTRICT IN WHICH THE
STRIKE IS OCCURRING FOR AN ORDER ENJOINING THE STRIKE. A
STRIKE MAY NOT BE ENJOINED UNLESS IT CAN BE SHOWN THAT IT
THREATENS THE HEALTH, SAFETY, OR WELFARE OF THE PUBLIC. A
COURT, IN DECIDING WHETHER TO ENJOIN THE STRIKE, SHALL
CONSIDER THE TOTAL EQUITIES IN EACH PARTICULAR CASE. TOTAL
EQUITIES INCLUDES THE IMPACT OF A STRIKE ON THE PUBLIC AS
WELL AS THE EXTENT TO WHICH EMPLOYEE ORGANIZATIONS AND
PUBLIC EMPLOYERS HAVE MET THEIR STATUTORY OBLIGATIONS. IF
AN IMPASSE OR DEADLOCK STILL EXISTS AFTER THE ISSUANCE OF
AN INJUNCTION, THE PARTIES SHALL SUBMIT TO ARBITRATION
UNDER AS 14.20.583.
(D) THE EDUCATIONAL EMPLOYEES LABOR RELATIONS
AGENCY SHALL ESTABLISH PROCEDURES UNDER WHICH THE
BARGAINING AGENT SHALL CONDUCT THE ELECTION DESCRIBED IN
THIS SECTION.

SEC. 14.20.583. ARBITRATION. (A) THE PARTIES
SHALL SUBMIT TO LAST BEST OFFER MEDIATED ARBITRATION IF
THE BOARD ADOPTS A RESOLUTION UNDER AS 14.20.581 THAT

PRECLUDES AN EMPLOYEE STRIKE, OR IF ARBITRATION RESULTS
UNDER AS 14.20.582(A) OR (C). AN AGREEMENT BETWEEN A BOARD
AND AN EMPLOYEE GROUP SHALL INCLUDE A PROCEDURE TO
PROMPTLY SELECT AN ARBITRATOR. IF THE PARTIES ARE UNABLE
TO AGREE ON A CONTRACTUAL PROVISION THAT PROVIDES FOR THE
SELECTION OF AN ARBITRATOR, THE EDUCATIONAL EMPLOYEES
LABOR RELATIONS AGENCY SHALL DIRECT THE PARTIES TO USE THE
SERVICES OF AND COMPLY WITH THE PROCEDURES OF THE FEDERAL
MEDIATION AND CONCILIATION SERVICES OR THE AMERICAN
ARBITRATION ASSOCIATION IN THE SELECTION OF AN ARBITRATOR.
AN ARBITRATOR SELECTED UNDER THIS SUBSECTION SHALL BE A
RESIDENT OF THE STATE.

(B) IN LAST BEST OFFER MEDIATED ARBITRATION UNDER
THIS SECTION EACH PARTY SHALL SUBMIT A FINAL OFFER ON ALL
ISSUES IN DISPUTE. EACH PARTY SHALL SUBMIT TO THE
ARBITRATOR ORAL OR WRITTEN EVIDENCE IN SUPPORT OF ITS
POSITION AND SHALL BE GIVEN AN OPPORTUNITY TO RESPOND TO
THE PRESENTATION OF EVIDENCE BY THE OTHER PARTY. THE
ARBITRATOR MAY PROPOSE COMPROMISES TO POINTS IN DISPUTE.
AT THE REQUEST OF EITHER PARTY, OR ON THE MOTION OF THE
ARBITRATOR, THE ARBITRATOR MAY CONDUCT A PUBLIC MEETING
FOR THE PURPOSE OF ALLOWING THE PARTIES TO PRESENT AND
EXPLAIN THEIR POSITIONS AND FINAL OFFERS. THE ARBITRATOR
SHALL ALLOW EACH PARTY TO REVISE ITS LAST BEST OFFER
BEFORE FINAL SUBMISSION TO THE ARBITRATOR FOR DECISION.
(C) THE DECISION OF THE ARBITRATOR SHALL TAKE
INTO CONSIDERATION

(1) THE HISTORY OF NEGOTIATIONS BETWEEN THE
PARTIES BEFORE ENTERING ARBITRATION;
(2) THE PUBLIC INTEREST AND FINANCIAL
ABILITIES OF THE SCHOOL DISTRICT;
(3) THE INTEREST AND WELFARE OF THE EMPLOYEE
GROUP;
(4) CHANGES IN THE COST OF LIVING;
(5) THE EXISTING EMPLOYMENT CONDITIONS OF
THE EMPLOYEE GROUP COMPARED WITH THOSE OF SIMILAR GROUPS;
AND
(6) THE SALARIES, FRINGE BENEFITS AND OTHER
CONDITIONS OF EMPLOYMENT PREVAILING IN THE STATE LABOR
MARKET.

(D) THE ARBITRATOR SHALL WITHOUT MODIFICATION
ADOPT THE LAST BEST OFFER OF ONE OF THE PARTIES AND ISSUE
A FINAL AND BINDING DECISION NOT MORE THAN 10 DAYS AFTER
THE PARTIES HAVE PRESENTED THEIR LAST BEST OFFER.
(E) THE PARTIES SHALL SHARE THE COST OF THE
ARBITRATOR EQUALLY.

SEC. 14.20.584. ARBITRATION AWARD. (A) ON
APPLICATION OF A PARTY, THE SUPERIOR COURT SHALL CONFIRM
AN AWARD UNLESS GROUNDS ARE URGED FOR VACATING,
MODIFYING, OR CORRECTING THE AWARD.
(B) ON APPLICATION OF A PARTY, THE COURT SHALL
VACATE AN AWARD IF

(1) THE AWARD WAS PROCURED BY FRAUD OR OTHER
UNDUE MEANS;
(2) THERE WAS EVIDENT PARTIALITY,
CORRUPTION, OR MISCONDUCT BY AN ARBITRATOR PREJUDICING THE
RIGHTS OF A PARTY;

(3) THE ARBITRATOR EXCEEDED HIS POWERS;
(4) THE ARBITRATOR REFUSED TO POSTPONE THE
HEARING UPON SUFFICIENT CAUSE BEING SHOWN FOR POSTPONEMENT,
REFUSED TO HEAR EVIDENCE MATERIAL TO THE CONTROVERSY, OR
OTHERWISE CONDUCTED THE HEARING TO SUBSTANTIALLY PREJUDICE
THE RIGHTS OF A PARTY.

(C) THE FACT THAT THE RELIEF ORDERED BY AN
ARBITRATOR CULD NOT OR WOULD NOT BE GRANTED BY A COURT IS
NOT GROUND FOR VACATING OR REFUSING TO CONFIRM THE
AWARD.
(D) AN APPLICATION TO THE SUPERIOR COURT UNDER
THIS SECTION SHALL BE MADE WITHIN 90 DAYS AFTER DELIVERY OF
A COPY OF THE AWARD TO THE APPLICANT. HOWEVER, IF THE
APPLICATION IS PREDICATED UPON CORRUPTION, FRAUD, OR
OTHER UNDUE MEANS BY EITHER THE OPPOSING PARTY OR AN
ARBITRATOR, IT SHALL BE MADE WITHIN 90 DAYS AFTER THE
GROUNDS ARE KNOWN OR SHOULD HAVE BEEN KNOWN.

(E) IN VACATING AN AWARD THE COURT MAY ORDER A
REHEARING BEFORE A NEW ARBITRATOR CHOSEN AS PROVIDED IN THE
AGREEMENT, OR IN THE ABSENCE OF A PROVISION IN THE
AGREEMENT, AS PROVIDED UNDER AS 14.20.585. IF THE AWARD IS
VACATED ON GROUNDS SET OUT IN (B)(3) OR (4) OF THIS
SECTION, THE COURT MAY ORDER A REHEARING BEFORE AN
ARBITRATOR WHO MADE THE AWARD OR BEFORE A SUCCESSOR
ARBITRATOR AS PROVIDED IN THIS SUBSECTION. THE TIME
WITHIN WHICH THE ORIGINAL AGREEMENT OF THE PARTIES REQUIRES
AN ARBITRATION AWARD TO BE MADE IS APPLICABLE TO THE
REHEARING AND COMMENCES FROM THE DATE OF THE ORDER REQUIRING
A REHEARING.

(F) IF THE APPLICATION TO VACATE IS DENIED AND
A MOTION TO MODIFY OR CORRECT THE AWARD IS NOT PENDING,
THE COURT SHALL CONFIRM THE AWARD.
SEC. 14.20.585. MODIFICATION OR CORRECTION OF
AWARD. (A) ON APPLICATION OF A PARTY MADE WITHIN 90
DAYS AFTER DELIVERY OF A COPY OF THE AWARD TO THE APPLICANT
THE SUPERIOR COURT SHALL MODIFY OR CORRECT THE AWARD IF

(1) THERE WAS AN EVIDENT MISCALCULATION OF
FIGURES OR AN EVIDENT MISTAKE IN THE DESCRIPTION OF A
PERSON OR REAL OR PERSONAL PROPERTY REFERRED TO IN THE
AWARD;
(2) AN ARBITRATOR HAS MADE AN AWARD
CONCERNING A MATTER NOT SUBMITTED TO THE ARBITRATOR AND THE
AWARD MAY BE CORRECTED WITHOUT AFFECTING THE MERITS OF
THE DECISION UPON THE ISSUES SUBMITTED; OR
(3) THE AWARD IS IMPERFECT IN A MATTER OF
FORM NOT AFFECTING THE MERITS OF THE CONTROVERSY.

(B) IF THE APPLICATION OF A PARTY UNDER THIS
SECTION IS GRANTED, THE COURT SHALL MODIFY AND CORRECT THE
AWARD TO EFFECT ITS INTENT AND SHALL CONFIRM THE AWARD AS
MODIFIED AND CORRECTED. IF THE APPLICATION IS DENIED, THE
COURT SHALL CONFIRM THE AWARD AS MADE.
(C) AN APPLICATION TO MODIFY OR CORRECT AN AWARD
MAY BE JOINED IN THE ALTERNATIVE WITH AN APPLICATION TO
VACATE THE AWARD.

* SEC. 8. AS 14.20.590 IS AMENDED TO READ:
SEC. 14.20.590. GRIEVANCE PROCEDURES.
NEGOTIATION AGREEMENTS EXECUTED AFTER JULY 1, 1975, SHALL
DEFINE "GRIEVANCES" AND PROVIDE FOR GRIEVANCE PROCEDURES
FOR THE CERTIFICATED STAFF. THE GRIEVANCE PROCEDURES
SHALL PROVIDE THAT THE FINAL STEP IN THE PROCEDURE SHALL BE
BINDING ARBITRATION. THE NEGOTIATIONS AGREEMENT SHALL
PROVIDE A METHOD FOR THE SELECTION OF AN ARBITRATOR TO
RESOLVE GRIEVANCES.
* SEC. 9. AS 14.20.600 IS AMENDED TO READ:
SEC. 14.20.600. INDIVIDUAL RIGHTS CASES. (A)
NOTHING IN AS 14.20.550 - 14.20.590 PROHIBITS AN
EMPLOYEE FROM ADDRESSING A SCHOOL BOARD, AS AN
INDIVIDUAL THROUGH THE REGULAR PROCEDURES OF THE SCHOOL
BOARD FOR HEARING INDIVIDUAL CASES.
(B) THE EDUCATIONAL EMPLOYEES LABOR RELATIONS
AGENCY CONSISTENT WITH THE PURPOSES OF AS 14.20.540 -
14.20.610 SHALL SET FORTH PROCEDURES TO SAFEGUARD THE
RIGHTS OF NONASSOCIATION OF EMPLOYEES HAVING BONA FIDE
RELIGIOUS CONVICTIONS.
* SEC. 10. AS 14.20 IS AMENDED BY ADDING NEW SECTIONS TO
READ:
SEC. 14.20.605. EDUCATIONAL EMPLOYEES LABOR
RELATIONS AGENCY. (A) THERE IS ESTABLISHED AN
EDUCATIONAL EMPLOYEES LABOR RELATIONS AGENCY WHICH
CONSISTS OF FIVE MEMBERS. THE THREE MEMBERS OF THE STATE
LABOR RELATIONS AGENCY (AS 23.40) ARE MEMBERS OF THE
EDUCATIONAL EMPLOYEES LABOR AGENCY. THE GOVERNOR SHALL
APPOINT TWO ADDITIONAL MEMBERS TO THE AGENCY ONE EACH FROM
LISTS OF NOMINEES SUBMITTED BY THE NATIONAL EDUCATION
ASSOCIATION OF ALASKA AND THE ALASKA ASSOCIATION OF SCHOOL
BOARDS, EACH OF WHOM MUST HAVE AT LEAST THREE YEARS
EXPERIENCE IN MATTERS RELATING TO EDUCATION IN ALASKA.
THE TWO CUBERNATORIAL APPOINTEES TO THE EDUCATIONAL
EMPLOYEES LABOR RELATIONS AGENCY SERVE AT THE PLEASURE OF
THE GOVERNOR.
(B) MEMBERS OF THE EDUCATIONAL EMPLOYEES LABOR
RELATIONS AGENCY RECEIVE NO COMPENSATION FOR THEIR
SERVICES, BUT ARE ENTITLED TO PER DIEM AND TRAVEL
EXPENSES AUTHORIZED FOR BOARDS AND COMMISSIONS.
(C) THE EDUCATIONAL EMPLOYEES LABOR RELATIONS
AGENCY MAY EMPLOY STAFF ASSISTANCE AS IT CONSIDERS
NECESSARY TO IMPLEMENT THE PROVISIONS OF AS 14.20.540 -
14.20.610.
SEC. 14.20.606. POWER TO IMPLEMENT
NEGOTIATIONS. (A) THE EDUCATIONAL EMPLOYEES LABOR
RELATIONS AGENCY SHALL PERFORM THE FUNCTIONS DESCRIBED IN
AS 23.40.120 - 23.40.180 TO CARRY OUT THE PROVISIONS OF
AS 14.20.540 - 14.20.610.
(B) THE PROHIBITION OF UNFAIR LABOR PRACTICES, AS
DESCRIBED IN AS 23.40.110, APPLIES TO A SCHOOL BOARD AND AN
EMPLOYEE ORGANIZATION.
* SEC. 11. AS 14.20.610 IS AMENDED TO READ:
SEC. 14.20.610. LEGAL RESPONSIBILITIES OF BOARDS.
NOTHING IN AS 14.20.540 - 14.20.600 OR 14.20.550 - 14.20.600
MAY BE CONSTRUED AS AN ABROGATION OR DELEGATION OF THE
LEGAL RESPONSIBILITIES, POWERS, AND DUTIES OF THE SCHOOL
BOARD INCLUDING ITS RIGHT TO MAKE FINAL DECISIONS ON
EDUCATIONAL POLICIES.
* SEC. 12. AN EXISTING SCHOOL BOARD SHALL MAKE THE LOCAL
OPTION DECISION BETWEEN LAST BEST OFFER MEDIATED
ARBITRATION OR THE RIGHT TO STRIKE REQUIRED UNDER AS
14.20.581(A) ADDED BY SEC. 8 OF THIS ACT WITHIN 90 DAYS
AFTER THE EFFECTIVE DATE OF THIS ACT.
* SEC. 13. THIS ACT DOES NOT MODIFY OR TERMINATE A
NEGOTIATING UNIT OR AGREEMENT IN EXISTENCE ON THE EFFECTIVE
DATE OF THIS ACT.
* SEC. 14. THIS ACT TAKES EFFECT IMMEDIATELY IN
ACCORDANCE WITH AS 01.10.070(C).

*passed Senate
last yr. -
died H. 60*

ok WJEH

BINDING ARBITRATION

1983-84 session was SB 78. Sen. HESS CS died in H. L&C
1981-82 was HB 174.

AK teachers no right to strike

1. Who choose strike over arbitration, teachers or board? When is a strike OK? After what amount of negotiation? The issue is how to finalize negotiations. Strike, unilateral determination, or binding arbitration? If strike, allow injunctive relief (court order teachers back)?

unlawfully delegate gov. decision powers to nongov. authority
Undermines public employees authority to m. show.

2. Political approval (municipal assembly or legislature if REAA) of arbitrator's award? (Puts local school boards under more direct control of assemblies. Binding arbitration prohibits elected body from exercising its responsibility to constituents.)
Which employees allowed to collective bargain? Certified vs. noncertified
4. How define grievance?

5. Scope of negotiations? What items must be negotiations, which optional, and which prohibited? + Negotiability vs. arbitrability of items.
What is negotiable?

NOTES:

Since 1970 teachers have had right to negotiated, but there is no dispute settlement procedure; no finality.

1979 Anchorage teachers strike - Alaska Supreme Court ruled in 1982 that teachers do not have the right to strike. Rabinowitz's dissenting opinion said if teachers are denied the right to strike, should be given right to compulsory arbitration.

As of 2/18/83, Juneau, Fbx, Anch, Kenai were only ones out of the 54 school districts that have a collective bargaining agreement with a union or association.

PERA (AS 23.40.070-.260) provides orderly negotiation procedures for all public employees except teachers.

QUESTIONS:

How fit with SB 154 Koslosky?
What is the "Kenai case"?

Arbitrator have authority to impose settlement upon parties?
p. 6, line 4 - "final & binding decision"

mediate - if can't agree, arbitrate.
strike allowed?

per Bob Manners
2-18-85

conventional arbitration -
arbitrator "fashions" the decision.

(NEA proposal) "last best offer" - selects one position or the other.
Can propose compromises.

NEA -

1. don't want arbitrator to be AK resident
2. item by item vs. package
3. criteria for making decision (from 1984 bill) O.K.
4. AG says don't need to specify judicial review 'cause already in law (AS 09.43.120-.130)
5. either party cause arbitration to commence vs. both parties having to agree
6. aren't asking for right to strike
7. Kenai case limits negotiable items

SB 78
POSITION PAPER

Collective Bargaining Between School Boards and Their Employees

The Committee Substitute for Senate Bill 78 has recognized three basic fundamentals which the Administration feels are vital in meeting the needs of educational collective bargaining:

1. The proper philosophical approach to public employment collective bargaining as stated by the Legislature in the Policy Declaration of AS 23.40 will protect the inherent right of elected public officials to manage, balanced against the employees' inherent right to participate in the development of the rules used to manage.
2. The need to continue the integrity of a separate Educational Title in the Alaska Statutes, where the needs of school district employees and school boards can be recognized.
3. The right of all school district employees to organize into representative groups of their own choosing, and to have a bilateral resolution to the collective bargaining process that will be overseen by an Educational Labor Relations Agency.

In addressing specific requirements of the bill, the Administration finds itself in agreement with:

1. The establishment of an Educational Labor Relations Board composed of the present State Labor Relations Agency plus, an additional two members from the educational community. This coupling of those already versed in Labor Related decisions on the record with the insight of those from Educational Community will save both time and money in implementing the new law change.
2. Overcoming the uncertainty found in AS 14.20.550 by defining "administrators" who may or may not participate in collective bargaining is long overdue. In addition, clarifying the right of non-certificated educational employees to organize, thus making them equal to their counterparts in State service is also looked upon by the Administration as an important step toward equitability in the law.
3. The establishment of a series of steps beyond impasse to bring bargaining to a bilateral conclusion by allowing for one of the following. A ten-day cooling off period, followed by the schoolboards' right to choose between unlimited strike followed by mediated arbitration, a limited 45-day strike followed by mediated arbitration, or an immediate move to mediated arbitration. These choices

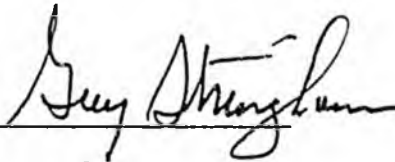
preserve the District Schoolboards' opportunity to choose the vehicle it feels best in a given situation, while ensuring the employee groups with a bilateral ending.

As the parties can move to resolution at any point, the pressure of the above actions will spur both parties to seek compromise as quickly as possible.

4. The use of Alaskan arbitrators versed in contract resolution, education and the needs of the public will help alleviate the fears of both Schoolboard and employee representative organizations that they will not get a fair contract under this system.

Prepared by:

Guy Stringham
Director
Division of Labor Relations

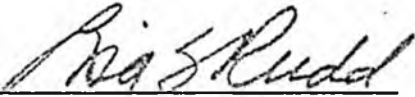


Date

4/18/83

Approved by:

Lisa Rudd
Commissioner
Department of Administration



Date

4/18/83

RESOLVING IMPASSES

[§5621] Handling impasses.—The best way to handle impasses is to avoid them by making the negotiation process work. But if the parties are not able to reach agreement in the course of negotiations, what happens? Public sector strikes are generally illegal. So various strike alternatives have been tried and new techniques are constantly being developed to solve this high-voltage problem.

Solutions will probably not be found until there's consensus about the meaningful differences between public and private employment. To what degree are they great enough to make techniques used in the private sector inappropriate? Views about this haven't jelled. Until they do, diversity in methods for settling contract disputes will continue—mediation, factfinding, arbitration and legal and illegal strikes.

Mediation

[§5625] What is it?—Mediation has been defined as "assistance by an impartial third party to reconcile an impasse between the public employer and the exclusive representative regarding wages, hours, and other terms and conditions of employment through interpretation, suggestion, and advice to resolve the impasse" (Haw. §11,102).

Mediation is generally either the required or authorized first step in an impasse procedure. Although other impasse techniques are often subject to legal attack, mediation is not. Since there is no element of compulsion, there are no problems of unlawful delegation of governmental powers.

A mediator's job is to find common grounds for compromise when the parties cannot, and through informal techniques, promote settlement of contract disputes. In the public sector, a mediator also participates in "preventive mediation" by serving as an educator for negotiators new to the collective bargaining process.

⇒ MEDIATOR'S FUNCTION → The advice of the professional mediator is valuable. Experienced mediators have been through the mill. Their advice may seem unpalatable but it may contain a hidden clue to solving a seemingly insoluble dispute. Mediation isn't just a time-consuming process required before going into factfinding. It's a stage of negotiations that frequently results in a settlement.

[§5626] Conciliation distinguished.—The terms mediation and conciliation are often used interchangeably. They are similar but not the same. The mediator comes up with solutions when efforts at conciliation fail. Conciliation essentially involves persuasion. The conciliator meets jointly or separately with the bargaining teams to try to convince them that it's in their own interest to settle. He/she will also stress the public interest.

Mediators don't stop at cajoling or persuasion. They make a determined effort to find a common ground for settlement. Failing that, they give professional advice and make suggestions and recommendations as to how the dispute can be settled. The charge placed upon mediators by the agency employing them is to resolve the dispute, hopefully, short of a strike.

⇒ FACTFINDING COMPARED → Mediation differs from factfinding because it is an informal rather than formal procedure. The procedures are similar in that neither involves binding recommendations.

[§5627] Obtaining the services of a mediator.—Labor relations agencies such as public employment relations boards generally act as clearing houses for mediators. In the federal sector, the Federal Mediation and Conciliation Service provides mediation services (See Fed. §35,550).

The mediator may be a full-time professional or a college professor, an ex-labor relations director or ex-union representative serving on a panel of part-time ad hoc mediators provided by a state agency. He/she may be a neutral official of some other agency or a leading citizen with a reputation for getting things done and is therefore designated by the governor or the mayor to resolve the dispute.

Don't be overly concerned if a mediator has a trade union or management background. Mediators' experience as negotiators for either side helps them develop creative approaches to settlement. A battle-scarred veteran of bargaining may be much more realistic and effective in offering advice than someone who's chosen merely because of the point of view he or she represents.

[§5628] The process.—In the first session, a mediator's usual technique is to have a free discussion in a joint session with both bargaining teams. Then he/she meets privately with the team that has the greater complaints.

What are their *real* concerns? What have they been advocating for trading purposes and what are the real "musts"? Are they willing to effect a compromise on any of their supposed "musts"? Are they aware of the chances they are taking in letting a dubious position go to factfinding?

After exploring issues in private conference, the mediator often urges resumption of direct negotiations. He/she may preside over several bargaining sessions before again separating the parties. He may urge one team or the other to state openly what it has said privately. Negotiators may find it advisable to comply but make their doing so contingent upon acceptance of a counter-proposal or upon the other side's willingness to modify or withdraw certain of its demands. A skillful mediator will explore every avenue in open session that might prove to be the catalyst leading to resolving the impasse.

The mediator may go further. If his or her advice has been rejected in part or in toto, the mediator still may present specific recommendations. These may stem from the neutral's own concept of what it would take to break a deadlock or from mere intuition as to what will be acceptable to the parties.

⇒ **MEDIATOR IS NOT AN ARBITRATOR** → Remember that the mediator isn't an arbitrator with the authority to impose a settlement upon the parties. He or she recommends but cannot mandate. In some states, a mediator's recommendations, if rejected, cannot even be referred to or given any weight in factfinding proceedings.

[§ 5629] Mediator's techniques.—The mediator is generally free to adopt any technique that will help settle a dispute. One exception is that some jurisdictions do not permit the mediators to make his/her findings public—or even submit them to a factfinder.

The mediator analyzes the power structure, separates "musts" from other items and groups packages. He/she (1) also is a good listener and gets negotiators who've stopped talking to open up; (2) cools things down when necessary; (3) is also adept at finding face-saving solutions and other expedients to generate compromise. The mediator ordinarily tries to convince both negotiating teams that they should choose the known over the unknown. The big unknown in the impasse process is what sort of a factfinder might be assigned if the dispute isn't settled.

⇒ **YOUR TECHNIQUES** → Don't put the mediator on the spot. He or she shouldn't be placed in the position of seeming to violate confidential disclosures. A mediator can't reveal to the other side what has been said in confidence. At the same time, you may want the mediator to intimate to the other side what you're willing to concede. Tell the mediator. But don't irrevocably commit your team to a proposition in a confidential discussion with the mediator. If you do, don't blame him or her for leaking it to your adversaries and urging its acceptance.

[§ 5630] Mediator's recommendations.—The mediator's recommendations should not be taken lightly. He/she usually has good reason to believe that one side or the other will find them generally acceptable and is convinced that what is proposed would be a fair solution of the issues in dispute. If he/she proposes a contract clause supporting the demand of the other side, this doesn't mean lack of impartiality. It does reflect considered judgment that the clause has merit.

At worst, the mediator's recommendations for proposed contract settlement show how far apart the parties are and set the stage for the next step. At best, they suggest possibilities for narrowing disputed issues or eliminating them altogether.

[§ 5631] Do you want to go to factfinding?—Before making a decision, consider the implications. They differ from state to state. In *New Jersey*, for example, the mediator's recommendations can't be presented to the factfinder [N.J. § 35,003,19: 12-3.5.]. Of course, if no law controls, the parties are free to decide what pre-conditions, if any, to set for admission of facts, arguments, conclusions or recommendations generated in the mediation proceedings.

⇒ **DON'T BE TOO QUICK TO DROP A MEDIATOR** → Study your position before breaking off relations with the mediator. Which of his or her recommendations, if disclosed to the public, would gain widespread support? Which would strengthen the opposition's hand? Which could be accepted without forfeiting any essential right or prerogative? While the mediator doesn't always know best, his/her advice shouldn't be totally ignored. The mediator may not feel free to disclose any information about the ultimate position of the other side. Look for hints that are often more revealing than outright recommendations.

Also, consider the cost of preparing and presenting the case to the factfinder. Each issue must be researched and the more issues that remain unsettled, the higher the cost of preparation.

⇒ BUT IT MAY BE INEVITABLE → If a truly important principle is involved, the party must go to factfinding regardless of costs.

Factfinding

[§ 5635] What is it?—Factfinding is often the second step in the hierarchy of impasse techniques used in the public sector. If mediation fails, factfinding begins. Factfinding is the investigation of a public sector labor dispute by an individual, panel, or board that submits a report to the parties describing the issues involved. The report may contain recommendations for settlement and sometimes may be made public.

Factfinding, like mediation, is not usually attacked legally because factfinders' recommendations are not binding on parties. Many state laws authorize or require it. In addition, the parties may agree to submit disputes to factfinding in the absence of a legal requirement to do so.

Factfinding differs from mediation in that it is a formal proceeding. It is comparable to arbitration with one important difference. Factfinding leads to *recommendations* for settlement. Arbitration means a *prescribed* settlement.

⇒ ADVISORY ARBITRATION → Factfinding is similar to advisory arbitration. When the process is used to settle grievance disputes, it's generally called advisory arbitration. When used to settle contract impasses, it's called factfinding.

[§ 5636] Who serves as factfinder?—Factfinders are generally supplied by labor relations boards. They often are experienced private or public sector arbitrators.

⇒ CHECK THE PROPOSED FACTFINDER → Assume you'll be assigned a competent factfinder but, if you have a choice under your state law, you can check the factfinder's background. Review recommendations made in comparable cases. They are frequently made public.

[§ 5637] Criteria.—Factfinder's criteria may or may not be set out in the law authorizing the procedure. Generally, the laws do set out the procedure to be followed in detail but do not specify criteria. One exception is the *Indiana* collective bargaining law for teachers [Ind. § 17,113].

The criteria generally relied on by factfinders are these:

- Comparisons of wages and other conditions of employment of the employees with those of others doing comparable work in the public or private sector at nearby locations.

- The employer's traditional rank when so compared.
- The employer's ability to pay.
- Cost-of-living increases.
- The bargaining history of the parties.
- The public interest.

[§ 5638] What factfinders do.—Factfinders analyze the relevancy of the facts and contentions presented to them. Then it's their job to come up with recommendations. The recommendations are hopefully palatable to both sides. If either side finds them otherwise, unless there's a further step in the impasse procedure, the impasse continues until the force of public opinion produces a change of position by one side or the other.

⇒ UNCERTAINTY OF FACTFINDING → Factfinders, like arbitrators, needn't be consistent. They may stick to "precedents" established by previous arbitration or factfinding awards or they may not. They can also find any number of reasons for deviating from the principles of other cases. The circumstances, in their opinion, may differ or the value of one criterion as opposed to another may vary. For example, ability to pay may be a crucial factor in the current dispute even though in a prior case it was hardly considered.

Some state laws expressly authorize factfinders to use mediation techniques. When laws are silent or nonexistent, factfinders often confer on or off the record before making official recommendations.

⇒ FACTFINDERS NEED NOT MEDIATE → Don't assume that the factfinder will try to mediate. The parties must fully prepare on each issue, regardless of time or cost. If the factfinder does try to mediate, such preparation doesn't hinder the process.

Factfinders perform their function as the law requires or, if there is no law, as their experience dictates. For example, private communications with a factfinder may be taboo. Generally, a factfinder can't even communicate in writing with one of the parties without giving notice to the other and an opportunity for both to comment on the subject discussed.

Acceptability to both parties is the chief object of professional factfinders.

[§ 5639] The hearing.—Even though factfinders make nonbinding recommendations, they expect and merit professional presentation of the positions of both parties. This is no task for amateurs. The agency's legal counsel may qualify if well versed in the technique of handling grievance arbitrations. If the agency has a labor relations department, its director or a staff member should be qualified. *How* an agency's case is presented may be more important than *what* is presented!

⇒ PUT YOUR BEST FOOT FORWARD → Don't assume that a factfinder is merely going to add two figures and then divide by two. Put forward your best proposals. Don't hold back anything you're willing to concede. How equitable a factfinder's recommendations are depends largely on how persuasively the case is presented.

After both parties have had all the time necessary to present their cases at the formal hearing, the factfinder prepares a report and recommendations on each issue submitted. Occasionally a specific issue will be remanded to the parties for further negotiation.

The factfinder's report is presented initially for private consideration by both parties. After a short period of perhaps a few days, the recommendations, if not accepted by both parties, may be made public. More often than not, direct negotiations are resumed. In some states another super-factfinding panel may hold further hearings.

[§ 5640] A hypothetical factfinding case.—Assume factfinding is the result of mutual consent by an employer and an employee organization that are locked in impasse. The parties are a municipal government and a union representing the nonsupervisory employees of a public library. Assume that they've fixed no special rules, that no holds are barred. The sole issue, the parties agree, is the amount of the general salary increase in next year's agreement. The factfinder is a lawyer experienced as an arbitrator. After oral discussion of the one issue before him or her, the ground rules are set: (1) Only one spokesman for each side; any other participants can appear only as witnesses and must be sworn; (2) statistical or other exhibits may be introduced; (3) witnesses may testify as to their relevancy; (4) written briefs may be filed at the close of the hearings; (5) the parties will be given 10 days to comment on each other's briefs; (6) court rules of evidence will not be followed.

Argument for the librarians: The librarians are the moving party. Therefore, their spokesman goes first and asks for a 20% across-the-board increase. This increase, he argues, is merely a catch-up to keep the local library salary rates in line with those paid by other libraries in the area. It's obvious to the factfinder that the term "area" has been loosely defined. Information is presented that salary rates in effect in other libraries are much higher than those currently paid in the town. The geographical or other criteria used in making comparisons is a proper question to be considered by the factfinder.

But this isn't the union's only argument. In the broad metropolitan area where the library is located, the regional Consumer Price Index has advanced 9% since the last general wage increase. In addition, evidence shows that the average increase of municipal clerks and unionized employees, including specifically the municipalities' blue collar workers, has amounted to 15% as a result of a 2-year contract entered into in the prior year.

Argument for the city: The city claims its finances are in too rough a shape to permit more than a minimal increase, maybe 2% or 3%. The librarians have picked out the richest cities in the state with which to compare themselves. They even reached out to include an affluent town in an adjoining state. Some of the cities listed as comparable have a big tax base from industry whereas the city involved is rural. The city submits its own list of comparable cities.

In addition, the Consumer Price Index has no relevancy. Librarians are professionals. It is argued that the BLS Consumer Price Index can't be applied to professional and other highly-paid white collar employees. Even if the Index is a proper factor, the city lies outside of the metropolitan area cited. If used at all, it should be the national, not a regional, index.

Finally, librarians in this city are already being paid fairly. Their last increase put them on a par with the rates paid in other comparable cities. In addition, one indicator invariably used by unions to indicate low salaries and low morale is the turnover rate. However, the union hasn't used it inasmuch as the turnover of city librarians has been almost zero.

Outcome: The factfinder prepares a graduated list of the last three years' salary scales from both the city's and the union's lists of comparable libraries. He/she discovers that—on the combined list—the city ranked seventh for two of the three years. This year, however, it fell to ninth. The city's tax rate and base are compared with those of adjoining communities. The factfinder discovers that although the city's tax base is small, its rate is fairly low, so a tax increase isn't out of the question.

The factfinder recommends a two-year contract with an 8% boost in the first year. This increase will bring the city's libraries back into seventh place in salaries. He/she recommends that the increase be broken up into two parts—4% now and 4% in six months—in order to ease the boost's burden on the city. For the second year, a cost-of-living adjustment based on the regional Consumer Price Index is recommended to give the librarians an inflation hedge.

Arbitration

[§5645] What is it?—Impasse arbitration is a formal adversary hearing presided over by a neutral who determines with finality the terms and conditions of a collective bargaining agreement. The neutral—or arbitrator—may be an individual or the third member of a panel whose other members are partisans of each of the parties.

Arbitration of grievances (sometimes called "rights" disputes) has long been accepted in the private sector and its legality (at least when authorized by statute) and usefulness in the public sector is widely acknowledged. But arbitration of impasses (sometimes called "interest" disputes) is another matter. Its supporters say it's necessary to provide a means for final settlement of impasses where the strike alternative is not available. Others question its legality and object to forced settlements by a stranger to the collective bargaining process.

[§5646] Arbitration laws.—Some laws authorize the parties to agree voluntarily to impasse arbitration. They have not resulted in a stampede for the services of arbitrators. On the contrary, when arbitration is voluntary, it's rarely used. Other laws *require* arbitration. They usually apply to police and firefighting personnel since there's a special need for strike-substitutes for members of these groups.

Compulsory arbitration of the disputes of other public employees is not common. One notable exception is the City of New York. In an effort to reduce disruptions of public services that have at times approached crisis proportion, the city in 1972 adopted amendments to its bargaining law requiring final binding determination of bargaining impasses [N. Y. §25,030 et seq.]. Eugene, Ore. also has an ordinance requiring city employees to arbitrate impasse disputes [Ore. §25,021].

Criteria. In some cases arbitrators' criteria are imposed by statute. They are similar to factfinders' criteria. Generally speaking, the criteria require comparisons with employees doing similar work in public and private employment and consideration of the employer's ability to pay and cost-of-living data. They may also include the "interests and welfare of the public" and "such other factors normally taken into consideration in the determination of wages, hours and employment conditions in the public and private sector" [Mich. §19,509].

[§5647] Legality.—Compulsory arbitration laws have been attacked on the ground that they unlawfully delegate governmental decision-making powers to a nongovernmental authority. This is a reflection of the "sovereignty" doctrine, under which only the public employer can establish the terms and conditions of employment of government employees. In practice however, governments do relinquish their "sovereign" rights in many ways, including their participation in the collective bargaining process.

Courts tend to uphold compulsory arbitration laws if they set guidelines for, and impose limits on, the powers of the arbitrator. The Supreme Judicial Court of Massachusetts held that binding arbitration provisions for police and firefighters (Mass. §11,117) superseded a town's "Home Rule" decision-making powers under the state constitution. The bargaining law is a general law, the Court said, and applied to all cities and towns; in case of inconsistency or conflict, local laws must yield. The Court also ruled that the legislature may delegate to a panel of private individuals the authority to implement legislative policy, so long as proper safeguards are provided [Town of Arlington v. Bd. of Conciliation and Arbitration (Sup. Jud. Ct., 1976) 352 N.E. 2d 914].

The Washington State Supreme Court upheld the constitutionality of a binding arbitration provision (Wash. §13,133) that set guidelines for the arbitration panel and standards for court review as a

safeguard against arbitrary action [City of Spokane v. Spokane Police Guild (S. Ct., 1976) No. 43954, 553 P. 2d 1316]. The Court also pointed out that although a binding arbitration award could result in the need for a city to raise taxes, the arbitration law itself didn't unconstitutionally impose a tax on the city to meet the costs of an arbitration award. But the Supreme Court of Utah held the state couldn't withdraw the power of local elected officials to determine wages, hours and conditions of employment for firefighters and grant it to a panel of private citizens without providing for court review or any other safeguard to protect the public interest [Salt Lake City v. IAFF (Utah S. Ct.) No. 14689, 4-25-77].

The Colorado Supreme Court barred binding arbitration in public sector disputes as an unconstitutional delegation of authority, without considering the issue of safeguards [Greeley Police Union v. City Council of Greeley (S. Ct., 1976) No. 26992, 553 P. 2d 793].

⇒ **POWER TO TAX** → Some laws meet the objection against giving an arbitrator power over the purse strings by providing that an award requiring legislative implementation is not final until that body acts (N.Y. § 25,043).

[§ 5648] **OTHER OBJECTIONS.**—The basic objection to binding arbitration, legal arguments aside, is that it undermines the collective bargaining process. Collective bargaining is a do-it-yourself technique. An imposed settlement is alien to it. Moreover, parties knowing that they won't have the final say tend to save their best shots for the arbitrator. It's realistic to expect them to hold off on compromises if they expect an arbitrator to split the difference.

Public employers also believe arbitration undermines their authority to run the show. This objection is at least partially answered by limits placed on the arbitrator whose authority is not wider than the scope of bargaining so his/her power may, as a practical matter, be no more than that enjoyed by a powerful union. Nevertheless, compulsory arbitration does mean that the employer is giving up to an outsider its right to say "no" on crucial issues of wages, salaries and conditions of employment. The arbitrator, in turn, doesn't have to live with the results of decisions and will not be called to account for them though court review may overturn them.

⇒ **EMPLOYEES' VIEW** → Employee organizations find arbitration less objectionable than management. Deprived of the strike weapon, they tend to look with favor on any procedure that deprives management of some of its trump cards.

[§ 5649] **Possible solutions.**—Some localities are experimenting with various methods to soften objections to arbitration. These include final offer arbitration (on a total package or issue-by-issue basis) and "Med-Arb."

⇒ **A DRAWBACK** → A drawback of the total package technique is that it completely ties the arbitrator's hands. What if the wage package of one of the parties is reasonable and its proposals on working conditions are out of line? While the total package technique does encourage negotiation and compromise, it can force the arbitrator into a difficult position and result in an unreasonable award.

The Wisconsin legislature has experimented with the total package, final offer technique for its law enforcement (except those in Milwaukee and small towns) and firefighting personnel [Wisc. § 13,124]. The law requires total package, final offer arbitration unless the parties agree to submit to traditional arbitration.

Final offer arbitration. With this method, the arbitrator is usually asked to choose the more reasonable *total package* final offer of one party. This, unlike conventional arbitration, encourages negotiation and compromise since a party is not likely to submit a package to an arbitrator if it sees a likelihood that the adversary's total package may be deemed more reasonable than its own. What happens, though, if both offers seem unreasonable to the arbitrator? Some final offer procedures have attempted to avoid such potential problems by allowing the arbitrator to select the better offer on individual *issues*, rather than the complete package. So the arbitrator may, as an example, find the employer's wage offer more reasonable and the union's proposed change in leave of absence provisions a fairer solution. In this way, both sides get a settlement that is a truer compromise. Final offer selection on an *issue-by-issue* basis is an alternative offered under New Jersey's compulsory arbitration law for police and firefighters [§ 19,505]. New Jersey and Massachusetts [§ 11,117] also permit a factfinder's recommendations as one of three total packages from which an arbitrator may choose (the other two being the final offers of the parties).

Med-Arb. A hybrid in the arsenal of public sector impasse techniques is called "Med-Arb." Under this technique, the arbitrator takes on the dual role of an arbitrator and mediator. He/she attempts to encourage

settlement by finding common grounds of agreement, meeting privately with each of them and making recommendations. If mediation efforts fail, the neutral arbitrates the dispute, and all decisions are final and binding.

Authorities are divided on the value of this technique. Those objecting claim that taking off a mediator's hat and putting on an arbitrator's hat is easier said than done. They believe it is impossible for a neutral to participate as a mediator without undermining one's authority as an arbitrator. Both the New York City arbitration law [N. Y. §25,034] and the Eugene, Oregon, ordinance [Ore. §25,011] specifically authorize impasse panels to mediate.

Strikes

[§5651] What is a strike?—A strike is the concerted refusal of employees to perform all or part of their work as a pressure tactic for improving working conditions. It has been defined by law as "concerted action in failing to report for duty, the wilful absence from one's position, the stoppage of work, slowdown, or the abstinence in whole or in part from the full, faithful and proper performance of the duties of employment for the purpose of inducing, influencing or coercing a change in the conditions or compensation or the rights, privileges, or obligations of employment" [Pa. §11,103].

Job actions. A definition such as the one used above could also cover job actions such as slow-downs. Authorized employee acts such as sick-calls and work-to-rule tactics could also be included. The employer's problem is one of proof. If firemen suddenly take advantage of their right to go off duty to have a physical checkup immediately after a fire, the city must show this was a pressure tactic and part of a concerted plan if it wants to prove it's a strike.

➤ MASS RESIGNATIONS → Mass resignations pose a special problem. If employees have resigned, they're no longer employees. Anti-strike laws apply to "employees." The problem for the employer is whether it *can* prove a job action was a strike and, more importantly, whether it *wants to*. Its basic objective is probably to get the "plant" running again under terms it can live with. Sometimes it needs court actions to accomplish this; other times negotiations will dispel the need to find out whether a particular job action was a strike.

[§5652] Legality.—Public sector employees do not have a constitutional right to strike [National Association of Letter Carriers v. Blount, 305 F. Supp. 546 (D.D.C. 1969); appeal dismissed 400 U.S. 801 (1971)]. The federal and state governments are therefore free to impose this restriction on their employees and they have freely done so. Strikes by federal employees are unlawful under federal law [5 U.S.C. §7311] and are an unfair practice under E.O. 11491 [Fed. §11,141], and many state laws are in accord. When laws are silent on the legality of strikes, courts have ruled public employee strikes are illegal [See Cal. & N.J. §10,100]. In both of these states, however, firefighter strikes are specifically prohibited by law. New Jersey law also prohibits police strikes [See N.J. §19,500 and Calif. §14,100].

➤ PENALTIES → Many laws impose penalties on strikers. Under federal law they are subject to \$1,000 fine and a year and a day imprisonment [18 U.S.C. §1918]. State laws also impose penalties. For example, under New York's Taylor Law an employee may be penalized two-days pay for each day on strike and may be placed on probation for a year. An employee organization loses its dues check off privilege [N.Y. §11,113]. Strikers may also be subject to fines or imprisonment for violating anti-strike injunctions.

Legal strikes.—Some states do permit *some* strikes. Laws in Alaska [§11,124], Hawaii [§11,125], Pennsylvania [§11,134] and Vermont [§13,110] permit strikes that do not endanger the public health and safety. Public sector nurses in Montana may also strike in some circumstances [Mont. §18,109].

The *Alaska* statute is unique in establishing different rules for different employee groups. Thus, police and fire protection employees, correctional employees and hospital employees are not permitted to strike. For these groups arbitration is the final-step impasse procedure. Public utility, snow removal, sanitation and public school employees may strike after mediation. However, once the strike "has begun to threaten the health, safety or welfare of the public" a court may issue a back-to-work order. All other employees may strike if a majority of the employees in the bargaining unit vote to do so.

[§5653] Should public employee strikes be allowed?—For many years there was near total agreement that anti-strike laws were needed because the feeling was that acts against the "sovereign" are akin to

Treason, government employment is a privilege and not a right, and strikes run counter to the public interest. There is still near total agreement that many strikes cannot be tolerated. Mass walk-outs by police and fire officers can have disastrous consequences. Extended walkouts by others such as sanitation workers can also seriously endanger the public health and welfare.

⇒ ON THE OTHER HAND → There's a growing awareness that public employment isn't the sole factor in determining whether services are essential. For example, are strikes by public sector clerks and park attendants more serious than those of private sector utility workers? Or strikes by public sector bus drivers more disruptive than strikes by private sector bus drivers?

Reappraisals. These considerations have made a small but growing number of policy-makers conclude that blanket strike bans are not justified (permissive laws in Alaska, Hawaii, Pennsylvania, Vermont illustrate this). Moreover, they don't work. Public employees have not abandoned and are not likely to abandon a successful technique when the issues are big enough to make the risk worthwhile. Strike penalties are not a deterrent if they're not enforced and many strike settlements include an agreement for amnesty.

⇒ AN EXAMPLE → The illegal postal strike of 1970 resulted in commitments for sizable wage and salary increases, the eventual resolution of inter-union rivalries and coverage of postal workers under the National Labor Relations Act. Moreover, no one went to jail.

From the employee view, the strike or the threat of it provides needed leverage. But the employer may also prefer a strike, in some instances, to the alternative of a settlement imposed by a third party such as an arbitrator. At least management retains its right to say "no."



NEA - ALASKA

AFFILIATED WITH THE NATIONAL EDUCATION ASSOCIATION

JUNEAU OFFICE
147 SOUTH FRANKLIN #207
JUNEAU, ALASKA 99801
PHONE: (907) 586-3090

ANCHORAGE REGIONAL OFFICE
1411 WEST 33rd
ANCHORAGE, ALASKA 99503
PHONE: (907) 274-0536

FAIRBANKS REGIONAL OFFICE
825 COLLEGE ROAD
FAIRBANKS, ALASKA 99701
PHONE: (907) 456-4435

Robert C. Manners
Executive Secretary
Juneau Office

Robert C. Cooksey
Deputy Executive Secretary
Juneau Office

James D. Alter
Field Staff
Juneau Office

Charles L. O'Connell
Deputy Executive Secretary
Anchorage Office

Dianne Anderson
Field Staff
Anchorage Office

Steve Pulkkinen
Field Staff
Anchorage Office

Mary Ann Eninger
Deputy Executive Secretary
Fairbanks Office

May 4, 1983

TO: Senator Joe Josephson, Chair
Members, Senate HESS

RE: SB 78; NEA-Alaska and AASB Meeting

At the request of the Committee we met on 3 May to discuss and explore options attendant to a mutually acceptable collective bargaining bill to be used as a substitute for SB 78.

While the discussions proved insightful and revealed some areas of commonality of thought on collective bargaining generally at least five (5) basic concepts continue to be deterrents to a mutually acceptable bill.

a) Scope of Negotiations:

- AASB prefers a specific list of items which would be subject to collective bargaining, especially if arbitration is to be the final step in the bargaining process.

- NEA-Alaska prefers that the current definition continue, incorporating with the "Kenai Decision". It is our opinion that a specific and limiting list unnecessarily constrains the parties in resolution of problems.

b) Negotiability vs Arbitrability:

- AASB feels that all of the items subject to negotiations should not necessarily be included in the issues which may be placed before an arbitrator.

- NEA-Alaska feels that any unresolved item which is legitimately included as part of a collective bargaining process should be subject to arbitration.

c) Management Rights:

- It is the position of AASB that the presence of an arbitration provision necessitates the inclusion of specific management rights statements.

- NEA-Alaska feels that the presence of 14.20.610 clearly reserves to a school board its rights, responsibilities, and authority and gives the board substantial latitude on matters attendant to policy.

Senator Josephson
Page Two


d) Finality through:

- conventional arbitration, last best offer arbitration, strike, unilateral determination.

e) AASB concern for effect of financial exigencies vis a vis reducing program and staff.

With a major share of the time being devoted to a, b, and c and not producing a bilateral understanding, items d and e were not fully discussed.

Respectfully submitted:



Robert Manners
Executive Secretary

RM:jc

d) "Arbitration lengthens the process."

- Again, quite the contrary! The data shows that the mere presence of an arbitration procedure enhances the potential for a negotiated settlement short of its actual use. When the parties know that the issues in a dispute will be subject to third party scrutiny and determination, the tendency is to take more reasonable and defensible positions in the interest of reaching bilateral agreement.

It should be noted that Alaska has had for over ten (10) years the statutory requirement of binding arbitration on grievance disputes. The track record in this arena clearly shows that the vast majority of grievances do not get to arbitration in that the parties are generally able to reach agreement on their resolution and that the arbitration decisions which have been rendered have not been particularly burdensome for either party.

Finality in teacher negotiations is essential. Too much time, energy, and human resource is currently being spent by both sides in the teacher collective bargaining process as a result of negotiations impasse disputes which would be better spent on the task of education.

*J. Venkamp, Zharov, Kodely
from Bob Manner*

SECTION ANALYSIS
2/5/85 Draft

"An Act relating to Public School Employees Collective Bargaining"
Amends 14.20.550-610

Section 1: Declaration of Policy; adds a new section AS 14.20.540 establishing that public school employees have a right to participate in formulating decisions pertaining to their employment, that such will provide cooperative and harmonious relationships and promote public education in the State.

Section 2: Amends AS 14.20.550 to include all school district employees under the negotiations requirement.

Section 3: Amends AS 14.20.555 to make optional coordinated employee negotiations available to administrative certificated personnel and to classified employees.

Section 4: Repeals and reenacts AS 14.20.560 to establish the Educational Employees Labor Relations Agency with administrative responsibility for determination on questions pertaining to the negotiations unit, its composition, and representation elections.

Section 5: Negotiation Meetings: Adds a new section AS 14.20.565, which establishes that negotiations will commence within 20 days of a request by either party and that all final agreements must be made at a public meeting of the school board. It also establishes release time without loss of pay or benefits for employees when negotiations are conducted during the normal workday.

Section 6: Amends AS 14.20.570 (A) to more clearly define the access to and utilization of the mediation procedure.

Section 7: Repeals and reenacts AS 14.20.580 to provide for last best offer, item by item arbitration on those issues not resolved in mediation. If the parties are unable to agree on a procedure for the selection of an arbitrator they are directed to utilize the procedures of the American Arbitration Association.

The arbitrator will receive the last best offer of each party; provide for argument, evidence, and testimony; may conduct a public hearing; and shall select the final offer of one of the parties as a binding determination.

The costs of the arbitrator are equally shared by the parties.

Adds a new section, 14.20.584 which provides for judicial review of an arbitration award consistent with AS 09.43.110 - 130.

Section 8: Amends AS 14.20.590 to include all public school employees in the requirement that all collective bargaining agreements must contain a provision providing for a grievance procedure ending in arbitration.

Section 9: Amends AS 14.20.600 to provide for bona fide religious objection to collective bargaining agreements containing provision for payment of a service fee to reimburse the exclusive bargaining agent for the expenses of representation.

Section 10: Adds a new section, AS 14.20.605, establishing an Educational Employees Labor Relation Agency which is responsible for the administration of the law. The Agency is created in the Department of Administration by the addition of two gubernatorial appointees to the current Labor Relations Agency.

Adds a new section, AS 14.20.606 which provides that the EELRA shall have responsibility to adjudicate unfair labor practices and incorporates, by reference, AS 23.40.120 - 180. Defines and prohibits unfair labor practices and incorporates by reference, AS 23.40.110.

Section 11: Legal Responsibilities of Boards: Amends AS 14.20.610 to clarify authority of a school board relative to its legal responsibilities.

Section 12: Provides grandperson protection to current recognized negotiating units and collective bargaining agreements in existence on the effective date of the Act.

Section 13: Effective date clause: immediate.

POLICY PAPER
on
COLLECTIVE BARGAINING
BETWEEN SCHOOL BOARDS AND THEIR EMPLOYEES

The intent of SB 78 is fully understood by reading the proposal in Section 7 of the bill which repeals AS 14.20.550 - 14.20.610. These sections are concerned with school board procedures relative to labor negotiations, mediations and grievance handling. This amendment would move the labor relations procedures of Title 14 to Section 23.40.070 - 260, the Public Employment Relations Act. At first reading this proposal appears to have validity in that a single statute would control procedures in the area of labor relations. However, SB 78 fails to address the unusual circumstances and political sensitivity of the educational views of the many communities of the state which are operative in labor disputes between school district administrators and educational associations. As found in SB 78 the proposal is to classify certificated employees of school districts as Class 1 participants as defined in PERA for the purpose of denying or limiting strikes. Class 1 employees are barred from striking and are immediately subjected to AS 09.43.030 which allows for court ordered interest arbitration. This proposal would appear to ensure labor harmony; in fact, it would limit attempts to find true areas of compromise, thereby forcing the parties to make non-negotiable demands rather than seeking settlement that reflects the interests of all parties, including the community.

Placing certificated employees within AS 23.40 of PERA opens a broader question of whether the present non-negotiable items found in the decision of the Supreme Court in the Kenai case could now be considered negotiable within the PERA definitions of terms and conditions.

All school-related employees should be spoken to under Title 14. The amendment proposing to view non-certificated school employees as Class 2 PERA employees has some validity when considering health-related activities such as trash removal. However, this group of employees when placed in a classification under Title 14 should be limited in their right to strike, similar to those employees presently classified as Class 2 within PERA.

While the above discussion on certificated and non-certificated employees is important, the proposal to force all school boards into accepting AS 23.40.070 - 260 can only disturb the regional needs to address all issues, including labor management, that impacts their lives.

The proposed amendments under SB 78 which attempt to define all public employees and public employers is a shotgun approach to creating a broad class of individuals within the AS 23.40 series. This issue should be examined more fully in another position paper.

As noted in other overviews on this subject an amendment to AS 14.20.580 "C" to include several options to school district administrators and employees such as:

- A. limited strike;
- B. interest arbitration;
- C. 30-day cooling off, mediation, limited strike, and finally interest arbitration

will provide the relief proposed in SB 78 without forcing educational labor needs into a purely unrelated labor bill. Community needs in the area of education and labor relations is an inherently different set of issues than the general non-education labor market concerns.

Guy Stringham
Director
Division of Labor Relations
Department of Administration

Lisa S. Rudd
Commissioner
Department of Administration

Senate Bill 78 effectively addresses the entire question by placing teachers in the PERA in the "essential services" category. In so doing, it eliminates the ambiguity regarding the procedures - and absence of same - in the current teacher bargaining law.

PERA has a positive labor relations track record in Alaska and its arbitration procedure is sound and provides the statutory parameters necessary to insure the interests of government.

Recent surveys in the Anchorage community by Senators Colletta and Kelly and Representative Phillips showed an overwhelming sentiment (nearly 80%) that teacher negotiations disputes should be settled through arbitration rather than strike.

In his dissenting opinion in the recent Supreme Court decision on the 1979 Anchorage Teacher Strike, Justice Rabinowitz said:

"If public school teachers are so essential to society that they must be denied the right to strike, then they should be given the right to compulsory arbitration."

In his public statements over the past two years Governor Sheffield has spoken strongly on the need for finality in the teacher negotiations process and indicated support for the Senate Finance Committee Substitute for CS for HB 174 in the Twelfth Legislature.

Opponents of arbitration of teacher negotiations disputes, while sincere in their opposition to the concepts of arbitration, generally have not accurately represented the facts of the process.

a) "Erosion of statutory authority of school boards."

- Through application of the Uniform Arbitration Act under PERA, arbitrators are constrained from excessive awards and cannot diminish the Statutory responsibility of a school board.

b) "Arbitration is not constitutional."

- Again, the Alaska Uniform Arbitration Act meets the constitutional test by establishing criteria for the arbitrator to use in reaching a decision.

c) "Arbitration doesn't prevent strikes."

- Quite the contrary! The record is clear in those states which have compulsory interest arbitration. There are not strikes as a result of negotiations disputes when arbitration is the final step in the dispute settlement procedure.

This decision combined with the absence of finality through arbitration puts teachers at a distinct disadvantage as they attempt to negotiate their terms and conditions of employment. Nothing in the present law creates an urgency or even a real need for a school board to negotiate in good faith and reach agreement. Parity and equity in a collective bargaining relationship derives from the parties each having some means of exerting pressure on the other in support of their position. Absent the ability or right to strike, teachers as employees do not have an equitable posture in the negotiations process.

In the public sector an answer which is being used by an increasing number of states is interest arbitration for "essential service" employees such as teachers, police, fire, and hospital employees. This is becoming the most effective method of preventing strikes while settling negotiations disputes in a fair and effective manner.

Alaska has a unique opportunity to resolve the teacher bargaining law problem through the Public Employee Relations Act. PERA, as it is known, has been in place for 10 years and has provided an orderly negotiations procedure for all public employees except teachers. The legislative purpose as stated in PERA, applied to public school teachers, would establish uniform labor relations procedures for all public employees in the State.

Sec. 23.40.070. Declaration of policy. — The legislature finds that joint decision making is the modern way of administering government. If public employees have been granted the right to share in the decision-making process affecting wages and working conditions, they have become more responsive and better able to exchange ideas and information on operations with their administrators. Accordingly, government is made more effective. The legislature further finds that the enactment of positive legislation establishing guidelines for public employment relations is the best way to harness and direct the energies of public employees eager to have a voice in determining their conditions of work, to provide a rational method for dealing with disputes and work stoppages, to strengthen the merit principle where civil service is in effect and to maintain a favorable political and social environment. The legislature declares that it is the public policy of the state to promote harmonious and cooperative relations between government and its employees and to protect the public by assuring effective and orderly operations of government. These policies are to be effectuated by

(1) recognizing the right of public employees to organize for the purpose of collective bargaining;

(2) requiring public employers to negotiate with and enter into written agreements with employee organizations on matters of wages, hours, and other terms and conditions of employment;

(3) maintaining merit system principles among public employees.

Sec. 23.40.080. Rights of public employees. — Public employees may self organize and form, join or assist an organization to bargain collectively through representatives of their own choosing, and engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

DFH2005I TRANSACTION ADMF ABEND AZI6 IN PROGRAM DFHCRP SYST
DFH2206I TRANSACTION ADMF ABEND G166 . BACKOUT SUCCESSFU SYST
DFH2005I TRANSACTION ADMF ABEND AZI6 IN PROGRAM DFHCRP SYST
DFH2206I TRANSACTION ADMF ABEND G166 . BACKOUT SUCCESSFU SYST

SB0078 -P02 DOCUMENT=

6 OF 8 PAGE = 1 OF 3

BILL = SB0078
CHAMBER = S
DATE = 03/27/84
PAGE = 02476
YEAR = 84
BILL SB0078
PAGE 02476
DATE 03/27/84
CHAMBER SENATE

TEXT The question being: "Shall Amendment No. 2 be adopted?" The roll was taken with the following result:

CSSB 78 HESS AM AM 2

Yeas: 7 Faiks, Fischer Paul, Gilman,
Halford, Mulcahy, Pettyjohn, Ziegler

Nays: 12 Bennett, Eliason, Fahrenkamp,
Ferguson, Fischer Vic, Josephson,
Kelly, Kerttula, Moss, Ray, Sackett,
Sturgulewski

Excused: 1 Rodey

and so, Amendment No. 2 failed.

SB0078 -P02 DOCUMENT=

6 OF 8 PAGE = 2 OF 3

Senator Ray moved and asked unanimous consent that <CS FOR
<SENATE BILL NO. 78 (HESS) am> be considered engrossed, advanced
to third reading and placed on final passage. Without objec-
tion, it was so ordered.

CS FOR SENATE BILL NO. 78 (HESS) am was read the third time.
The question being: "Shall CS FOR SENATE BILL NO. 78 (HESS)
am (teachers' collective bargaining agreements; efd) pass
the Senate?" The roll was taken with the following result:

CSSB 78 HESS AM 3RD

Yeas: 15 Bennett, Eliason, Fahrenkamp,
Ferguson, Fischer Paul, Fischer Vic,
Gilman, Halford, Josephson, Kelly,
Kerttula, Moss, Pettyjohn, Ray,
Sturgulewski

Nays: 4 Faiks, Mulcahy, Sackett, Ziegler

Excused: 1 Rodey

and so, CS FOR SENATE BILL NO. 78 (HESS) am passed the Senate.
Senator Ray moved and asked unanimous consent that the roll
call on the passage of the bill be considered the roll call
on the effective date clause. Without objection, it was so

TEXT OF ALASKA SUPREME COURT DECISION ON SCOPE OF BARGAINING
UNDER TEACHER NEGOTIATIONS STATUTE

IN THE SUPREME COURT
OF THE STATE OF ALASKA

KENAI PENINSULA BOROUGH
SCHOOL DISTRICT and KENAI
PENINSULA BOROUGH

v.

KENAI PENINSULA EDUCATION
ASSOCIATION,
Appellee.

File No. 2470

ANCHORAGE BOROUGH EDUCATION
ASSOCIATION,
Appellant,

v.

GREATER ANCHORAGE AREA BOROUGH,
ANCHORAGE BOROUGH SCHOOL DISTRICT,
Appellee.

File No. 2492

MATANUSKA-SUSITNA SCHOOL DISTRICT,
Appellant,

v.

MATANUSKA-SUSITNA EDUCATION
ASSOCIATION,
Appellee.

File No. 2563

[No. 1537 - December 9, 1977]

Appeals from the Superior Court of the State of Alaska, Third Judicial District, at Kenai, No. 2470, James A. Hanson, Judge; at Anchorage, No. 2492, Victor D. Carlson, Judge; at Anchorage, No. 2563, C. J. Occhipinti, Judge.

Appearances: Allen McGrath and John R. Snodgrass, Jr., of Graham & James, Anchorage, for School Districts. John R. Strachan, Anchorage, for Education Associations.

Before: Boochever, Chief Justice, Rabinowitz, Connor, Erwin, and Burke, Justices.

CONNOR, Justice.

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

ed on the matter, one ruled in favor of the school boards,¹ one ruled in favor of the teachers' union,² and one split the various items, ruling for the board on some and the unions on other.³

I. Introduction

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

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

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

The boards contend, using labor cases from the private sector, that the requirement of collective bargaining in good faith is a term of art in labor law. Unlike a simple "meet and confer" requirement, to negotiate in "good faith" entails a duty to make concessions. Thus, management does not have the final decisions on matters subject to good faith collective bargaining, since if management adheres to its determined policies, it violates the law.

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

The unions argue that such delegation is perfectly proper, and that there is no delegation of decision-making power inherent in a labor negotiations requirement. They further argue that they represent professional employees, and that

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

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

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

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

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

their participation in good faith collective bargaining labor negotiations is an attempt by the legislature to provide professional advice to school boards on the management of the schools. They assert that this is a legislative policy judgment, in no way inimical to the Alaska Constitution. Also relying on labor cases, they discount the importance of any "management prerogative" to determine educational policy under AS 14.20.610, and assert that labor's concerns with working conditions override any management prerogative as to basic policy.

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

II. Scope of the Duty to Bargain

If we were to look to the law concerning bargaining between labor unions and private employers, we would conclude that the scope of negotiable issues is broad. The law relating to the private sector has always contained, and still does contain, uncertainties. But the general trend has been to require that employers bargain in good faith on a wide range of items with respect to wages, hours, and other conditions of employment, without regard to whether the employers consider the items bargained for to be within the prerogatives of management.³ Moreover, some cases hold that for an employer or a union to avoid being found to have bargained in bad faith, the parties must make some reasonable effort to compose their differences. While the good faith standard of collective bargaining does not compel either party to make concessions, intransigent positions, adopted in an effort to avoid any agreement, are disfavored.⁴ Thus a legal determination that a matter is subject to good faith collective bargaining may narrow the policy-making powers of an employer by curtailing any absolute directives on his part.

When we turn to employment in the public sector, and particularly in education, the question of what is properly bargainable is thrown into more doubt. If teachers' unions are permitted to bargain on matters of educational policy, it is conceivable that through successive contracts the autonomy of the school boards could be severely eroded, and the effective control of educational policy shifted from the

school boards to the teachers' unions. Such a result could threaten the ability of elective government officials and appointive officers subject to their authority, in this case the school boards and administrators, to perform their functions in the board public interest.⁵

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

"A public employer, unlike his private counterpart, is not guided by the profit motive and constrained by the normal operation of the market. Municipal services are typically not priced, and where they are they tend to be regarded as in some sense 'essential' and therefore are often price inelastic. Although a public employer, like a private one, will wish to keep costs down, he lacks an important discipline against agreeing to increases in labor costs that in a market system would require price increases. A public sector union is correspondingly less concerned that high prices due to costly wage demands will decrease output and hence employment.

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

Finally, decisionmaking by a public employer is above all a political process. The officials who represent the public employer are ultimately responsible to the electorate, which for this purpose can be viewed as comprising three overlapping classes of voters — taxpayers, users of particular government services, and government employees. Through exercise of their political influence as part of the electorate, the employees have the opportunity to affect the decisions of government representatives who sit on the other side of the bargaining table. Whether these representatives accede to a union's demands will depend upon a blend of political ingredients, including community sentiment about unionism generally and the involved union in particular, the degree of taxpayer resistance, and the views of voters as to the importance of the service involved and the relation between the demands and the quality of service."

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

"The ultimate objective of a union in the public sector, like that of a political party, is to influence public decision-making in accordance with the views and perceived interests of its membership. Whether a teachers' union is concerned with salaries and fringe benefits, teacher qualifications and in-service training, qualifications and in-service training, pupil-teacher ratios, length of the school day, student discipline, or the content of the high school curriculum, its ob-

³ *Fibreboard Paper Products Corp. v. N.L.R.B.*, 379 U.S. 203 (1964) (management decision to subcontract out the work of some employees must be bargained); *International Ladies' Garment Workers Union v. N.L.R.B.*, 463 F.2d 907 (D.C. Cir. 1972) (decision to relocate the business to another state subject to bargaining); *Royal Typewriter Co.*, 209 N.L.R.B. 1606, 1012 (1974) (decision to close a plant subject to bargaining). *But see* *General Motors Corp.*, 191 N.L.R.B. 951 (1971), *aff'd sub nom. International Union, United Auto. A. & A. Imp. Wkrs. v. N.L.R.B.*, 470 F.2d 422, 425 (D.C. Cir. 1972) (decision to sell part of business not bargainable).

⁴ *Sign and Pictorial Union Local 1175 v. N.L.R.B.*, 419 F.2d 726, 731 (D.C. Cir. 1969); *N.L.R.B. v. General Electric Co.*, 418 F.2d 736, 756-62 (2d Cir. 1969), *cert. denied*, 397 U.S. 965 (1970); *N.L.R.B. v. McLane Co.*, 405 F.2d 433, 434 (5th Cir. 1968); *N.L.R.B. v. Reed & Prince Mfg. Co.*, 205 F.2d 131, 134-35 (1st Cir. 1953), *cert. denied*, 346 U.S. 857 (1953) ("the employer is obliged to make some reasonable effort in some direction to compose his differences with the union"); emphasis in original; *Majure v. N.L.R.B.*, 198 F.2d 735 (5th Cir. 1952). See generally *Swerdlow, Freedom of Contract in Labor Law*, 51 *Tex. L. Rev.* 1 (1972).

⁵ As one commentator has noted, "what is in the best interest of the students and the community is not always in the best interests of teachers." *Hend, Symposium on Teacher Bargaining, Commentary*, 50 *Ind. L.J.* 344, 350 (1975).

jective is to bring school board policy and decisions into harmony with its own views. Similarly, to the extent that school board expenditures and policy are guided by decisions made by the municipal, state and federal governments, the union's objective is to obtain favorable decisions — and to place persons in positions of power who will be receptive to the union's viewpoint. In these respects, the public sector union is indistinguishable from the traditional political party in this country." 52 L. Ed. 2d at 298.⁴

The legislature was evidently cognizant of this concern when it enacted AS 14.20.550 and .610, stating two goals which apparently conflict. We must now proceed to interpret what we believe the legislature meant by these provisions.

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

While courts in an earlier era often held laws unconstitutional on the ground that they delegated legislative power to private persons or groups, *e.g.*, *Carter v. Carter Coal Co.*, 298 U.S. 238, 311 (1936), the trend has been to uphold such delegations, even when the power is delegated to a group with an economic interest in the decisions to be made. *E.g.*, *United States v. Rock Royal Cooperative, Inc.*, 307 U.S. 533, 577-78 (1939) (cooperative marketing program from agricultural products); *Agricultural Prorate Comm'n v. Superior Court*, 55 P.2d 495, 504-06 (Cal. 1936) (same); *Potter v. New Jersey Supreme Court*, 403 F. Supp. 1036, 1039-40 (D.N.J. 1975), *aff'd*, 546 F.2d 418 (3d Cir. 1976) (requirement that attorneys have graduated from law schools accredited by the American Bar Association). See generally, 1 K. Davis, *Administrative Law Treatise* §2.14 (Supp. 1970) (collecting cases). See also 1 *Id.* §2.15 (1958).

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

⁴ The holding of the majority in *Abaad* was that a union shop or agency shop agreement for public employees, requiring all employees in the bargaining unit to make financial contributions to the union, did not violate the first amendment rights of employees who objected to the union. The same rule obtains for unions in the private sector. Although Justice Powell concurred in the majority's decision to remand the case for further proceedings, he disagreed with this constitutional holding. Unlike the majority, he felt that the differences between public and private employment compelled a holding that agency shop or union shop agreements in the public sector are forbidden by the first amendment.

See generally Rehmus, *Constraints on Local Governments in Public Employee Bargaining*, 67 *Mich. L. Rev.* 919 (1969); Shaw and Clark, *The Practical Differences Between Public and Private Sector Collective Bargaining*, 19 *U.C.L.A. L. Rev.* 867 (1972); Summers, *Public Sector Bargaining: Problems of Government Decisionmaking*, 44 *U. Con. L. Rev.* 669 (1975); Summers, *Public Employee Bargaining: A Political Perspective*, 63 *Yale L.J.* 1156 (1974); Wellington & Winter, *The Limits of Collective Bargaining in Public Employment*, 78 *Yale L.J.* 1107 (1969); Project, *Collective Bargaining and Politics in Public Employment*, 19 *U.C.L.A. L. Rev.* 887, 1010-51 (1972), Supp. 1036, 1039-40 (D.N.J. 1975), *aff'd*, 546 F.2d 418 (3d Cir. 1976) (requirement that attorneys have graduated from law schools accredited by the American Bar Association). See generally, 1 K. Davis, *Administrative Law Treatise* §2.14 (Supp. 1970) (collecting cases). See also 1 *Id.* §2.15 (1958).

The cases in other states rejecting the argument that collective bargaining with teachers' unions is an unconstitutional delegation of power, all involve statutes which fairly narrowly constrict either the scope of bargainable issues, or the school boards' duty to accede to union proposals, on both. *Chicago Div. of Ill. Ed. Ass'n v. Board of Ed.*, 222 N.E.2d 243, 251 (Ill. App. 1966); *Joint School Dist. No. 8 v. Wise. Emp. Rel. Bd.*, 155 N.W.2d 78, 83 (Wisc. 1967); *State v. City of Laramie*, 437 P.2d 295, 300 (Wyo. 1968) (firemen).

In this opinion, we similarly construe the Alaska statute. A statute defining the scope of collective bargaining as broadly as the union would have us do, might well present a more troubling constitutional question. But we find no constitutional infirmity in AS 14.20.550 and .610. The delegation of power problem still bears upon our task of statutory interpretation, however, for in interpreting the relevant statutes we will not readily assume that the legislature intended to divest the school boards of their power to determine matters of educational policy and school system management.

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

The court in *Dunellen Bd. of Education v. Dunellen Ed. Ass'n*, 311 A.2d 737 (N.J. 1973), dealt with a conflict between a requirement to bargain about "terms and conditions" of employment (without further definition) and the broad managerial power over schools entrusted to local school boards. The court noted that "terms and conditions" of employment without further definition does not furnish a dispositive guideline. It held that the decision whether to consolidate chairmanships of the social studies department and English department was not a subject of mandatory bargaining. It was a matter predominately of educational policy and thereby fell within the exclusive prerogative of management.⁵

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

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

⁵ The teachers' unions in the case at bar argue that *Dunellen* was overruled by later legislation. The statute in question dealt with only a limited aspect of bargaining; and *Dunellen* has been followed by the courts despite the statutory amendment. See, *e.g.*, *Galloway Tp. Bd. of Ed. v. Galloway Tp. Ed. Ass'n*, 343 A.2d 133 (N.J. Super. 1975).

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

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

Put another way, a matter is more susceptible to bargaining the more it deals with the economic interests of employees and the less it concerns professional goals and methods. Bargaining over the latter topics presents particular problems because there is less likely to be any politically organized interest group other than the union concerned with these issues. The salaries of public employees have a direct financial effect on the taxpayers; on the other hand, a question such as teacher evaluation of administrators is unlikely to have any impact sufficiently direct to be discernible by laymen. Furthermore, it is such an abstract and abstruse subject that it is unlikely that any appreciable portion of the public will either understand it or care greatly about it. In such circumstances, the risk that effective power over the governmental decision will come to rest with the union is significantly greater. Moreover, it is more likely that there will be disagreements among union members on questions of this nature than on "bread and butter" issues; the risk that minority viewpoints within the union will not be meaningfully represented in the bargaining is a real one. See Summers, *supra*, 83 *Yale L.J.* at 1191-82, 1194-95. But see Wollett, *The Coming Revolution in Public School Management*, 67 *Mich. L. Rev.* 1017 (1969) (argues that these subjects should be bargainable).

III. Specific Issues

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

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

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

In the *Mat-Su* case the teachers have asked for a planning period of 45 minutes "to be taken during the academic portion of the day." Were this merely a request for planning time, it might be considered negotiable. The demand that it be during the academic portion of the day, however, presents an additional complication; whether, as a matter of

educational policy, elementary school children should have one teacher with them throughout the day or whether they are old enough to be taught by different people. This presents a basic educational decision. While the amount of paid time available to a teacher for preparation of lesson plans affects the teacher directly, the demand that such time be available "during the academic portion of the day" presents a policy question.

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

An examination of the other specific items listed above yields equally indefinite answers. We are confronted, then, with a situation in which the legislature has not spoken with clarity and concerning which we possess no expertise. We can only conclude that salaries, fringe benefits, the number of hours worked, and the amount of leave time are negotiable.¹⁰ In view of the concerns expressed on page 7-10 *supra*, we conclude that the other specific items listed on page 17 are, under the existing statutory language, non-negotiable.

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

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

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

AFFIRMED IN PART, REVERSED IN PART.

APPENDIX LIST OF NEGOTIABLE AND NON-NEGOTIABLE ITEMS

Those items which are non-negotiable are as follows:

1. Relief from Non-Professional Chores
2. Class Size and Teacher Load
3. Ombudsman
4. Evaluation of Administrators

¹⁰ Or 5 U.S.C. §7512(a) under the Veterans Preference Act.

5. Teacher Aides
6. Para-Professionals
7. PTR Formula
8. Specialists
9. Calendar

Those items which are negotiable are:

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

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

SITKA SCHOOL DISTRICT

ACCREDITED BY THE NORTHWEST ASSOCIATION OF SECONDARY SCHOOLS & COLLEGES

~~Dennis~~
~~HB 130~~
~~bind arb~~
coll bargain



P.O. BOX 179 SITKA, ALASKA 99335

February 14, 1985

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

Dear Governor Sheffield:

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

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

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

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

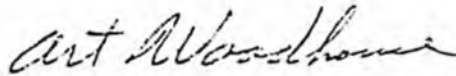
Governor Sheffield
February 14, 1985
Page 2

SITKA SCHOOL DISTRICT

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

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

Respectfully,



Art Woodhouse
Superintendent

AW/sh

encs.

cc: Legislators
State Board of Education

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

Mayor Young
was one of the
Prime Sponsors
of Act 312 when
he was in
the
Legis. Linn.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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