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study, based on a national sampling of teachers from arbitration and non-arbitration states, estimates that salaries in arbitration states may be nine percent higher.²⁶⁰ This study probably overstates the arbitration effect, however, for it does not measure the amount of increase attributable to arbitration and does not control for a number of potentially influential factors.²⁶¹

Tables 5 and 6 contain alternative methods of gauging the arbitration effect through, respectively, a measurement of salary trends in states both before and after the adoption of arbitration, and a comparison of salary trends in arbitration and non-arbitration states. We emphasize that these measures invite several methodological criticisms, and we do not offer them as proof of the magnitude of the arbitration effect.²⁶² Cumulatively, however, these measures appear to suggest the presence of some inflationary effect.

Table 5 sets forth the rate of salary increases occurring in each of the binding arbitration states for the three years prior to the enactment of compulsory arbitration and the four years following adoption of the process. The rates of salary increase are measured both in terms of actual dollars and 1967 dollars, and those rates are

of the impact of the availability of arbitration upon salaries. It is a difficult methodological task to match two groups of teachers such that they are identical *but for* the availability of arbitration in one group. For example, the political and economic processes that lead to the instigation of arbitration in a jurisdiction may produce a bargaining context quite different from that of a non-arbitration jurisdiction. For a more detailed critique of problems associated with using this approach to estimating the impact of arbitration, see Anderson, *The Impact of Arbitration: A Methodological Assessment*, 20 INDUS. REL. 129, 133-41 (1981).

Second, a wage determination econometric model can be used to estimate S_n . Using a number of variables highlighted by the wage determination theory, S_n is estimated by use of sophisticated wage equations. For examples of wage determination models, see Bloch & Kurkin, *supra* note 75; Fogel & Lewin, *supra* note 75. Of course, this approach is limited by the accuracy and comprehensiveness of the wage equation.

260. Delaney, *supra* note 79, at 445-46.

261. As discussed *supra* note 257, the failure to control for pre-existing salary levels in arbitration jurisdictions has potential to overstate appreciably the independent impact of arbitration. Furthermore, CPS data fail to control for such factors as a school district's *ability to pay*, and as Delaney concedes, such failure will overstate the salary effect if those factors are themselves correlated with the existence of arbitration legislation. See Delaney, *supra* note 79, at 444 n.49. Finally, Delaney's classification scheme contains certain errors. See *supra* note 86.

262. In essence, Table 6 is an extension of the S_a-S_c method of estimating the impact of the availability of arbitration upon teacher salaries discussed in *supra* note 259. Rather than matching the salaries in one jurisdiction where arbitration is available with the salaries of a comparable group of teachers in a jurisdiction without arbitration, Table 6 compares all the arbitration jurisdictions, in general, with all the non-arbitration jurisdictions. Of course, this technique is subject to all the criticisms of the S_a-S_c method of estimation outlined in *supra* note 259. Furthermore, as both Tables 5 and 6 incorporate state-level average salaries, any inferences based on these data are also limited by the critique of state-level studies offered in *supra* notes 75-76.

TABLE 5
Average Salary of Public School Teachers in Binding Arbitration States for the Period
Three Years Before and Four Years After the Enactment of Binding Arbitration

Year	Average Salary in Dollars	Average Salary in 1967 Dollars	Percent Increase in Average Salary	Percent Change in Average Salary in 1967 Dollars	Year	Average Salary in Dollars	Average Salary in 1967 Dollars	Percent Increase in Average Salary	Percent Change in Average Salary in 1967 Dollars		
		Nebraska (1972)						Minnesota (1973)			
1970-71	8,125	6,782	10.2*	5.0	1971-72	10,218	8,247	4.7	1.0		
1971-72	8,465	6,832	4.2	0.7	1972-73	10,553	8,143	3.3	-1.7		
1972-73	8,704	6,716	2.9	-1.7	1973-74	11,076	7,789	5.0	-4.3		
1973-74	9,168	6,447	5.3	-4.0	1974-75	11,790	7,490	6.4	-3.8		
1974-75	9,264	5,886	1.0	-8.7	1975-76	12,726	7,589	7.9*	1.3*		
1975-76	10,409	6,207	12.4*	5.5*	1976-77	13,963	7,858	9.7*	3.5*		
1976-77	11,172	6,287	7.3*	1.3*	1977-78	14,167	7,456	1.5	-5.1		
		Iowa (1974)						Wisconsin (1978)			
1972-73	9,597	7,405	4.5	-4.4	1976-77	13,242	7,452	7.2*	1.2*		
1973-74	9,854	6,930	2.7	-6.4	1977-78	14,045	7,390	6.1	-0.8		
1974-75	10,655	6,769	8.1	-2.3	1978-79	14,906	7,132	6.1*	-3.5*		
1975-76	12,132	7,234	13.9*	6.9*	1979-80	16,006	6,745	7.4*	-5.4*		
1976-77	12,533	7,053	3.3	-2.5	1980-81	17,606	6,671	10.0	-1.1		
1977-78	13,340	7,021	6.4*	-0.5*	1981-82	19,387	6,807	10.1*	2.0*		
1978-79	14,186	6,788	6.3*	-3.3*	1982-83	21,496	7,279	10.9*	6.9*		
		Connecticut (1979)									
1977-78	14,299	7,526	4.7	-2.1							
1978-79	15,482	7,408	8.3*	1.6*							
1979-80	16,229	6,839	4.8	-7.7							
1980-81	17,404	6,595	7.2	3.6							
1981-82	18,858	6,621	8.4	3.9*							
1982-83	20,731	7,020	9.9*	6.0*							
1983-84	22,624	7,317	9.1*	4.2*							

*Percent increase in state average salary exceeds the national means.

Source: Calculated from data in National Education Association Research, Estimates of School Statistics (revised) (unpublished). The 1983-84 statistic for Connecticut is an unrevised estimate.

- The national average includes data from the three states and the District of Columbia that could not be categorized as either collective bargaining intensive or unintensive.
- 1982-83 data is only an estimate and has yet to be revised.
- This list includes Illinois, Ohio and Michigan which effectively have a "de facto" right to strike. While other states arguably fall into this category, these three were chosen because they have a particular problem with "illegal" teacher strikes. Without these three states, the mean would be 17.48.
- Massachusetts (1.59%) has not been included among the "Other Collective Bargaining Intensive States" as that state's school districts have been subject to an abnormal, legal taxing limitation since 1980. If included, the mean would be 16.80%.
- Minnesota (25.42%) has not been included among the "Binding Arbitration States," as since 1980 teachers have had the choice of either striking or going to binding arbitration.

Source: Calculated from data in National Education Association, *The Ranking of the States, 1981 and 1983.*

compared to the national figures. There is no exact pattern duplicated in each of the binding arbitration states. Because each of these arbitration systems was introduced into a different educational system in a different economic and political climate, it is not surprising that the salary effects recorded on Table 4 do not replicate each other. There is, however, a general trend indicating that the salary rates in most binding arbitration states consistently overtook national averages within two to three years of the introduction of binding arbitration.

Additional inferences of the economic impact of arbitration may be drawn when one compares the rates of salary increase in arbitration states with those in other jurisdictions. Table 6 sets forth the rates of salary increase occurring in the various states from 1980 to 1983. As Table 6 demonstrates, the average rate of salary increase in arbitration states²⁶³ exceeds both that in states with the right to strike, and that in states where collective bargaining is intensive but does not culminate in resolution by strikes or arbitration. The salary effect varies considerably from state to state, however, and thus it is not possible to quantify a consistent arbitration effect.

In summary, the best available evidence from the educational and non-educational employment sectors suggests that teachers' salaries may be moderately inflated by the introduction of binding arbitration procedures.²⁶⁴ And to the extent that such salary inflation does occur, it will occur through the influence of arbitration on negotiation behavior. For this reason, the relatively modest effect of arbitration is not surprising. Even though professional negotiators may be influenced by arbitration to negotiate somewhat larger salary settlements, one would not expect substantial salary increases in the absence of a signal from arbitrators that they will establish substantial salary precedents—and this, the evidence indicates, does not occur. Therefore, even though arbitration may "matter," "'market' factors appear to matter more."²⁶⁵

This does not suggest that binding arbitration is an undesirable impasse resolution technique for teachers. In a system of localized

263. The 1980-83 period was chosen because it is the earliest time period in which arbitration legislation was in effect for all states listed.

264. This analysis focuses on salaries, and thus does not reflect the impact of arbitration on economic fringe benefits. Such fringe benefits are clearly a factor in estimating the general economic impact of arbitration. The work of Feuille, Hendricks and Delaney, (*COLLECTIVE BARGAINING*, *supra* note 204), reveals that arbitration's impact on salaries and fringe benefits is similar—there is "little effect on the general levels of fringe benefits and total compensation or on specific fringe benefits. . . ." *Id.* at 30. But clearly more work on this subject is needed.

265. *Id.* at 27.

collective bargaining, marginal improvement in salary levels may be better than no improvement at all. In addition, if arbitration is relatively as effective in improving salaries as the right to strike, it is probably preferable to the social and political turmoil that result from a shutdown of the schools.²⁶⁶ There is, however, no indication that arbitration has the potential to produce change of such magnitude as will lift teachers' salaries to a competitive level in the labor market.²⁶⁷ As a technique for educational reform, therefore, it is as unpromising as other variations on the system of localized collective bargaining.

B. The Effects of Binding Arbitration on School Governance and Educational Policymaking

While the predominant fear of local government is that arbitration will inflate the local budget, there is also serious concern over its non-economic implications. In particular, there are numerous policy issues that arise in collective bargaining which are thought unsuited for resolution by anyone other than the parties. As noted by one commentator:

[P]rofessional employees often bargain over programs. For example, teachers' unions may demand certain kinds of educational offerings or limits on class size. Even if arbitrators were capable of dealing with the complexities of budgeting and choosing programs, elected officials should not delegate the duty they owe to the electorate to settle these questions. Deciding policy issues is the vocation of officials, not of arbitrators.²⁶⁸

The claim that certain policy matters should be non-arbitrable has had little effect on the scope of arbitration statutes. Arbitration legislation generally recognizes a scope of arbitration that is coextensive with the scope of negotiations.²⁶⁹ As a consequence, arbitra-

266. See *infra* text accompanying notes 299-302.

267. See *supra* note 79.

268. Bernstein, *supra* note 53, at 467. Accord, Grodin, *Political Aspects of Public Sector Interest Arbitration*, 64 CALIF. L. REV. 678, 689-90 (1976).

269. A review of statutes that authorize some form of arbitration in teacher bargaining (compulsory or voluntary) reveals but three states that limit the scope of arbitration. These limitations interestingly, prohibit arbitration of economic rather than policy issues. See ME. REV. STAT. ANN. tit. 26, § 965.4 (1974); N.H. REV. STAT. ANN. § 273-A:12 (1979), R.I. GEN. LAWS § 28-9.3-12 (1980).

When binding arbitration legislation was debated in the Connecticut Senate, an unsuccessful amendment was introduced to restrict the scope of arbitration to issues involving compensation and fringe benefits. See 22 CONN. GEN. ASSEMBLY, 1979 SENATE PROCEEDINGS 2719 (May 8, 1979). In support of this amendment, one state senator argued that "I am not sure that we are ready with our long history and tradition of local control of education to have

tors cannot avoid deciding policy proposals that remain unsettled in negotiations. In theory, then, arbitrators could exercise their decisional authority to determine such matters as class size, teachers' work schedule, teachers' work duties, and even merit pay.

Prior studies of education arbitration have not examined the effects of arbitration on policy issues, and there is little evidence from the non-educational sector.²⁷⁰ In an effort to investigate this effect, we analyzed the composition of all arbitration offers, awards and opinions rendered during the first four years of binding arbitration in Connecticut. This analysis identified both the extent to which arbitration is invoked to obtain change in policy-related matters, and the extent to which such attempts have succeeded. Furthermore, the results of arbitration were compared with those of negotiated settlements, thereby permitting some estimate of the relative effect of arbitration on bargaining outcomes. These findings are illustrated in Table 7, which represents a cross-section of the major substantive proposals made during the study period.²⁷¹

As Table 7 illustrates, the direct impact of arbitration on policy issues is surprisingly small. Teachers' proposals for policy change have been overwhelmingly rejected to the extent these proposals affect the scheduling or size of classes, the length of the workday,²⁷² the scope of teachers' work duties, or the qualifications for teacher advancement. Teachers' field of success, by comparison, has been

these important management and educational decisions made by an outside arbitrator." See *id.* at 2721.

270. See *infra* notes 276-77 and accompanying text.

271. The contract sample constitutes 70% of all bargaining agreements in effect in the school year 1979-80. The arbitration proposal and award sample cover all arbitration proceedings. (Because we were able to obtain contract samples for those districts where policy issues have been arbitrated, the percentage figures for contract and arbitration changes coincide.) Our selection of issues encompasses those policy-related proposals that have appeared with any frequency in arbitration proceedings. We have not included those proposals that, in our judgment, make minor or technical modifications in existing policy. In exercising this judgment we relied both on our interviews with personnel in Connecticut and our knowledge of the bargaining system gained through review of bargaining agreements and arbitration proceedings. Needless to say, there is a margin of error in this approach, but we do not think it affects the strong trends reported on Table 7.

272. Proposals affecting the length of the teachers' work day (proposal 6) were often opposed by school boards on the ground that they are *permissive* subjects of bargaining. This argument seems well-founded in *West Hartford Educ. Ass'n, Inc. v. DeCourcy*, 162 Conn. 566, 287 A.2d 739 (1972), and thus the unions' failure to win such proposals may be largely explained on legal grounds. The arbitrators' response to this scope challenge has not been altogether favorable to the school boards, however. As demonstrated in proposal five ("compensation for longer day-year") arbitrators have thought it equitable to require additional compensation for teachers in the event the school boards mandate the lengthening of the work day or work year.

TABLE 7
Changes in Contract Composition: 1979-1983

Provision	1979 Frequency (N = 117) As percentage of contracts	All Changes (1979-83) As percentage of contracts	Negotiated Changes As percentage of contracts	Arbitrated Changes As percentage of contracts	Arbitration Success Rate As percentage of proposals
TEACHER PROPOSALS					
1) Seniority rights for layoff	50%	32% (37)	25% (29)	7% (8)	57% (8/14)
2) Seniority rights for rehiring	32	26 (30)	19 (22)	7 (8)	62 (8/13)
3) Compensation for longer day/year	12	17 (21)	7 (8)	11 (13)	87 (13/15)
4) Binding grievance arbitration	70	15 (19)	13 (15)	3 (4)	67 (4/6)
5) Agency fee (a)	N/A	56 (65)	33 (39)	22 (26)	64 (25/39)
6) Work day limit (b)	50	6 (7)	6 (7)	0	0 (0/13)
7) Work year limit	66	8 (9)	8 (9)	—	—
8) Teaching period limit	38	2 (3)	2 (2)	1 (1)	8 (1/13)
9) Teaching subject limit	32	1 (1)	1 (1)	—	—
10) Increased preparation time (c)	N/A	N/A	N/A	1 (1)	6 (1/18)
11) Class size limits	47	3 (3)	3 (3)	0	0 (0/13)
12) Change in teacher duties (c)	N/A	N/A	N/A	7 (8)	22 (8/37)
13) Change in degree qualifications (c)	N/A	N/A	N/A	0	0 (0/12)
14) Transfer restrictions	20	22 (3)	2 (3)	0	0 (0/4)
BOARD PROPOSALS					
15) New hire salary discretion	26	3 (3)	3 (3)	0	0 (0/2)
16) Merit-related salary (d)	48	0	0	0	0 (0/3)
17) Management rights	69	2 (2)	2 (2)	0	0 (0/2)
18) Change in teacher duties (c)	N/A	N/A	N/A	4 (5)	38 (5/13)
19) Change in degree qualifications (c)	N/A	N/A	N/A	12 (14)	58 (14/24)

Notes: (a) Agency fee provisions were not legal at the time the contract sample was compiled.

(b) See note 260 for further explanation.

(c) Changes in contract composition for these items were not obtained.

(d) This provision refers only to the contractual power of school boards to withhold salary increases for poor performance.

(e) N/A = either the information was not available or not obtained.

limited to a rather narrow range of traditional union concerns—recognition of seniority rights in staff reductions, provision of additional compensation for a lengthened work schedule, institution of grievance arbitration, and authorization of agency fee provisions (a costless item for school government). What is noteworthy in this award pattern is that arbitrators have consistently refrained from interjecting themselves into the routine managerial concerns of school government.

These findings take sharper focus when compared to the general composition of arbitration disputes. Arbitration, it turns out, is used primarily to settle economic disagreements.²⁷³ Just as economic disputes are the leading cause of strike activity, they also prompt most instances of bargaining impasse and arbitration.²⁷⁴ Salary disputes were the principal component of virtually every arbitration proceeding; and both survey and field research confirm that non-economic disputes are secondary concerns in most arbitration proceedings.²⁷⁵

Our findings of arbitrator conservatism on policy issues are consistent with experience in the non-educational public sector. A comprehensive national study of arbitration in the police services, for example, found that the unions obtained change on non-economic matters in but one-fifth of the cases.²⁷⁶ This study's authors thus concluded that "arbitrators seem to view their role in a conservative rather than innovative manner."²⁷⁷ A similar appraisal has been offered by the chairman of the New York City Office of Collective Bargaining: "[a]s for the fear that arbitrators will impose unique, innovative provisions that may prove unworkable, it is interesting to note that there has been a reticence on the part of arbitrators to be

273. During the first four years of arbitration in Connecticut, approximately 58% of the issues concerned economic matters like salaries and fringe benefits. Furthermore, among the remaining 42% of non-economic issues, a large number were minor procedural refinements of existing language (e.g., expanding time limits for asserting grievances).

A similar finding is reported in *COLLECTIVE BARGAINING*, *supra* note 204, at 21, 62. Their multi-state survey of police arbitration revealed that the "vast majority" of arbitrated issues (78%) were economic. *Id.* at 21.

274. Salary disputes are found to be the leading cause of strike activity among teachers. See B. COOPER, *supra* note 44, at 76-79.

275. Our study of arbitration proceedings in Connecticut reveals that virtually all disputes include the issue of salaries. One union official informed us that salaries are the point of contention in the great majority of bargaining impasse, and that non-economic issues are of secondary concern. Similarly, surveys of school board chairmen, superintendents and teacher representatives reveal that salaries are, overwhelmingly, the most important issue in local contract negotiations. The next two issues of importance are insurance benefits and reduction in force.

276. See *COLLECTIVE BARGAINING*, *supra* note 204, at 21-22, 56-58.

277. *Id.* at 22.

innovative. It appears that most arbitrators prefer to follow, or perhaps it is fair to say that the parties expect the arbitrators to follow, predictable paths."²⁷⁸ Regarding the propensity of arbitrators to follow bargaining patterns, it is also noteworthy that in those limited areas where Connecticut's arbitrators have shown willingness to award policy change, it is usually in the context of strong bargaining trends.²⁷⁹

Thus, there is little evidence that binding arbitration produces, or is invoked to produce, significant change in educational policy or school governance. In part, this finding may reflect the arbitrators' self-imposed limitations. Arbitrators typically have backgrounds in the law and dispute resolution, but little or no experience in the particular governmental service that is regulated by the bargaining agreement.²⁸⁰ Therefore, arbitrators may quite sensibly conclude that neither their expertise nor their role lends itself to the determination of matters of policy. Furthermore, arbitrators are involved in the negotiation process for a very brief time, and thus have limited acquaintance either with the parties' historical bargaining relationship or the particular nature of the local governmental service.

There are also important process dynamics at work in public sector arbitration, which implicitly encourage arbitrator conservatism. An arbitrator, whatever his quasi-governmental status, is a professional intervenor whose employment is directly dependent on his continued acceptability to labor and management. The arbitrator's acceptability, in turn, is largely a function of his awards, which must neither wholly please nor wholly displease a party. Any perception of unfairness or bias will quickly stigmatize an arbitrator,

278. Anderson, *Lessons from Interest Arbitration in the Public Sector: The Experience of Four Jurisdictions*, in *ARBITRATION-1974* (BNA) 59, 64 (1975) (proceedings of the Twenty-Seventh Annual Meeting, Nat. Acad. of Arbitrators, April, 1974); accord B. DOWNIE, *supra*: note 48, at 55 ("[A]rbitrators almost invariably are conservative with respect to change.").

279. See Table 7, *supra* following note 272. The exceptions to this generalization are proposals three and five. Proposal three appears to be an anomalous result attributable to a peculiarity of Connecticut's bargaining law. See *supra* note 272. Proposal six, however, is a clear example of an issue where arbitrators have generated a bargaining trend through their rulings. Nonetheless, agency fee provisions are a costless item for school government and thus do not have serious implications for school governance.

280. See, e.g., Weiler, *supra* note 223, at 377-78. By way of example, only one of the neutral arbitrators on the Connecticut panel has a background in teaching and administration. The most prevalent occupation of arbitrators is law. See CONNECTICUT STATE DEPARTMENT OF EDUCATION, *PER DIEM FEE SCHEDULES MEDIATORS AND ARBITRATORS* (Conn. 1983) (unpublished).

and will result—as has happened in Connecticut—in his unemployment.²⁸¹

The arbitrator's need to remain marketable manifests itself in several respects. One phenomenon, discussed already, is that arbitrators tend to avoid controversiality and innovation.²⁸² This perception is confirmed by professional bargaining representatives of both unions and school boards, who agree overwhelmingly that arbitrators are often "hesitant . . . to alter the status quo in contract provisions" and "unwilling to deal with proposals that are innovative."²⁸³ This conservatism most often works to the detriment of unions, who are the primary proponents of policy innovation,²⁸⁴ but it can also frustrate the efforts of an aggressive management that seeks change through the processes of collective bargaining.²⁸⁵

281. Arbitration statutes in the public sector almost always permit the parties to choose their arbitrator(s). See H. TANIMOTO, *supra* note 211, at 25-26. In Connecticut, this process is normally one in which each party selects a "partisan" arbitrator from a panel designated by the state, and these partisan arbitrators mutually agree on the selection of a "neutral" arbitrator. See CONN. GEN. STAT. ANN. § 10-153F(a), (c)(1) (1979). Such use of a tripartite panel is common among public employee arbitration statutes. See H. TANIMOTO, *supra* note 211, at 25-26. During the first years of arbitration in Connecticut, one neutral arbitrator was perceived as "anti-union" and was selected to arbitrate but three disputes. Ultimately, that arbitrator resigned from the arbitration panel.

282. See *supra* notes 256-78 and accompanying text.

283. Eighty-one percent of school board representatives, and 91% of union representatives agreed that "arbitrators are often hesitant to award proposals that alter the status quo in contract provisions." Eighty-nine percent of board representatives and 86% of union representatives agreed that "arbitrators are often unwilling to deal with proposals that are innovative."

284. As Table 7 illustrates, *supra* following note 272, the unions are far more aggressive in seeking change in school administration through collective bargaining. The school boards' area of success consists primarily of efforts to increase administrative control over contract rights previously won by teachers. For example, boards have succeeded in obtaining limitations on the subject area of academic degrees that will qualify teachers for higher salaries. See *id.* A similar observation has been made by a union representative with experience under the Wisconsin teacher arbitration laws:

[c]onsequently, the desire to remain competitive through the arbitrator selection process can create a compulsion to remain cautiously attached to the status quo. The status quo generally conforms more comfortably with the employer's position than with the union's, since it is the union which has been seeking change (improvement) through its bargaining demands.

Lentz, *Can Compulsory Arbitration Work in Education Collective Bargaining? A Second Look*, 9 J. L. & EDUC. 85, 90 (1980).

285. A management representative, with experience under the Wisconsin teacher arbitration statute, has noted the existence of a "no take back" rule, which prevents management from reversing earlier concessions to the unions. See Rynecki, *Can Compulsory Arbitration Work in Education Collective Bargaining? A Second Look*, 9 J. L. & EDUC. 93, 98-99 (1980). Our review of arbitration proceedings in Connecticut reveals some effort by management to "take back" previous concessions; but aside from those attempts that are based on legal grounds (i.e., previous concessions are not within the mandatory scope of bargaining and thus

The conservatism of arbitrators on policy issues may work in tandem with another decisional phenomenon: arbitrators typically render awards that offer a measure of success to both sides. Arbitration, our survey research indicates, is generally viewed as an accommodative process whose outcomes should largely reflect the tradeoffs and compromise of bargaining.²⁸⁶ Any award lacking "balance" may be considered a distortion of the bargaining process and will surely alienate one of the parties. Thus, the great majority of bargaining representatives report that they expect a "proportionate" number of successes and failures in arbitration "regardless of the proposals' actual merit."²⁸⁷

The "balance" in an arbitrated contract, however, does not resemble the *quid pro quo* of a conventional contract. For while teachers continually seek greater compensation, fringe benefits and job security, school boards have few affirmative gains to be won through collective bargaining.²⁸⁸ Instead, the school board's success is measured by the extent to which their managerial prerogatives are preserved against encroachments of unions through collective bargaining. Therefore, in the context of arbitration, both school board success and award balance are reflected in arbitrators' rejection of union policy proposals, or in their acceptance of less intrusive board counterproposals.

There are, then, process dynamics that encourage arbitrators to enhance certain employee benefits (primarily economic ones) while preserving fundamental aspects of administrative control. Central to these process dynamics is the fact that arbitrators usually are chosen by the parties. Such a selection process ensures a measure of "accountability" that, in the words of one commentator, "may be no more circuitous than the public official's accountability."²⁸⁹ It is thus paradoxical that binding arbitration is viewed by school boards as a unilateral threat to local school governance. For, as our analysis shows, the principal dilutants of local educational control have been

can be deleted by management at will) there has been little effort to win back major substantive rights.

286. For a discussion of the accommodative actions of arbitrators, see Horton, *supra* note 52, at 500-01; Krislov, *supra* note 52, at 73.

287. Eighty-four percent of school board representatives and 81% of union representatives agreed that "arbitrators often feel compelled to render 'balance' awards that grant each party a proportionate number of its proposals, regardless of the proposals' actual merit."

288. See, e.g., Doherty, *supra* note 137, at 73. See also Metzler, *Preparing for Negotiations*, in *COLLECTIVE BARGAINING TECHNIQUES IN EDUCATION* 121 (J. Herring & J. Sarthory eds. 1980) ("Many boards fail to face the facts of collective bargaining, fail to recognize that theirs is essentially a defensive not an offensive position.").

289. Krislov, *supra* note 52, at 73. See also Summers, *supra* note 57, at 1200.

the voluntary concessions made by school boards in collective bargaining.²⁹⁰

IV. SOME THOUGHTS ON THE FUTURE OF EDUCATIONAL COLLECTIVE BARGAINING

In the preceding sections we have reviewed and interpreted the evidence concerning the effects of collective bargaining in public education. Our primary contention is that teacher bargaining has not proven to be the monolithic force in school government that some feared. Contrary to early speculation, the power of organized teachers in local school districts is relatively less than that of organized employees in private industry—particularly in the economic aspects of bargaining. Furthermore, organized teachers have not arrogated control over school policymaking through the negotiation process. The more significant success of teachers has been the attainment of various employment rights vis-a-vis administrative authority in personnel decisions; and even these job protections, the evidence indicates, are unexceptional among the conventions of labor relations.

Future developments in educational collective bargaining—whether they be changes in the methods of dispute resolution, in the scope of bargaining, or in the distribution of bargaining authority—will depend on the objectives that state government chooses to emphasize. In the early years of bargaining, these objectives often have been unarticulated and confused. Collective bargaining policy has sought simultaneously: 1) the prevention of work stoppage; 2) the provision of economic benefits and employment conditions sufficient to retain an able teaching force; 3) the preservation of a political tradition of local educational control; and 4) generally, the maintenance of an effective educational program. This ambitious wish list has, expectedly, gone unfulfilled. But a reconsideration of these objectives, in light of the schools' initial experience with collective bargaining, may at least suggest what realistically can be achieved in the coming years.

A. Prevention of Work Stoppage

One of the surest conclusions to be drawn from experience is that binding arbitration will, with infrequent exceptions, prevent strikes.²⁹¹ The record of labor peace in both the educational and

290. See, e.g., Table 7, *supra* following note 272.

291. The WISCONSIN REPORT, *supra* note 226, notes that there were 51 teacher strikes in the six years preceeding introduction of arbitration procedures in Wisconsin teacher bar-

non-educational public sector demonstrates that unionized employees are reluctant to flout the authority of arbitrators. The reasons for this record of compliance are not altogether clear. Unions may be anxious to support a system for which, in many cases, they have lobbied. The unions, furthermore, may have made a pragmatic assessment that the marginal gains resulting from arbitration are the most to be expected in the local bargaining climate. But compliance also may reflect the unions' belief in the ultimate "fairness" of an outcome derived from a "neutral" process. Arbitration is, after all, the routine method of settling individual grievances within the school system, and the *sine qua non* of an acceptable bargaining agreement.²⁹² The moral authority behind an arbitrated contract, therefore, should not be underestimated.²⁹³

Even though binding arbitration may be a successful medication for the strike problem, one might reasonably ask whether strikes should be a "problem" at all. Indeed, in recent years some commentators have argued that the public employee strike no longer strikes fear in the hearts of local government officials, and that local government therefore no longer needs legal protection from the strike threat.²⁹⁴ If such is the case, then public annoyance is arguably the greatest cost of a strike, and the legislatures might wish to reconsider their historical opposition to the strike.

It is not our purpose to resolve the strike question here. But we would note some factors in educational bargaining that might give educators and supporters of public education pause in pressing for the legalization of strikes. First, the public does not want strike legalization, and, according to our surveys, neither do school boards

gaining. Since the introduction of arbitration, none have been reported. *Id.* at 185. Similarly, data supplied to us by the Connecticut Education Association show there were 49 teacher strikes in the 12 years preceding introduction of arbitration, and none since implementation of arbitration. Researchers in Canada report that no strike has occurred in the 40 year experience of British Columbia teachers with arbitration. See Thompson & Cairnie, *Compulsory Arbitration*, *supra* note 224, at 11 (note that only economic items are arbitrable in British Columbia, and that strike data concerns only those disputes that are arbitrable).

Of course, one cannot expect that any legislative scheme will provide a fool proof method of strike prevention. See generally, *Structuring Collective Bargaining*, *supra* note 40, at 831. Nonetheless, the experience with arbitration reveals incontrovertible evidence that it is an exceptionally strong deterrent of strike activity.

292. See Table 7, *supra* following note 272. See generally, Craver, *The Judicial Enforcement of Public Sector Grievance Arbitration*, 58 TEX. L. REV. 329 (1980); Getman, *Labor Arbitration and Dispute Resolution*, 88 YALE L.J. 916 (1979).

293. See *Structuring Collective Bargaining*, *supra* note 40, at 832-33.

294. See, e.g., Burton & Krider, *The Role and Consequence of Strikes by Public Employees*, 79 YALE L.J. 418 (1970); Cohen, *supra* note 41, at 192-93; Hanslowe & Acierno, *supra* note 39, at 1068-72. There is also some evidence that the bargaining impact of legal strike activity is relatively small and inconsistent. See *supra* notes 85-90 and accompanying text.

and school administrators.²⁹⁵ And while such opposition is not ground for defaulting on the issue, there are reasons to question the wisdom of pursuing such a highly controversial technique for resolving teacher bargaining disputes. As noted earlier, the consumers of public education are a minority of the voting public; consequently, support for the schools depends on political persuasion rather than confrontation.²⁹⁶ With an aging population, declining public school enrollments, growing competition from private schools, and increasing enrollments of politically disadvantaged students,²⁹⁷ the public schools hardly can afford the public resentment that often attends the shutdown of local schools. In short, because of the weaker political leverage of educators, there is reason to think that strike activity in public education will be counter-productive over the long term.

There is also the possibility that strike-based bargaining will perpetuate, if not exacerbate, the current educational inequalities among local school districts. Experience with public sector strike activity indicates that its impact can vary widely,²⁹⁸ depending in part on the balance of political power in local communities. One might speculate that the strike will be more productive where the employee unit is already relatively advantaged in the political process and less productive for weaker employee groups.²⁹⁹ Therefore, if statewide educational equality remains a state government goal, recognition of the strike right may be undesirable in a decentralized system of collective bargaining.

Of course, the evidence we have adduced shows that binding arbitration will itself be no panacea for disparities in instructional funding.³⁰⁰ In this respect, both binding arbitration and the right to strike carry the strong imprint of local conditions. Nonetheless, the fact that arbitration tends to equalize at least one component of the salary equation may suggest that arbitration is somewhat less objec-

295. The Gallup survey of public attitudes in 1980 found that 52% of the respondents opposed recognition of the right to strike, a slight increase in opposition from 1975. Gallup, *The 12th Annual Gallup Poll of the Public's Attitudes Toward the Public Schools*, FHI DELTA KAPPAN, Sept. 1970, at 33, 40. Our surveys of all state school superintendents and board chairmen in Connecticut reveal that more than 75% of each group oppose even a limited right to strike, and more than 90% of each group opposed a full right to strike.

296. See *supra* notes 94-109 and accompanying text.

297. See *supra* notes 102-04 and accompanying text.

298. See *supra* note 87.

299. The limited evidence on this subject lends support to this theory. See B. COOPER, *supra* note 44, at 75 (citing a study of public employee strikes where it was concluded that "well compensated unions may press for more, whereas lower wage groups may not. . .").

300. See *supra* text accompanying notes 244-59.

tionable than the right to strike.³⁰¹ Still, the relative advantage is small and, as a matter of public policy, one might legitimately question whether it is an advantage at all.

B. Maintaining the Salaries and Employment Conditions of Teachers

The central dilemma for public education today is the same as that of earlier decades—how to fund a grand program of compulsory education for all. Much has been expected of the schools in post-war America, and the price has been considerable. In an era of generally rising costs, the schools have been charged with educating a larger body of students, many of whom require more costly forms of instruction.³⁰² It is not surprising that teachers' salaries have remained at the bottom of the professional scale or that teaching work loads have remained steady. Local government simply has not been willing to bear the rather imposing costs of "educational excellence," for all that phrase entails in a pluralistic society.³⁰³

Experience with conventional forms of teacher collective bargaining, we have argued, holds little promise for economic improvement of an order that would fundamentally change the professional status of teachers. The potential of teacher bargaining as a tool for reform, if any, depends on adoption of alternative bargaining strategies. One such strategy, binding arbitration, promises at least relative improvement in the level of teachers' salaries. Furthermore, there is some indication that binding arbitration may be as effective as the strike right in raising salaries, without the public and political costs entailed by a shut-down of the schools.³⁰⁴

There are significant limitations, however, to the potential of binding arbitration. First, there is reason to believe that arbitration systems stabilize over time and that arbitrators exert a conservative influence in the system. Arbitration, we have demonstrated, is essentially an accommodative process in which existing bargaining trends are duplicated. The marginal effect of arbitration on the overall system, therefore, cannot proximate the salary gains that are needed to make a qualitative difference in teacher compensation levels. Fur-

301. As demonstrated earlier, binding arbitration does lead to measurable compression in the range of percentage salary increases—the standardization effect. See *supra* note 254. If salary levels were roughly proximate, then weaker bargaining units would either maintain parity with stronger units, or the decline in parity would at least be somewhat slowed.

302. See generally D. RAVITCH, *supra* note 60, at 267-325; Bakalis, *American Education and the Meaning of Scarcity*, PHI DELTA KAPPAN, Oct. 1961, at 102.

303. See Bakalis, *supra* note 302.

304. See Table 6, *supra* following note 262; see also note 86.

thermore, arbitration shows little potential to affect those conditions of classroom education with cost implications—like class size, teaching loads and teaching duties—since arbitrators refrain from awarding change in those areas.³⁰⁵

An alternative to arbitration is the centralization of the bargaining process, or at least centralization of its economic component. In practice, arbitration achieves some degree of centralization because it tends to standardize bargaining outcomes throughout a jurisdiction. But arbitration does not affect several important features of the bargaining system—salary trends still are established by a series of local negotiations, existing salary disparities remain unaffected, and salary funding continues to be provided mainly by local taxation. This continued funding obligation of local government has proven to be one of arbitration's most fractious features, as local government complains loudly that state arbitrators are dictating local budgetary decisions and taxing policy. Therefore, if the state wishes to raise the general level of teachers' salaries, arbitration hardly seems the politically legitimate means of doing so.

Centralized salary determination and funding seem the inevitable direction of public education finance though the change may be a gradual one. Already, state government has surpassed local government in the general funding of local schools.³⁰⁶ As the state's funding role increases, the state's claim to a role in determining salary levels should also increase. Furthermore, centralized salary policy would provide a direct means of ensuring greater equality among the instructional expenditures of school districts, a goal the states have yet to meet.³⁰⁷ If past experience with localized collective bargaining teaches anything, it is that legal variations on the local bargaining process pale next to the influence of local wealth and local willingness to tax and spend for education.³⁰⁸ Thus, a greater state

305. See Table 7, *supra* following note 272.

306. In 1979, the state share of revenues for public elementary and secondary education surpassed the local share for the first time in recent history. The shares of state and local government were, respectively, 46% and 45%. See *CONDITION OF EDUCATION*, *supra* note 64, at 39-40, 56-57.

307. See *supra* notes 63-64 and accompanying text.

308. Past studies of teachers' salaries show that "[w]ealth of the community [is] the most powerful determinant of salary." A. CRESSWELL & M. MURPHY, *supra* note 25, at 447. In an attempt to test these findings, we performed a series of regressions to determine the causes of salary levels in Connecticut school districts. Employing a regression model like that reported in *supra* note 237, we found that a school district's ability to pay explained 70-85% of the variance in salaries at the top of the salary schedule ($p < .001$), and 30-60% of the variance at other points on the salary schedule ($p < .001$). Thus, our results strongly confirm the determinative value of local wealth in instructional funding.

role in determining and funding instruction costs of education may serve objectives of both quality and equality.

It is noteworthy that the governmental response to reformers' appeals for higher teacher salaries has occurred primarily at the state level.³⁰⁹ State government has already demonstrated the greatest power to summon public attention to the needs of education and, more importantly, has the means to fund those needs other than through the local property tax.³¹⁰ While none of these efforts reveal a legislative intent to exercise full control over the determination of teaching salaries, the refocusing of attention on centralized solutions is itself significant. Growing state involvement should increase the organizational strength of teachers in the political process,³¹¹ and should defuse the power of localized tax resistance. Moreover, the conspicuous role of state government in establishing salary policy may weaken the claim that salary determination is predominantly a matter of local concern.

Yet, even if centralized salary policy is the final destination of public education, one should not exaggerate the implications of that development in and of itself. The success of instructional reform depends ultimately on political will. The magnitude of costs of restoring teachers' salaries to a competitive market position is imposing.³¹² One would be more sanguine about the possibility of such reform if the federal government's role were increased, and national educational goals received a national funding commitment like that of public transportation or pupil welfare programs. In the absence of a federal commitment, the possibility of reform remains uncertain even at the state level.

309. See *supra* note 2. See also THE NATION RESPONDS, *supra* note 3, at 15 ("state leadership is one of the hallmarks of this reform effort.").

310. The proportion of state revenues derived from the property tax is quite small. See STATISTICAL ABSTRACT, *supra* note 22, at 287. Most states rely, instead, on a diverse group of alternative revenue sources like the personal income tax, the corporate income tax and general sales taxes. See F. WIRT & M. KIRST, SCHOOL POLITICS 235 (1982). During the past decade, as public resistance to the property tax increased, school financing shifted both to the state level and to non-property tax sources. The result has been an increasing role for state legislators and the state executive branch in public education. The current centralized efforts at educational reform, accordingly, should strengthen the shift in educational control to the state level. See generally *id.* at 207, 216-18, 234-36.

311. See *supra* note 117.

312. See, e.g., Odden, *supra* note 83, at 311 (estimates for raising teachers' salaries to a competitive level range from \$5 billion to \$20 billion nationally). Howe, *Education Moves to Center Stage: An Overview of Recent Studies*, PHI DELTA KAPPAN, Nov. 1983, at 167 (estimate for raising teachers' salaries equals \$20 to \$30 billion a year nationally).

C. Preserving Local Control of Education

By far, the greatest resistance to teacher collective bargaining has come from the advocates of local educational control. Just as local control has been a "powerful and persuasive political shibboleth" in the struggle against state efforts to reclaim a leadership role in education,³¹³ local control has been a mainstay of opposition to recognition of the duty to bargain,³¹⁴ to expansion of the scope of bargaining,³¹⁵ and to adoption of impasse resolution techniques like binding arbitration.³¹⁶ Some of this opposition—the Wellington and Winter critique, for example—has been based on substantive fears that economic and educational outcomes might be adversely affected by a diminution of local powers.³¹⁷ A large measure of the opposition, however, has been premised on process values. In particular, proponents of local control have worked from the premise that local school control is a quintessentially democratic process which is effectively under lay control.³¹⁸ Collective bargaining, conse-

313. F. WIRT & M. KIRST, *supra* note 20, at 114; accord SCHOOL FINANCE, *supra* note 42, at 348 ("The most frequently raised argument against school finance reform is the fear that it will result in a loss of local control. The concept of local control exasperates reformers, who claim that local control is a myth."). For an interesting general account of how the rhetoric of local control is employed to legitimate the decentralized state structure, see G. CLARK & M. DEAR, STATE APPARATUS: STRUCTURES AND LANGUAGE OF LEGITIMACY 157-59 (1984).

314. See, e.g., M. LIEBERMAN, *supra* note 137, at 69-92; R. SUMMERS, *supra* note 41, at 1-17; Scott, *The Case Against Collective Bargaining in Public Education*, 3 GOV'T UNION REV. 16, 21 (1983). For a recent iteration of Professor Summers' view, see Summers, *Public Sector Collective Bargaining Slightly Diminishes Democracy* 1 GOV'T UNION REV. 5, 13 (1980).

315. See, e.g., A. CRESSWELL & M. MURPHY, *supra* note 25, at 172-73, 477-78; Metzler, *The Need for Limitations Upon the Scope of Negotiations in Public Education*, I, in EDUCATION AND COLLECTIVE BARGAINING 33, 45-51 (A. Cresswell & M. Murphy eds. 1976).

316. See, e.g., M. LIEBERMAN, *supra* note 137, at 93-95. Challenges to the legality of binding arbitration statutes have often been based on "home rule" laws, which constitute a legal manifestation of the local control theme. See, e.g., *The Conn. Ass'n of Brds. of Educ. v. Shedd*, ___ Conn. Supp. ___ (1984); *Dearborn Fire Fighters Union, Local No. 412 v. City of Dearborn*, 394 Mich. 229, 243, 231 N.W. 2d 226, 229 (1975); *City of Amsterdam v. Helsby*, 37 N.Y.2d 19, 332 N.E.2d 290, 371 N.Y.S.2d 404 (1975).

317. See *supra* notes 71-72 and accompanying text.

318. See, e.g., R. SUMMERS, *supra* note 41, at 2-3; Metzler, *supra* note 315, at 45-51. An excerpt from R. SUMMERS, *supra* note 41, illustrates the popular view. Writing of public education in the pre-bargaining era, Summers observes that:

"democracy probably functioned more robustly [in education] than in any other local public benefit activity. In nearly all aspects of local educational decision making, powerful interest groups did not hold sway. There was usually substantial citizen interest and participation in school policy at local levels, and elected officials were by law accountable and frequently responsive.

Id. at 2.

quently, has been forced to defend itself against suspicions that it is, above all else, undemocratic.³¹⁹

The tradition of lay governance in education is almost uniquely American;³²⁰ even within American government one can think of few close analogues. The instrument of lay government, the local school board, is usually an elected body which is chosen in non-partisan campaigns.³²¹ Though elected to operate the largest and most costly public service of local government,³²² board members serve on a part-time basis, receiving neither remuneration³²³ nor full-time staff assistance.³²⁴ Moreover, though professional training and certification are required of those who implement the educational program,³²⁵ board members themselves usually have no more professional expertise than the laity they represent.³²⁶

Expertise, concededly, is not always a virtue in government. Given the important role of public schools in socializing and acculturating children, there is something to be said for the ideology of lay governance. Yet, this ideology largely obscures the reality of governance. For it is now "widely confirmed"³²⁷ by investigation of school government processes that local educational policymaking is dominated by professional school administrators. Notwithstanding a formal structure of lay government, the influence of the laity—either directly or through its representatives on the school board—is quite limited.

An impressive amount of research in local school government, dating back to the 1960's, has led most observers to regard the

319. See authorities cited *supra* note 314.

320. See H. TUCKER & L. ZEIGLER, *supra* note 111, at 19.

321. See *id.* at 17, 229; Peterson, *The Politics of American Education*, in *REVIEW OF RESEARCH IN EDUCATION* 348 (F. Kerlinger & J. Carroll eds. 1974).

322. See *supra* notes 65-66 and accompanying text.

323. See McDonnell & Pascal, *supra* note 118, at 40; Peterson, *supra* note 321, at 351.

324. See *e.g.*, F. WIRT & M. KIRST, *supra* note 20, at 80; Cohen, *supra* note 6, at 446.

325. See, *e.g.*, Project, *supra* note 16, at 1378-79.

326. See, *e.g.*, SCHOOLS IN CONFLICT, *supra* note 18, at 129; F. WIRT & M. KIRST, *supra* note 20, at 79; Project, *supra* note 16, at 1486.

327. Boyd, *supra* note 111, at 548; accord H. TUCKER & L. ZEIGLER, *supra* note 111, at 229 ("The superintendent and other professional administrators consistently dominate the lay school board and public, regardless of arena or topic of decisionmaking."); Project, *supra* note 16, at 1486 ("The increasing complexity of administrative and policy problems generates the attitude among elected board members that they lack the competence to make policy decisions. The result is deference to an even narrower and less responsible circle of experts who frequently believe that they alone are capable of making policy. This has had the effect, particularly in large cities, of virtually excluding representatives, let alone parents, from a significant role in the educational systems, thus undermining one of the traditional bases of the public school system.").

school board's role as one of legitimation.³²⁸ In practice, it is professional school administrators who determine the content and scope of the agenda for school board meetings.³²⁹ Board action on this agenda almost always results in affirmation of the administration's proposals.³³⁰ Moreover, those issues of central concern to educational policy making—curriculum, student affairs and personnel matters—are among the first matters ceded to administrative determination.³³¹ As a result of this pattern of continual deference to professional school administrators, it is said that “the board becomes the agent of legitimation that provides a facade of public control, while power is really being exercised by administrators.”³³²

This view of the school board as a legitimating agent contains, no doubt, some overstatement. There is evidence, for example, that school board influence is appreciably stronger on “external” issues pertaining to the school budget and school facilities.³³³ Furthermore, there is some evidence that smaller, exurban school districts exhibit a higher degree of school board and community involvement than is commonly suggested.³³⁴ Nonetheless, there is incontrovertible evidence that the prevailing image of school government processes bears little resemblance to the normal operation of those processes.³³⁵

The image of lay control also is dispelled by study of public participation in school politics. Actual citizen participation in school government affairs may be the lowest of any institution of American government.³³⁶ Public turnout at both school board elections³³⁷

328. See, e.g., L. ZEIGLER & M. JENNINGS, *GOVERNING AMERICAN SCHOOLS* 250 (1974); KERT, *The School Board as an Agency of Legitimation*, 38 *SOC. EDUC.* 34-59 (1964); Peterson, *supra* note 321, at 351.

329. See, e.g., H. TUCKER & L. ZEIGLER, *supra* note 111, at 123-25; L. ZEIGLER & M. JENNINGS, *supra* note 328, at 190.

330. See, e.g., H. TUCKER & L. ZEIGLER, *supra* note 111, at 144-45, 231; L. ZEIGLER & M. JENNINGS, *supra* note 328, at 14-15.

331. See, e.g., L. ZEIGLER & M. JENNINGS, *supra* note 328, at 128; Boyd, *supra* note 111, at 567; Wollett, *supra* note 9, at 1018.

332. Peterson, *supra* note 321, at 351. See generally Wertheim, *The Myth of Local School Control*, 102 *INTELLECT* 55 (1973).

333. See, e.g., Boyd, *supra* note 111, at 565-67; Peterson, *supra* note 321, at 354.

334. See Boyd, *supra* note 111, at 560-61, 573. But see Cohen, *supra* note 6, at 438-39.

335. Conventional labor law analysis, to our knowledge, has yet to incorporate any of the social science findings discussed above. The de facto authority of school administrators has been noted, however, by two advocates of teacher collective bargaining. See Kay, *The Need for Limitation Upon the Scope of Negotiations in Public Education*, II, in *EDUCATION AND COLLECTIVE BARGAINING* 52, 53 (A. CRESSWELL & M. MURPHY eds. 1976); Wollett, *supra* note 9, at 1018.

336. See H. TUCKER & L. ZEIGLER, *supra* note 111, at 229.

337. See *SCHOOLS IN CONFLICT*, *supra* note 18, at 95 (“One clear point is that there is little voter turnout for board elections, even more indifference than that for other government

and school board meetings³³⁸ is surprisingly low. Past attempts to encourage public involvement, furthermore, suggest that widespread participation could not be induced "under any imaginable system of local control of schools."³³⁹ In addition, the public appears to have little interest in, or views on, issues of educational policy.³⁴⁰ Like the school boards themselves, citizens confine their interest to external issues affecting local tax burdens and school facilities³⁴¹ — with occasional interest in ideologically-laden issues like textbook censorship.³⁴² Matters of educational policy invoke the same deference to professionalism that is common among school board members.³⁴³

There is, then, ample evidence that the school boards function as "symbolic democracies,"³⁴⁴ and that lay control is often more "ritual"³⁴⁵ than substance. This is not to say that local factors have no influence on the educational process. Local financing decisions, as

offices."); Reed & Mitchell, *The Structure of Citizen Participation; Public Decisions for Public Schools*, in PUBLIC TESTIMONY ON PUBLIC SCHOOLS 194-95 (S. Weinstein & D. Mitchell eds. 1975).

338. According to a 1983 Gallup survey, 8% of the public (including both parents and non-parents) attended a local school board meeting in the 1983 school year. See Gallup, *The 15th Annual Gallup Poll of the Public's Attitudes Toward the Public Schools*, PHI DELTA KAPPAN, Sept. 1983, at 43.

339. G. LANGUE & B. SMITH, *THE POLITICS OF SCHOOL DECENTRALIZATION* 229 (1973). The pattern of public indifference appears also to extend to the collective bargaining process, notwithstanding claims that the public has been involuntarily excluded from that process. The Rand study of teacher bargaining found, for example, that the public had declined to participate even when actively solicited. Thus, the Rand researchers concluded that advocates of community involvement lead a "phantom army." L. McDONNELL & A. PASCAL, *supra* note 47, at 43-44; accord Doherty, *supra* note 21, at 546; Perry, *supra* note 41, at 3, 5.

340. See, e.g., H. TUCKER & L. ZEIGLER, *supra* note 111, at 231-32; *SCHOOLS IN CONFLICT*, *supra* note 18, at 130-31; Cohen, *supra* note 6, at 442.

341. See, e.g., Boyd, *supra* note 111, at 566-67; Peterson, *supra* note 321, at 354. See also Belasco, Alutto & Glassman, *A Case Study of Community and Teacher Expectations Concerning the Authority Structure of School Systems*, 4 EDUC. & URB. SOC'Y 85, 90-93 (1971) (survey data showing that the community expects greatest lay control over budget, facilities and salaries).

342. Based on a survey of citizens, officials and local civic leaders, one researcher concluded that:

[they had] no particular interest in curriculum, text books, subversive activities, personalities, athletics, race relations. . . . This suggests that these areas provide a reservoir for what we have called episodic issues—issues which emerge under unusual or special conditions and shortly subside. Thus, it is not textbooks which cause concern, but a particular textbook under a special set of circumstances.

R. MARTIN, *GOVERNMENT AND THE SUBURBAN SCHOOL* 55 (1962).

343. See, e.g., Boyd, *supra* note 111, at 566-67. Surveys of community attitudes indicate that most parents believe school personnel should control issues of instructional policy. See Belasco, Alutto & Glassman, *supra* note 341, at 93.

344. H. TUCKER & L. ZEIGLER, *supra* note 111, at 13.

345. Cohen, *supra* note 6, at 435.

we have demonstrated, have significant impact on the quality of public education.³⁴⁶ Furthermore, local parties still have a pivotal role in educational policy making and implementation, even if those parties are unelected professionals.³⁴⁷ Thus, "local control" may have operational meaning even if "lay control" does not.

Advocates of collective bargaining in the schools should be relieved, however, of their historical burden of proving its compatibility with democracy. If contemporary school politics are abnormally undemocratic, the loss is attributable to causes other than collective bargaining. Thus, the question put by teacher bargaining is not whether the public or the professionals shall determine educational policy; it is whether an already pervasive professional influence in the public schools should be distributed differently. The latter question, as we shall suggest in the following section, is eminently debatable. But it is an altogether different question from the one that has preoccupied labor critics in the past.

D. Collective Bargaining and the Educational Program

Most critical attention in recent years has disregarded the possibility that teacher bargaining might have salutary effects for the schools. At least until the release of reform reports in 1983, concern over teacher compensation and working conditions was drowned out by more vocal concern over local tax burdens and the diminution of local control.³⁴⁸ The premise of critics usually has been that bargaining effects, whatever they are, are negative.³⁴⁹

While teacher unionism is certainly not an unalloyed good, its relationship to the educational program is far more complex, and far more ambiguous, than is often suggested. The fact that teachers' unions continually press for higher salaries and reduced work loads, for example, undoubtedly shows a measure of professional self-interest. But self-interest does not obviate the realities of the labor market or the exigencies of teaching performance; an examination of these factors suggests that professional and educational goals may sometimes be closely related.³⁵⁰ Furthermore, the self-interest of school government and local taxpayers has its part, too, in the prob-

346. See *supra* text accompanying notes 94-109.

347. See *infra* notes 354, 359-60 and accompanying text.

348. See, e.g., authorities cited *supra* note 314. See generally R. SUMMERS, *supra* note 41.

349. For a recent example of one genre of this type of criticism of teacher bargaining see Baird, *Teacher Unions, Educational Quality, and a Free Market Remedy*, 5 GOV'T UNION REV. 3:12 (1984).

350. See *supra* notes 11, 196-99 and accompanying text.

lems of public education. As one advocate of reform has observed, "[t]here is a disturbing duplicity in a society that fails to create the conditions that would foster teacher competence and then complains of incompetent teachers."³⁵¹

Perhaps the strongest case to be made against teacher collective bargaining concerns its effect on the processes of school administration. Like other legislative programs in the schools, statutory bargaining contributes to a process of administration by rules³⁵² — rules, moreover, that are formulated at the school district level rather than at the school site where they must be applied.³⁵³ Critics rightly apprehend that such rules may compromise the leadership role of school administrators, a role that has proven important in successful schools.³⁵⁴ And while the evidence of such impact is neither consistent nor unequivocal, there is little reason to doubt that bargaining has affected the processes of school administration, and that sometimes the effect has been detrimental to the schools.³⁵⁵

Yet, if collective bargaining is less than ideal as a method of ordering school labor relations, it must be compared to what it has replaced. School administration in the pre-bargaining era was characterized by broad, unilateral control over the teaching staff.³⁵⁶ In an earlier period, unrestricted administrative discretion seemed no more objectionable than the schools' economic dependence on a fe-

351. CARNEGIE REPORT, *supra* note 2, at 161.

352. See Yudof, *supra* note 100, at 897, 904. See generally B. WISE, LEGISLATED LEARNING 103-06 (1980).

353. Collective bargaining agreements are, with the exception of a statewide agreement in Hawaii, negotiated at the school district level. See *supra* note 17. In 1980, there were 15,912 public school districts. See DIGEST OF EDUCATION STATISTICS, *supra* note 17, at 59. By comparison, there were more than 86,000 public schools during school year 1976-77, the most recent year of reference. See *id.* at 65.

354. See, e.g., CARNEGIE REPORT, *supra* note 2, at 219-29; Wellisch, MacQueen, Carriere & Duck, *School Management and Organization in Successful Schools*, 51 SOC. OF EDUC. 211 (1978).

355. The empirical evidence on collective bargaining's effect on school administration is reviewed in Nicholson & Nasstrom, *The Impact of Collective Negotiations on Principals*, 58 NAT'L ASS'N OF SECONDARY SCHOOL PRINCIPALS BULLETIN 100 (Oct. 1974). The authors conclude:

[t]he variety of results from these studies strongly suggest considerable care in discussing implications. Nevertheless, it would appear that principals will find their decision-making role affected in the future by professional negotiations. The role is not destroyed, however, it will simply require that principals understand how to share decision-making power while exercising it.

Id. at 106. See also Johnson, *Teacher Unions in Schools: Authority and Accommodation*, 53 HARV. EDUC. REV. 309 (1983).

356. See *supra* note 133.

male labor supply debarred from more lucrative careers.³⁵⁷ These conditions would eventually lead, however, to the widespread unionization, as teachers exerted collective strength to win greater professional recognition and a greater participatory role in school processes. The very fact that, in 1980, one-half of all teachers' union members worked in rural or small towns, and two-thirds described themselves as politically "conservative,"³⁵⁸ is testimony to the broad appeal of the teachers' labor movement.

There is also a strong educational claim for teacher participation in school government, and this claim is no less compelling than the need for educational leadership. Effective schools will be founded on effective teaching.³⁵⁹ It is the teaching staff, after all, that must implement the intangible program called "educational policy." And as past experience makes clear, neither legislative initiatives nor managerial directives can succeed unless there is willing and intelligent participation by the teaching staff.³⁶⁰ The law may attempt to preserve educational policy making as the special responsibility of management,³⁶¹ but the realities of the educational process say it cannot.

The structure of district-wide collective bargaining, of course, hardly seems the best mechanism for ensuring fluid and responsive school administration at the school site. It is the nature of collective

357. See, e.g., Grant, *The Teacher's Predicament*, 84 TEACHERS C. REC. 593 (1983) ("The drainage out of teaching has been the result of a variety of factors, not least of which is the success of the feminist movement in lifting the professional horizons for women who in earlier eras would not have looked beyond the helping professions of teaching, nursing, and social work. This was especially true of talented women who entered elite colleges; twenty years ago four times as many Smith College graduates went into teaching as into business—today the reverse is true.") accord A. CRESSWELL & M. MURPHY, *supra* note 25, at 62-63; D. RAVITCH, *supra* note 60, at 323.

358. See STATUS, *supra* note 27, at 16, 19.

359. See, e.g., Murnane, *supra* note 178, at 26-27. See also CARNEGIE REPORT, *supra* note 2, at 154-85.

360. See, e.g., Murnane, *supra* note 178, at 26 ("A necessary condition for effective teaching may be that teachers adapt instructional strategies and curricula to their own skills and personalities, and to the skills, backgrounds, and personalities of their students. In this view of teaching and learning, the technical characteristics of instructional strategies and curricula are not, by themselves, the critical components. Instead, what matters is the extent to which teachers are willing and able to adapt the curricula and instructional strategy to their needs and to the needs of their students."); McDonnell & Pascal, *supra* note 118, at 44 (concerning the importance of teacher participation to the success of federally-funded programs). See also Johnson, *supra* note 355, at 319-20 (concerning the interdependence of teachers and administrators). Significantly, those empirical studies that find a correlation between school effectiveness and administrative leadership also find that successful administrators are highly involved with classroom teachers in the coordination and implementation of the instructional program. See Wellisch, MacQueen, Carriere, & Duck, *supra* note 354, at 216-17, 219.

361. See *supra* note 124 and accompanying text.

bargaining agreements to substitute rule and formality for trust and informality.³⁶² This seems especially so in public education, where the evolution from unilateral school government has occurred under the watchful eye of school critics, and where the political legitimacy of the teacher labor movement has never been fully accepted.³⁶³ Moreover, the zeal with which accountability measures have been forced on the schools has predictably led educators to seek contractual declaration of their rights and their defenses.³⁶⁴

In the final analysis, the contribution of collective bargaining to school personnel relations may come not from its generation of rules, but from its expansion of the non-contractual role of teachers in school policy making.³⁶⁵ Even more encouraging is evidence that strong educational leadership can coexist with collective bargaining if teachers and administrators are willing to accept their mutual roles.³⁶⁶ This suggests that it is often the quality of a school's personnel, and the culture they generate, that determine the success of school labor relations. As one commentator has observed:

Those who predicted that teacher unionism would transform the schools into hostile, rigid institutions expected that teachers would pursue their self-interests narrowly, that they would aggressively enforce the contract provisions negotiated on their behalf, and that traditional educational values—flexibility, responsiveness, cooperation—would be abandoned for conformity, confrontation, and formality. Such commentators discounted the reciprocal school setting, the interdependence of teachers, and the day-to-day realities of school work.

362. See Yudof, *supra* note 100, at 892-93.

363. See authorities cited *supra* note 314.

364. On the proliferation of state accountability legislation, see D. RAVITCH, *supra* note 60, at 315-16. See also Cohen, *supra* note 6, at 445 ("In reality . . . public schools have suffered from an excess of accountability most of their history. . . . Public-school professionals have only recently begun to attain the power that enables them to deal with local communities and special interests with some degree of autonomy, but they are still held more accountable to the community than are members of any other profession."). For a discussion of the effects on personnel of accountability practices like merit pay and merit staff reductions, see *supra* notes 164-65, 178 and accompanying text.

365. There is, in fact, evidence to suggest that an informal participatory role for teachers has evolved in mature bargaining relationships. See, e.g., Perry, *supra* note 41, at 15-16. Perry, we should note, does not conclude whether the effects of expanded teacher participation are beneficial for the schools. See *id.* at 17. There is, however, a disappointing lack of evidence of any consistent increase in teacher participation in unionized school districts. See *supra* note 146. This suggests that the development of informal participatory mechanisms may depend on the nature of personnel relations in individual school districts.

366. See, e.g., L. McDONNELL & A. PASCAL, *supra* note 47, at S1-S2; Johnson, *supra* note 355, at 32j-26; Williams, *The Impact of Collective Bargaining on the Principal: What Do We Know?*, 11 EDUC. & URBAN SOC'Y 168, 178 (1979).

Teachers in this study did not want to run the schools, but they were prepared to support a principal who demonstrated that their schools could be run well. For most teachers, being part of a good school took precedence over union membership or close enforcement of the contract.³⁶⁷

As is the case with educational finance, then, school labor relations may be little affected by legislated labor policy. Collective bargaining usually will not interfere with schools that work well, and collective bargaining seldom will rehabilitate schools that are run poorly. The task of labor law, therefore, is to cultivate an environment in which the better potential of educators and administrators can develop. For this reason, the legislatures should act cautiously in imposing unproven reform measures, like merit pay, on the schools. Though such measures may seem the needed antidote for an untoward union influence, their greatest potential may be to undermine the collegial working relationship that is a prerequisite to effective schools.³⁶⁸

Needed is some equilibrium between the rightful influence of professional educators and the imperative that the schools be managed. Collective bargaining may be an imperfect means of reaching that equilibrium, but it holds greater promise than the managerial traditions it replaces. Teacher collective bargaining is, after all, a relatively young institution, which has carried a heavy burden of past custom during its early years. As the realm of possibilities is reimaged, there is reason to hope that labor relations can evolve in a direction that will accommodate both professional and public interests.

V. CONCLUSION

The problems of contemporary educational reform are also largely the problems of school labor relations. Most prominent among these is the schools' incessant need for greater financial support, particularly in funding the costs of instruction. Experience with educational collective bargaining demonstrates that the teachers' unions, far from having "disproportionate power" as claimed by Professors Wellington and Winter, may be at a disadvantage in the

367. Johnson, *supra* note 355, at 326. See also Vaughn, *Public Sector Bargaining Issues in the 1980's: A Neutral View*, 33 N.Y.U. CONF. ON LABOR 317, 323 (1980) ("There is now a growing body of empirical evidence emerging confirming what most professional industrial relations experts have always known—that the nature of the labor-management relationship in an organization can have significant positive or negative effects on productivity, depending on the quality of the relationship.").

368. See Johnson, *supra* note 166, at 183-85.

local political process. Nor is this disadvantage one that can be remedied legislatively by recognition of teachers' right to strike or arbitrate. This financial dilemma seems to inhere in the current localized processes for funding teachers' salaries, and the dilemma is exacerbated in poorer school districts. This suggests that, if reform of teacher compensation is to come, it must originate at higher levels of government where there is both the political will and the economic means to pay for it.

Experience with teacher labor relations is less suggestive of strategies for reforming the non-compensatory aspects of public education. Clearly, the schools must avoid the excesses of either an arbitrary school administration or a workplace regimented by contractual rules. Yet, while there is agreement on this in the abstract, practical proposals are lacking. The history of labor relations may also reveal the dominant influence of custom, personality and professional identity in the schools, and the futility of legislative reforms—like merit pay—that ignore the school culture. One suspects, however, that the sociologically informed labor policies will ultimately yield to public opinion, given the public's irrepressible fancy that it can—and does—run the schools.

Whatever the progress of educational reform, the public schools must address the problem of dispute resolution. Indeed, if significant reform is not forthcoming, dispute resolution may become the predominant issue in school labor relations. Both our research and the research of others indicate that there is a solution to work stoppage—binding arbitration. Yet, having discarded the common law notion that teachers' strikes are *malum in se*, one must ask further whether the remedy is less appealing than the malady.

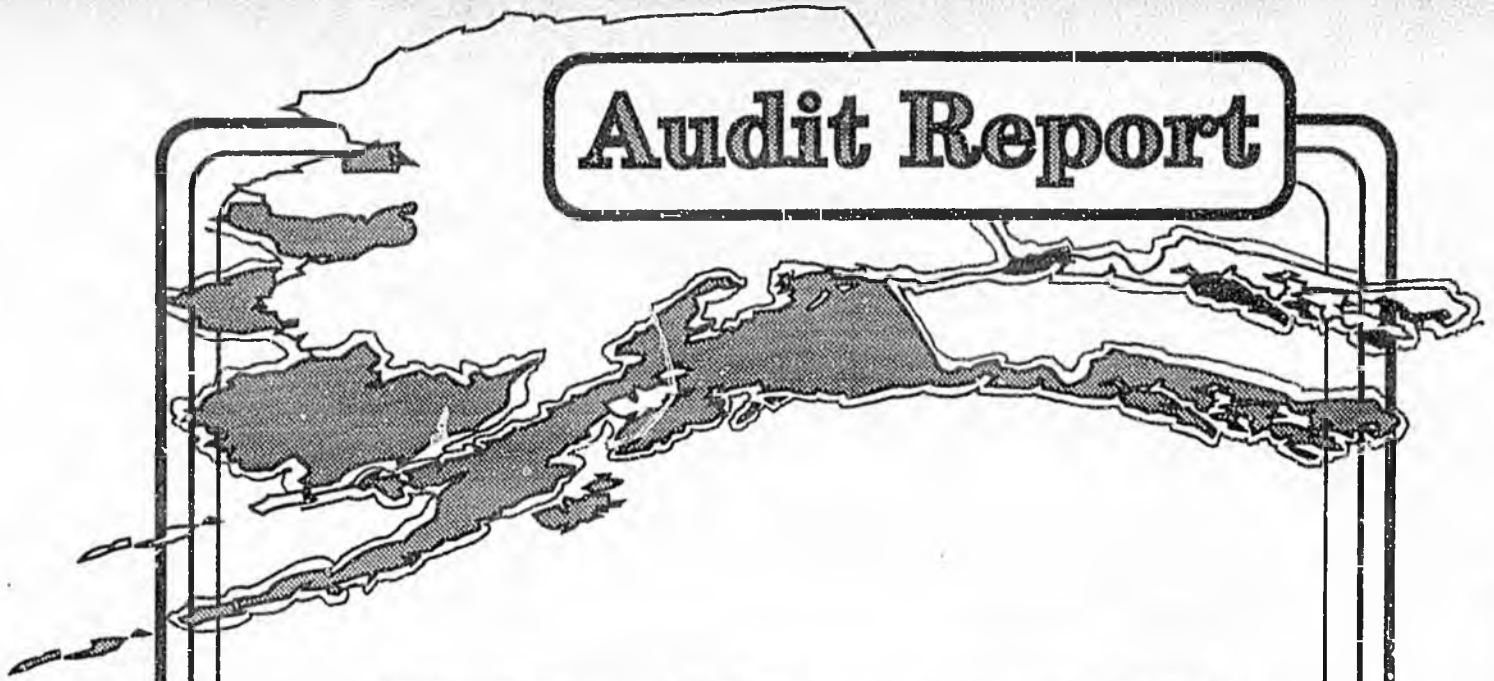
Present evidence suggests that local government will pay a moderate economic cost under binding arbitration. Whether that cost is an enduring one remains to be seen. Local school government will not, however, surrender many of its important managerial prerogatives to arbitrators (excepting some fiscal control); arbitrators are a conservative lot, by and large, and arbitration schemes provide disincentives for those who would view the process as a progressive or innovative one. Thus, arbitrators, like the parties themselves, concede and compromise so far as compelled to by their environment.

There remains the question: Is binding arbitration a politically legitimate process? The answer is indisputably "yes", insofar as both teachers and school government show an overwhelming willingness to abide by the outcome of arbitration. Furthermore, one cannot fully credit the argument that arbitration threatens local

control, since public education is a state responsibility, just as one cannot give credence to those who find arbitration a threat to "free" collective bargaining—free bargaining was never a feature of a system that denied teachers the right to strike.

Still, one is left with a niggling doubt that binding arbitration may mask the political timidity of state government, and that it may offer merely an easy peace. Binding arbitration is a tentative step toward centralized educational governance, but one under which the state can control neither the costs nor the direction of educational decision-making. It is just such diffusion and delegation of responsibility that has brought our educational system to its present sorry state.

Audit Report



**IMPACT OF THE
PUBLIC EMPLOYMENT RELATIONS ACT
ON LOCAL SCHOOL DISTRICTS**

November 8, 1991



Audit Control Number:

05-4419-92

Division of Legislative Audit
P.O. Box W, Juneau, Alaska 99811-3300

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November 22, 1991

Members of the Legislative Budget
and Audit Committee:

In accordance with the provisions of Title 24 of the Alaska Statutes, the attached report is submitted for your review.

A Report on the Impact of the Public Employment Relations Act on Local School Districts

November 8, 1991

Audit Control Number

05-4419-92

The audit reports on the impact that Chapter 180, SLA 1990 has had on labor relations between school employees and the State's local school districts. This legislation made public school employees subject to the provisions of the Public Employment Relations Act (PERA), AS 23.40, Article 2. The legislation also classified public school employees as (a)(3) workers under AS 23.40.200 which gave the school employees the legal right to strike. This was a right that they had previously not been granted.

The audit was conducted in accordance with generally accepted government auditing standards. We recommend in the report that legislation be passed that will continue to classify public school employees as (a)(3) employees under AS 23.40.200 and that they continue to be subject to the other provisions of PERA. We also recommend that the legislature consider passing legislation to clearly establish what items are negotiable between school district administrators and their employees. A further statement of our audit approach is included in the Objectives, Scope, and Methodology section of this report.

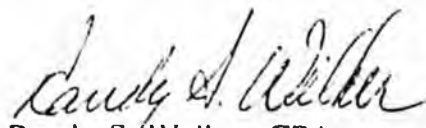

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Legislative Auditor

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OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with a Legislative Budget and Audit Committee special request and the provisions of Title 24 of the Alaska Statutes, we conducted a review of the effects of Chapter 180, SLA 1990 (Senate Bill 15) on the State's local school districts. This legislation made public school employees subject to the provisions of the Public Employment Relations Act (PERA), AS 23.40, Article 2. Public school employees were classified as (a)(3) workers. Under PERA, class (a)(3) employees are given the legal right to strike; whereas, previously when public school employees were covered by Title 14, the Alaska Supreme Court determined that they had no legal right to strike.

Objectives

The objective of the review was to gain an understanding of the effects of Chapter 180, SLA 1990 on labor relations between public school employees and their respective school districts. Specific objectives of the review were to:

1. Determine how the legislation affected the length of time needed to reach a negotiated settlement compared to negotiations conducted under Title 14.
2. Determine if there has been an increase in the costs of attorneys or other legal costs attributable to negotiations under PERA.
3. Determine whether under PERA there has been an increased cost to school districts attributable to contract negotiations.
4. Compare the settlement process between school districts and employees under Title 14 with PERA.
5. Assess the involvement of the Alaska Labor Relations Agency (ALRA) with public school employees and school districts.
6. Review and report on the number and content of Unfair Labor Practice (ULP) filings submitted to ALRA.
7. Report on the effect of PERA classification on the general attitudes of both labor and management towards each other during the negotiations process.

Scope

We focused our examination of education employee labor relations on the 54 school districts established in the State of Alaska. In our review, we placed additional emphasis on larger districts that have negotiated agreements or are currently negotiating under the provisions of PERA.

Methodology

Our evaluation of the effects of Chapter 180, SLA 1990 involved review and analysis of the following documents:

1. Alaska Statute 14.20, Article 6. Negotiation and Mediation.
2. Alaska Statute 23.40, Article 2. Public Employment Relations Act.
3. Information pertaining to 1989's Senate Bill 15 which eventually was passed as Chapter 180, SLA 1990, an act "Including, for two years, public school employees in the Public Employment Relations Act as class (a)(3) employees entitled to a right to strike; requiring advisory arbitration before public school employees exercise the right to strike; and providing for an effective date."
4. Information pertaining to 1988's House Bill 170 which eventually was passed as Chapter 95, SLA 1988, an act "Extending collective bargaining rights to noncertificated school district employees."
5. The Alaska Supreme Court decision regarding *Kenai Peninsula Borough School District v. Kenai Peninsula Education Association*, 572 P.2d 416 (Alaska 1977).
6. The Alaska Supreme Court decision regarding *Anchorage Education Association v. Anchorage School District*, 648 P.2d 993 (Alaska 1982).
7. Executive Order No. 77.
8. ALRA's 1990 Annual Report.
9. ALRA's ULP Case Management File.
10. ALRA's ULP Case Status Report.
11. Public Case Files at ALRA on filed education cases.

We also relied extensively on interviews with the following groups of individuals:

1. Organizations with an interest in education matters, which included the Alaska Association of School Boards (AASB), the Alaska Council of School Administrators (ACSA), and the National Education Association (NEA).
2. School district administrators, which included superintendents, personnel directors, and labor relations directors.

3. Presidents and members of negotiating teams for local teachers' unions.
4. Presidents and members of negotiating teams for local education support personnel unions.
5. ALRA's hearing examiner/administrator.

We prepared a questionnaire regarding the effects of placing public school employees under the provisions of PERA, which was mailed out to the presidents of local NEA-affiliated unions.

We also prepared a questionnaire regarding the effects of placing teachers under the provisions of PERA, which was mailed to the superintendents of 51 of the State's school districts. Because the questionnaire was designed based on their discussions, we did not mail the questionnaire to the superintendents of the three school districts we had interviewed in the survey phase of our audit work.

ORGANIZATION AND FUNCTION

Title 14 of the Alaska Statutes sets out the duties and organization of the Department of Education. The statutes establish a seven-member State Board of Education appointed by the Governor, which sets the policy for education in Alaska's public schools. The State Board appoints the Commissioner of the Department of Education to implement and carry out its policy decisions.

There are 471 public schools administered by 54 school districts in Alaska. The school districts include 21 Regional Education Attendance Areas (REAs) and 33 City and Boroughs. The REAs are created in politically unorganized areas in rural Alaska and the city and borough school districts serve politically-organized areas of the State.

Alaska education highly emphasizes the importance of local control. Each school district has a locally elected school board that works within the state guidelines to set policies for their respective districts. In 1990, there were about 108,000 students attending public school between preschool and twelfth grade. These students were taught by about 6,400 public school teachers.

Teachers and other school personnel were placed under Title 14 eighteen years apart

Certificated public school employees were given the right to bargain matters pertaining to their employment and the fulfillment of their professional duties in 1970. Chapter 18, SLA 1970 codified laws relating to school district labor relations under AS 14.20, Article 6 (commonly referred to as Title 14). Noncertificated public school employees were given the right to bargain matters of wages, hours, and other terms and conditions of employment in 1988 (Chapter 95, SLA 1988) when AS 14.20, Article 6 was amended.

In 1990 (Chapter 180, SLA 1990) public school employees were placed, for a two-year period, under the provisions of the Public Employment Relations Act (PERA) as class (a)(3) employees. An important aspect of labor relations under PERA is the role of the Alaska Labor Relations Agency (ALRA).

ALRA acts as referee and adjudicator for public employee labor relations

The present organization of ALRA was created on July 1, 1990 after the governor issued and the legislature approved Executive Order 77. The order consolidated three separate agencies into ALRA responsible for administering PERA and the Railroad Corporation Act. ALRA is composed of a board of three members who serve staggered three-year terms. The governor appoints and the legislature confirms the board members. No more than two board members may be from a single political party and all must have backgrounds in labor relations. One member is drawn from management, one from labor, and one from the general public.

ALRA employs a small staff of hearing officers and examiners to process and review various allegations and petitions within its jurisdiction. Perhaps the most visible aspect of ALRA's responsibilities is its resolution and adjudication of unfair labor practices (ULP).

The ALRA's process for resolving ULPs is as follows:

1. Preliminary review of allegation. The party filing a charge lays the issue out to a hearing officer/investigator. The hearing officer fills out a checklist to determine that all requirements for a charge have been met. Requirements include that the charge is sworn, that there are written addresses for the parties to the charge, and that the charge is dated. The hearing officer has 14 days to conduct an investigation, but in actuality it has been taking longer than 14 days.
2. Determination of jurisdiction. If the facts alleged appear to be true, then ALRA must decide if it has jurisdiction to hear the case. If it is determined that ALRA has jurisdiction, the facts of the charge are again examined prior to contacting witnesses on both sides. The hearing officer then forwards the case to the hearing examiner with a recommendation to dismiss or hear the case.
3. Informal Mediation or Resolution. If it is decided to hear the case, the hearing examiner attempts to bring the two parties together to have them conciliate the issues that separate them.
4. Hearing is held. If conciliation is not possible, then a hearing is held. An audio tape and written testimony is kept of each hearing. The case may be heard either by the ALRA's hearing examiner or the ALRA board may choose to hear the case as a board. When the board chooses to not be present at the hearing, the hearing examiner prepares a proposed decision for the board. When comments are received back from each board member and an agreement is reached on the wording of the decision, it becomes final. The final decision is written and is appealable in court.

BACKGROUND INFORMATION

1970 legislation first defined labor rights for teachers

In 1970, the terms and conditions by which teachers could collectively bargain were first established by the legislature in AS 14.20, Article 6. The statute sets out the negotiation and mediation processes to be followed for teachers (called certificated employees). Specifically, AS 14.20.550 requires that

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.

AS 14.20, Article 6 also set out procedures for school boards to follow in recognizing organizations to bargain on behalf of teachers (the statute refers to these organizations as bargaining agencies).

Noncertificated public school employees joined teachers in obtaining the right to bargain conditions of their employment in 1988, with the passage of Chapter 95, SLA 1988. This legislation amended AS 14.20, Article 6 to include noncertificated public school employees. Noncertificated employees were allowed to bargain matters of wages, hours, and other terms and conditions of employment.

Title 14 sets out procedure for union recognition and certification

The statutes required school boards to conduct secret ballot elections to select union representation for teachers. The school boards had to hold an election if 25% of the district's teachers so requested. After such an election, the statute required school boards to recognize the union with the most votes.

A Short Glossary of Terms Used in This Report

Advisory arbitration: An independent third party is called in to help settle a collective bargaining deadlock. After hearing both sides of the dispute, the arbitrator issues an advisory decision. Although the decision is not binding on either of the two sides, it often brings a realistic perspective to the negotiations.

Binding arbitration: As in advisory arbitration, a third party hears both sides, but then renders a decision that is binding on both parties.

Mediation: Involves third party intervention between conflicting parties. However, a mediator acts more informally than an arbitrator, often serving as a go-between for the two sides in order to promote reconciliation or compromise.

Deadlock: Point at which negotiations between two parties reaches a standstill. Often a mediator is brought in at this point to help the two sides to continue communicating and to mutually resolve differences.

Impasse: Point at which negotiations have broken down to the point that neither side to a dispute will concede on their issues. Impasse exists after a mediator and an advisory arbitrator have tried to resolve issues.

After recognition, school boards were required to negotiate within 20 days after receiving a written request from the union. Negotiation meetings were required to be open to the public unless both sides mutually agreed to have the meetings closed.

1970 legislation also provided for mediation then arbitration

The statute required mediation, in a prescribed manner, of labor negotiations if and when the two sides reached a deadlock. The United States Federal Mediation and Conciliation Service would serve as the agency to resolve the dispute. The mediator would chair the mediation meetings and attempt to resolve the differences between the two sides. The mediator would prepare a written report, which would be issued to both sides. If either side rejected the report in its entirety, the mediator could make changes and prepare a final report. If either side rejected that final report, the governor could appoint an advisory arbitrator to hear the issues.

The statute also required that negotiated agreements provide for a grievance procedure. When setting up a grievance procedure, the statute required that binding arbitration be used as the final procedural step. The statute did maintain that it was not designed to abrogate school boards' rights to have final decision-making authority on policy.

1972 legislation sets out public employee labor relations rights

Two years after teachers were given the right to bargain, public employees had their rights codified in AS 23.40, Article 2. The legislation, referred to as the Public Employment Relations Act (PERA), established three classes of public employees and gave specific bargaining rights to each class.

Class (a)(1) employees include police and fire protection employees and were designated as workers whose services cannot be suspended for any length of time. Class (a)(1) employees are not allowed to strike. However, if impasse is reached in negotiations even after mediation, then the bargaining parties must submit to binding arbitration.

Class (a)(2) employees, which include public school employees other than teachers or noncertificated employees, and public utility employees, were designated as workers whose services could be suspended for short intervals. Class (a)(2) employees are allowed to engage in a strike after unsuccessful mediation. But if either the employer or the State's labor relations agency can prove that the strike threatens health, safety, or the public welfare, they can apply for a court order to stop the strike. If the impasse continues after the suspended strike, the parties must submit to binding arbitration.

Class (a)(3) employees are those employees not specifically included in the two previous groups. Class (a)(3) employees are allowed to engage in a strike if a majority of the bargaining unit votes to do so by secret ballot.

PERA rights differ significantly from Title 14 provisions

The rights conveyed to employees covered by PERA differed significantly from rights conveyed to certificated public school employees in Title 14. These rights, as listed below, differ in areas ranging from union selection to mandatory payment of dues:

1. The selection of unions (or bargaining agencies) - A major difference between PERA and Title 14 is in the area of union certification. PERA involves the Alaska Labor Relations Agency (ALRA) in selecting and certifying union representation rather than local school boards. If there is a request for union representation; ALRA, not the school board, conducts an election by secret ballot.
2. Mediation - Another difference is the process of mediation. Under PERA, when labor and management negotiating teams reach a deadlock, they can mutually select a mediator or request that ALRA appoint a mediator. The mediator tries to work with the two parties to resolve any open issues.
3. Unfair Labor Practices (ULPs) - PERA also conveys additional rights that were not mentioned in Title 14. One right under PERA is that neither the public employer or public employees may engage in ULPs. PERA defines what constitutes a ULP and assigns ALRA with the responsibility of investigating and adjudicating ULP charges. ALRA can try to help resolve ULP issues between the two parties informally or can go through a formal hearing process in accordance with the Administrative Procedures Act. ALRA has the power to issue and serve orders to stop prohibited practices or to apply for an injunction from superior court. In order to reach its decision on ULPs, ALRA has the power to subpoena witnesses. ALRA can dismiss unfounded ULP allegations.
4. Dues deduction - PERA also conveys the right to employees to bargain for an agency shop and to have union dues deducted from employees' payroll and conveyed to the representative union.

PERA was not automatically made applicable to all employers. Under the 1972 legislation, political subdivisions were allowed to "opt out" of PERA and substitute their own labor relations provisions. Some subdivisions, most notably the Municipality of Anchorage, opted out of PERA.

Judicial decisions further define public school employees' rights

The requirements and application of Title 14 were further defined by two Alaska Supreme Court decisions. The first decision was in the case of the *Kenai Peninsula Borough School District v. Kenai Peninsula Education Association*, 572 P.2d 416 (Alaska 1977), commonly referred to as "Kenai '77" (see inset on page 11). In its decision, the court established what items were negotiable and what issues were non-negotiable in the collective bargaining process between teachers and school districts.

In the second case, *Anchorage Education Association v. Anchorage School District*, 648 P.2d 993 (Alaska 1982), referred to as the "Anchorage Strike Case" (see inset at right), the court ruled that teachers did not have the right to strike. These two court cases helped provide interpretation and guidance on items that had not been specifically addressed by the 1970 legislation.

Employees resent imposed contracts

Prior to 1990, public school employees were growing increasingly frustrated with their inability to bring closure or "finality" to the bargaining process. Under Title 14 and the accompanying court decisions, school districts had the right to impose a contract when collective bargaining impasse was reached. Public school employees had no formal means to respond to a contract imposition since they did not have a legal right to strike.

Despite not having the right to strike, teachers have been effective in using informal means to get imposed contracts lifted and have both sides return to the negotiations.

Informal means used by teachers have consisted of picketing their school district, filibustering school board meetings, taking votes to have an illegal strike, and working to their contract. When certificated staff work to their contract, they put in exactly their workday hours, but no more. This means that papers may not be graded and extracurricular activities for students may be curtailed. While effective, the informal means were long and drawn out and led to increasingly poor relations between the staff and school district.

ALASKA SUPREME COURT RULES TEACHERS HAVE NO RIGHT TO STRIKE

In 1979, school teachers in Anchorage went on strike. When they had not completed contract negotiations that year by the first day of school, they decided to walk out of classes. The strike lasted five days until the state superior court issued a temporary restraining order halting the walkout. The teachers then appealed the restraining order.

In the case, *Anchorage Education Association v. Anchorage School District*, 648 P.2d 993 (Alaska 1982) the supreme court ruled that the teachers did not have the legal right to strike. The court held that PERA did not pertain to teachers, even though AS 23.40.200 (d) lists public school employees as falling under its provisions.

The courts ruled that the statute referred to public school employees other than teachers, such as principals and counselors. The courts held that if the legislature had wanted PERA and its strike provisions to apply to teachers, it would have specifically so stated.

The decision went on to say, "No court has held that the common law permits public employees to legally strike in the absence of explicit statutory consent." Another reason cited by the court for their decision was the absence of an established oversight agency for the teachers, under the provisions of Title 14, which the court observed has historically contributed to the fairness of strikes.

Although the court admitted that teachers were not being treated the same as other public employees who were covered by PERA, it added that, *unequal treatment is permissible if it is substantially related to the legitimate purposes of the legislation.* The court observed in making its ruling that apparently the legislature felt Title 14 adequately provided cooperative labor relations for teachers.

KENAI '77 CASE DEFINES NEGOTIABLE ITEMS

In the mid 1970s, the Kenai School district filed suit against the local teachers union. The district sought a ruling from the courts regarding what items were negotiable and what items fell within the district's powers and responsibilities to make final decisions on policies. The school board claimed that while employment-related issues were subject to bargaining, items that affected educational policy should not be subject to bargaining. The union contended that district policy was a proper subject for collective bargaining.

In ruling on the case in 1977 [Kenai Peninsula Borough School District v. Kenai Peninsula Education Association, 572 P.2d 416 (Alaska 1977)], the Alaska Supreme Court observed that under the general law concerning bargaining between labor unions and private employers, the "scope of negotiable issues is broad." However, the court said that when the public employment sector is concerned, "and particularly education, the question of what is properly bargainable is thrown into more doubt." The courts expressed concern that the autonomy of school boards could be gradually eroded by the collective bargaining process over time.

In deciding the case, the Alaska Supreme Court quoted a passage from an United States Supreme Court decision that stated,

Whether a teachers' union is concerned with salaries and fringe benefits, teacher qualifications and in-house training, pupil-teacher ratios, length of schoolday, student discipline, or the content of the high school curriculum, its objective is to bring school board policy and decisions into harmony with its own views.

The court held that while school boards are required to negotiate in good faith, school boards are not required or permitted to delegate decision-making to unions. The court stated, "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."

While observing that it would be helpful if the legislature would provide more specific guidance on what items may be negotiated (see Recommendation No. 2 in this report), the court made a decision of what collective bargaining items are negotiable and which are non-negotiable.

The court then went on to list more than 30 items that could be bargained by the union and then listed nine items that it felt were nonnegotiable policy items:

- 1) relief from non-professional chores,
- 2) class size and teacher load,
- 3) an Ombudsman for teachers,
- 4) evaluation of administrators,
- 5) use and number of Teacher Aides,
- 6) use and number of Para-Professionals,
- 7) pupil to teacher Ratio Formula,
- 8) use of specialists, and
- 9) the school year calendar.

Binding arbitration considered one method of achieving finality

Public school employees lobbied the legislature for a number of years to have a formal means to bring finality to their contract negotiations. The method preferred by the

employees was binding arbitration (see glossary on page 7 for definition of binding arbitration).

School district administrators and school boards adamantly opposed binding arbitration. Administrators are opposed to binding arbitration because they felt it contributes to escalating personnel costs in other states where it is used. Administrators have also found that in many instances where they have gone to advisory arbitration, they have been the losers in the financial decision, suggesting they would fare no better if the arbitrator's rulings became binding.

Currently many school districts feel that they are constrained in what they can pay to employees because revenues are limited under the State's school foundation program. The legislature, to some extent, has recognized the validity of this viewpoint. In 1991, they provided 15 single-site school districts a total of \$2,131,200 to supplement funding the districts under the foundation program.

School districts who have a taxing authority have found taxpayers unwilling to support additional property or sales taxes. While funding has not increased in recent years, costs for school districts have been rising. Some of the costs are uncontrollable, particularly rapidly increasing costs of the Teacher's Retirement System. School districts are concerned that if their employees have binding arbitration as the means to finality, salaries and benefits will be set at amounts that are impossible to fund.

1989's Senate Bill 15 attempts to resolve finality issue

In this background of public school employee frustration with the provisions of Title 14 and school district concerns about binding arbitration, Senate Bill 15 was introduced in January 1989. The original version of the bill made substantial changes to Title 14. It included giving the ALRA oversight responsibilities for union elections and a provision of "last-best-offer" mediated arbitration that would be binding on both parties. The bill was altered substantially as it moved through the Senate. The revisions continued as the bill moved from the Senate to the House for consideration. In one committee version of the bill, public school employees were placed under the provisions of PERA as class (a)(2) employees with a limited right to strike followed by binding arbitration.

To avoid having binding arbitration imposed, two organizations that represent school boards and school administrators, the Alaska Association of School Boards and the Alaska Council of School Administrators, respectively, agreed to drop their opposition to the bill. Their agreement was predicated on the bill containing a right to strike [or (a)(3) PERA status] for teachers and other school personnel rather than binding arbitration [(a)(1) or (a)(2) PERA status].

These two organizations and the National Education Association-Alaska (NEA-Ak), representing teachers and other school employees, reached an agreement on a bill that would classify public school employees under PERA as class (a)(3) employees. Such classification

would give them the right to strike. The House Finance Committee version of the bill reflected the agreement reached between the three interested organizations. However, the bill was changed when it reached the House Rules Committee.

House Rules Committee add a repeal date clause

The House Rules Committee passed out legislation that would make the reclassification of school district employees under PERA effective for only two years. At the end of the two-year period, the employees would again be subject to the provisions of Title 14 unless the legislature acted to extend their coverage under PERA. There was expressed intent for the two years to serve as a trial period. One representative stated that he viewed the "legislation as an experiment in finality in collective bargaining," and that he "hoped it would put a stop to the charges and counter charges seen on both sides of this issue." SB 15, as passed out of the House Rules Committee, placed public school employees under PERA as class (a)(3) workers for a two-year period.

SB 15 was then revised again on the floor of the House. An amendment, characterized as a "technical amendment" prohibited school districts from opting out of the bill. The amendment addressed concerns that since the original passage of PERA in 1972 allowed political subdivisions to "opt-out," school boards might argue that they should be entitled to the same option. The amendment was intended to clarify the intent of the legislature that the law would apply to all school districts. Senate Bill 15 as passed by the House and Senate, was signed into law by the Governor with an effective date of June 22, 1990.

REPORT CONCLUSIONS

The Legislative Budget and Audit Committee directed that we review and report on the impact of the Public Employment Relations Act (PERA) on various aspects of labor relations between public school employees and the State's 54 school districts. We based our report conclusions on the information that we gathered through interviews with education organization groups, school district administrators, and members of local unions representing both certificated and noncertificated staff. We also relied on the results of a questionnaire we mailed to 51 school districts. We received a response from 38 or 75% of districts polled.

Length of time involved in negotiations has generally remained unchanged

There has been no significant consistent change in the length of time it takes to negotiate a contract under the provisions of PERA compared to Title 14. The issues being negotiated and the amount of available funding have more of an impact on the time spent bargaining than does the process used. Eighteen school districts responding to our survey reported that the length of time to negotiate a contract remained the same under PERA as it had under Title 14. Eleven districts reported that they either had not negotiated under PERA and therefore had no basis to form an opinion or that they simply had no opinion. Eight respondents felt that the length of time had increased while one respondent felt that the length of time had decreased.

Union members generally reported that the length of time to negotiate a contract had not changed much under PERA, but they felt that the productivity of negotiation meetings had been greatly enhanced. They attributed this change to the presence of the unfair labor practice (ULP) process which kept both union and management aware of the need to bargain honestly and in good faith.

Legal service costs at the district level generally not affected

Local unions reported that they have not experienced an increase in legal costs, while 27 (71%) of school districts also report no increase in legal costs. Local unions typically have not hired attorneys to either negotiate on their behalf or to act in legal disputes. Instead, any local union which is a party to an ULP charge or court case is assessed \$10.00 for each local member and the state branch of the union pays the balance of the legal cost. The National Education Association (NEA), which represents most education employees in Alaska, report that they have had only a minimal increase in legal costs due to ULPs.

We found a total of \$245,000 had been spent by school districts on legal costs in response to PERA; \$120,000 paid by Alaska Association of School Boards (AASB) and \$125,000 paid by individual school districts. AASB stated that they had just hired a \$120,000 labor relations attorney to assist their member school boards in labor matters. Among the 11 (29%) school district respondents who reported an increase in legal costs eight reported the increase was due to negotiations and six reported the increase was due to preparations for

a ULP. We contacted the three school districts who had gone all the way to the hearing process with a ULP. One school district indicated they had hired their own in-house attorney in response to a ULP. They have budgeted \$100,000 for that position. The second school district would not offer an exact estimate but said the amount was immaterial. The third school district stated they had spent about \$9,000 in preparation for a ULP. In addition to school districts who had legal costs as a result of a ULP, another school district stated they had paid \$16,000 for an attorney-prepared presentation for their school board and in preparation of upcoming negotiations.

The Alaska Labor Relations Agency (ALRA) also has costs that are attributable to the time they spend investigating and hearing ULP charges. Since they do not have a system to keep track of the time spent on each case, we chose to allocate ALRA's FY 91 expenditures based on the number of education-related cases handled compared to the total number of cases filed with the agency. Based on this method, ALRA has spent an estimated \$35,000 to investigate and hear education ULP cases.

Use of professional negotiators has remained about the same

We did not find any increase in costs to school districts attributable to hiring a professional contract negotiator. Of the 38 school districts responding to our survey, 8 (21%) hire either a consultant or an attorney to negotiate on their behalf. Of those, three had not yet negotiated a contract under PERA, and one reported that their negotiation costs remained the same. Of the remaining four who use a hired consultant or attorney, one had already reported an increase in costs under the legal services previously discussed. The other three districts reported no increase in their negotiator's fees.

We found no school district which had decided to use a hired negotiator when it had not used one previously, as a result of being placed under the provisions of PERA. Since there has been no significant change in the length of time it takes to negotiate a contract under PERA, it seems reasonable that the costs to negotiate those contracts would not alter significantly. Also, many negotiators receive a fixed fee for their services irrespective of the length of time it takes to reach settlement or the results of the settlement.

The major difference with PERA are the issues being negotiated

The major difference in negotiations and contract settlement under PERA is the nature of the issues being negotiated. With the passage of PERA, there is a lot of uncertainty on the part of both administrators and unions about what can be negotiated in collective bargaining. Both parties are unsure if the items listed as non-negotiable in the Kenai '77 court decision still apply.

Some feel that the court case is now void since it pertained to Title 14. The National Education Association of Alaska (NEA-Ak) say that they have no plan to push for reconsideration of the issues dealt with in the Kenai '77 decision. However, individual local unions told us that they were raising previously non-negotiable items in their contract talks.

These reports were substantiated by six school districts which in their survey response related that previously non-negotiable items were being raised during bargaining. The most commonly addressed non-negotiable item being discussed is class size. Currently, ALRA is considering the negotiability of a specific issue whose status is unclear.

According to information provided by NEA-Ak, 31 negotiated contracts have been settled under the provisions of PERA. This total includes contracts for both certificated staff and support staff. Nine additional contracts are currently being negotiated and ten districts have not negotiated under the provisions of PERA. As of this time under PERA, there has been no contracts imposed on unions by the school districts nor have there been any union strikes against the school districts. Of the 37 school districts who responded to our questionnaire, only 3 (8%) said that they had gone as far as advisory arbitration to reach contract settlement.

Only 5 (13%) of our school district respondents felt they had conceded more in negotiations under PERA than they would have conceded under Title 14. When we contacted those school districts, we found that the concessions were in the way of contract language and the union classification of employees rather than of a direct financial nature.

When polled, only one school district said that being under PERA was an improvement over being under Title 14. The one district that preferred PERA thought the law provided more clearly defined ground rules for labor relations. There were 31 (82%) school districts who felt that being under PERA was a disadvantage because of increased bureaucracy. They also did not like the potential for ULPs and strikes.

ALRA role has involved delay and has been less extensive than originally envisioned

While ALRA has had some involvement in school district labor relations, the amount of contact has been less than what was originally anticipated by the ALRA hearing examiner. The hearing examiner said that while she had expected up to 50% of ALRA cases to involve education issues, in actuality, less than 25% of ALRA's cases have been education-related.

According to ALRA's administrative hearing examiner, the small percentage of education cases can be attributed to two factors. One factor is that not every school district has negotiated a contract under PERA; therefore, ALRA has had jurisdiction over only some of the State's 54 school districts. A second factor is that both education unions and school districts are just learning about PERA and how ALRA is available to answer questions and hear issues.

There has been some frustration expressed by the education unions and school district administrators over the length of time involved in the ALRA hearing process. Two of the education cases that have advanced to the hearing process have taken as long as eight months to one year for a decision from the ALRA board.

ALRA EDUCATION-RELATED CASES AND ISSUES			
Type of Action	Date of Filing	Parties to Case	Status as of 10/7/91
Unfair Labor Practice	7/20/90	<i>Kenai Peninsula Borough School District v. Kenai Peninsula Educational Support Association</i>	Closed
Unfair Labor Practice	7/25/90	<i>Lower Kuskokwim Education Association v. Lower Kuskokwim School District</i>	Closed
Unfair Labor Practice	7/25/90	<i>Classified Employees Association v. Matanuska-Susitna Borough School District</i>	Closed
Unfair Labor Practice	7/27/90	<i>Yukon Flats School District v. Yukon Flats Education Association</i>	Open
Unfair Labor Practice	8/14/90	<i>Kenai Peninsula Education Association v. Kenai Peninsula Borough School District</i>	Closed
Unfair Labor Practice	8/20/90	<i>Anchorage Education Association/NEA-Alaska v. Anchorage School District</i>	Suspended
Unfair Labor Practice	11/26/90	<i>Kashunamiut School District v. Chevak Education Association</i>	Dismissed
Unfair Labor Practice	2/25/91	<i>Mid-Kuskokwim Education Association v. Kuspuk School District</i>	Open
Unit Clarification	4/16/91	<i>Classified Employees Association/NEA-Alaska v. Matanuska-Susitna Borough School District</i>	Closed
Amended Clarification	5/2/91	<i>Matanuska Susitna Education Association and Matanuska Susitna Nurses Association Merger</i>	Requires Posting
Representation Petition	5/24/91	<i>In re IBEW, petition for Decertification and Certification (Fairbanks North Star Borough School District)</i>	Closed
Regulatory	5/29/91	<i>Anchorage Education Association</i>	Added to project list
Unit Clarification	6/26/91	<i>Yakutat Education Association/NEA-Alaska v. Yakutat City School District</i>	Open
Representation Petition	8/7/91	<i>Teamsters Local 959 v. Fairbanks North Star Borough School District</i>	Prehearing Upcoming
Representation Petition	8/21/91	<i>Alaska Vocational Technical Teachers' Association v. State of Alaska</i>	No Action Necessary

One reason for the delay in case resolution is that ALRA, as it is currently organized, was formed only nine days after the effective date of Chapter 180, SLA 1990. And there has been a turnover of board members since that time. Executive Order No. 77 combined the labor relations functions of three separate entities under the one agency -- ALRA. There was a period immediately following this when offices were being moved, furnished, and staffed. Shortly after the agency was settled in and ready to work effectively, a new administration replaced the board members with new appointees. Because of these changes, ALRA has not had full opportunity to become as effective as originally envisioned by the legislature when they placed school employees under PERA.

ALRA has received favorable comments for its advisory role and mediation function

In spite of the frustration over delays in issuing decisions on ULPs, there have been many positive comments about ALRA. Union members and school district administrators who have contacted ALRA report that there is a considerable body of knowledge about labor relations at the agency. They have found ALRA to be a reliable, unbiased source of information. The comment was also frequently made that despite the length of delay at ALRA it is still a faster alternative than going to court to get a decision. It is significant to note that ULPs can be, and are being, filed by school districts almost as often as by unions.

ALRA's 15 education cases involve union certifications, regulations, and ULPs

The table on the opposite page summarizes ALRA's 15 education related cases. Eight of the cases involve ULP allegations (the sidebar on the right explains the types of cases filed at ALRA other than ULPs). Only three of the ULP allegations went to a final hearing. The other five ULP allegations either have been resolved by mutual consent of the two parties, dismissed by ALRA, or suspended pending completion of contract grievance procedures.

The one case that has gone to the hearing process and has had a decision rendered was a case filed by the *Classified Employees Association v. Matanuska-Susitna Borough School District*. This case is of particular interest because the school district raised the question, "When the terms of a collective bargaining agreement that pre-dates application of the PERA conflicts with the Act, does the agreement or the Act govern?" In this particular instance, the collective bargaining agreement that was being questioned had been negotiated under Title 14 and not under PERA. The school district believed that any definitions of confidential employees in PERA would not apply since it had a preexisting agreement. The classified employees association felt that the PERA definition was applicable.

In their decision based on the hearing, ALRA said they did not perceive any conflict between PERA and the agreement; therefore, ALRA could reach a decision on the case without addressing the question of which would apply in the event there was a conflict. After ALRA decided that they could determine whether certain employees were designated as confidential, the issue was subsequently converted to a unit clarification petition by mutual consent of the two parties.

**ALRA HANDLES OTHER CASES
BESIDES ULPs**

Union representation is the subject of three petitions filed at ALRA. Representation petitions are requests by unions that they be recognized as the bargaining agent for a group of employees.

Unit clarifications are the content of two of the cases filed at ALRA. Unit clarifications deal with which school district employees are considered confidential and therefore are prohibited from joining a union because of their access to management information.

Amendment to a unit certification is one case filed at ALRA. This case involves an agreement between two local unions and the school district regarding the merger of the two bargaining groups.

Regulatory request is one of the filed actions at ALRA. This case results from a petition from a local union requesting ALRA define in regulation their concept and approach of advisory arbitration.

ALRA is still considering two ULPs as of the date of this report. Both cases have gone to a hearing and a decision is pending; one case has been open for eight months and the other case has been open for a year and three months. The first case deals with a school district that refused to open negotiations with the certificated employees association when notice of intent to bargain was received one day late.

The second pending ALRA ULP case is of considerable interest because it deals with an item that was considered as negotiable in the "Kenai '77" court case. The school district filed the case against their local education association. The school district argued that while they have to bargain procedural requirements on voluntary transfers, they do not have to bargain substantive criteria. The education association responded that the wording in the contract that the district is questioning has been there for years and is clearly a permissible subject to bargain. When ALRA makes their decision on this case, it could be the first step in defining how the "Kenai '77" court case applies to PERA.

Unions feel that playing field is level, administrators prefer Title 14 process

The general attitude of public school employees is that while they would prefer to have binding arbitration as their means to finality, they find having the right to strike an acceptable alternative. Public school employees said there has been a perceptible change at the negotiating table now that they are under the provisions of PERA. There is a feeling that PERA has brought equality to the two sides and that more serious negotiations are now taking place. The phrase used most often by education personnel is that PERA "has levelled the playing field." Education personnel say that neither side has the upper hand in negotiations; school districts can impose and school personnel can strike. They also say that the knowledge of either side being able to file ULPs has made each side less likely to resort to "game-playing" in the negotiation process.

The general attitude of school district administrators is a great deal more mixed. On their responses to the questionnaire, only 3 (8%) of the administrators felt that it would become a common practice for teachers in their district to go on strike. Yet, 28 (74%) of the respondents said that they would prefer to have their employees return to Title 14, and 29 (76%) said they were opposed to having their employees remain in PERA with a class (a)(3) classification.

When questioned in person, the respondents had attitudes that were different than those reflected in the survey. Some school district administrators said that in public they will support the position expressed by the Commissioner of Education and by their individual school boards, but their personal feeling was different. Many school district administrators stated that it is acceptable to them if public school employees remain under the provisions of PERA as class (a)(3) employees. School administrators consistently remain strongly opposed to binding arbitration for their employees, but they find the right to strike an acceptable compromise.

AUDITOR COMMENTS

School district experience with PERA has been limited by two-year trial period

Because of the cyclical nature of school district contracts, not every district has had the opportunity to negotiate under the provisions of PERA during the eighteen months prior to the time of our review. Twenty percent of the school districts have not yet begun to negotiate a contract under the provisions of PERA.

Further, since the Alaska Labor Relations Agency (ALRA) was reorganized essentially at the same time that school district personnel came under PERA, that agency has not had the opportunity to fully demonstrate its effectiveness in overseeing school district labor relations. All unfair labor practice (ULP) charges must be settled before the two parties can proceed to the next step of the negotiation process. Since ULP charges for one district have been open for more than a year, contract negotiations have been stalled.

Despite the limited period involved, we believe PERA's impact on public school employees has been beneficial enough to warrant recommending that employees remain classified under AS 23.40.200 as (a)(3) employees (see Recommendation No. 1 in the Findings and Recommendation section of this report). However, if the legislature is still unsure about the benefits and impact of PERA, we would recommend extending the provisions of Chapter 180, SLA 1990 at least another three years and as many as six in order to provide more historical experience for setting public policy in this area.

A right to strike does not necessarily lead to strikes

Even though there has been no strikes since the Anchorage School District court decision, we were told that provisions of Title 14 should not be considered as having prevented strikes. Individuals experienced with school district labor relations in both Alaska and other parts of the United States, reported that statutory prohibitions against strikes did not necessarily prevent them from happening. One example cited was the State of Michigan, where teachers often strike illegally despite statutory prohibitions.

In our interviews with school employees, we were told that in the past illegal strikes were often a very real possibility in some communities. In several instances where a school district had imposed a contract on their employees, votes had been conducted for illegal strikes. We were told by different employee unions that conducted strike votes, that from 70% to 100% of their members had voted for illegal strikes in the past. In these instances, strikes had been avoided when the school district administration heard about the results of the strike vote and agreed to return to negotiations.

Just as not having a right to strike does not prevent strikes, having that right does not necessarily cause strikes. Strikes are caused by high labor expectations and low funding available to management and administrators to meet those expectations. We were told by

many individuals from both labor and management that strikes occur when the collective bargaining system breaks down. Nobody makes the decision to go on strike, lightly. Everyone acknowledges that strikes are very disruptive to a community.

In small, rural communities employees fear for their personal safety if they were to go on strike. According to labor representatives, having the right to strike actually forces them to weigh how serious they are about items under negotiation. They must continually evaluate if the issues involved are important enough to them that they would rather strike than settle. As disruptive as all strikes are, illegal strikes are potentially even more disruptive. Most often illegal strikes take place in situations where there is no labor relations oversight agency such as the ALRA to moderate and oversee the situation.

Major benefit of PERA is not the right to strike, but in changes of attitude

Since public school employees are neither more nor less likely to go on strike by having the right to strike, then the real benefit of being under PERA is the perceived attitude change. All public school employees who spoke to us felt they had been patronized when negotiating under AS 14.20.500. In their view, both sides now recognize that there is an equality of power at the negotiating table. Public school employees feel that being under PERA offers additional benefits, such as oversight by ALRA, a more clearly defined negotiating process, and the right to bargain for a standard assessment of dues and fees.

Public school employees includes more than teachers

It is important to note that Chapter 180, SLA 1990 affected not just certificated staff but also non-certificated personnel. Non-certificated staff includes secretaries, bookkeepers, maintenance workers, and other public school employees. Prior to 1990, when the definition section of PERA excluded teachers from the provisions of PERA, it also was interpreted as excluding all non-certificated staff.

FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

Public school employees should remain under the provisions of the Public Employment Relations Act (PERA), classified as (a)(3) employees.

Chapter 180, SLA 1990 contained an automatic repeal provision of two years. The effect of this repeal clause would be to again subject the labor relations for public school employees to the provisions of AS 14.20, Article 6, if no legislative action is taken.

In our view, the legislation should be enacted to lift the two-year repeal provision that was originally part of Chapter 180, SLA 1990. We further suggest that public school employees remain classified as (a)(3) employees, entitled to a right to strike after submitting to advisory arbitration, as provided for under PERA (AS 23.40).

Returning public school employees to the provisions of AS 14.20.550 would result in treating the largest public employment occupational group differently than all other public employees. In our view, this would be inconsistent with the legislature's previously established public policy in this area. AS 23.40.070 states in part that

*...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, ... 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.*

Other public employees covered by the provisions of PERA have the means to conclude negotiations through either binding arbitration or the right to strike. AS 14.20, Article 6, as currently written, does not provide public school employees such a method to achieve finality. Under this statute school districts had the right to, and did, impose employment contracts on teachers. In testimony before the Senate Labor and Commerce committee and in interviews with us, teachers reported that imposed contracts cause severe morale problems. In the past, imposed contracts have reduced wages and benefits and have pushed teachers to consider calling illegal strikes. Such circumstances do not suggest to us that AS 14.20, Article 6 promoted *harmonious and cooperative relations* between the school districts and its employees.

PERA has promoted harmonious and cooperative relations

As discussed in the Auditor Comments section, we recognize that two years has not provided an adequate trial period for all aspects of the legislation. However, we feel that it has been

a sufficient period to show that PERA has successfully worked for public school employees. Based on our interviews with school district personnel, administrators, and the responses to our survey, on balance we feel that the 1990 legislation did promote harmonious and cooperative relations between school district personnel and administration.

It was widely conceded that teachers have more bargaining power under PERA than under Title 14. However, few school districts that reached agreement under the statute's provisions reported that they felt they had made major financial concessions. Although almost all districts responded that they favored a return to Title 14, from our interviews we felt this was because the district's enjoyed the wide degree of discretion and latitude provided by the statute rather than out of concern that they were at a great negotiating disadvantage under PERA.

Presence of Alaska Labor Relations Agency also beneficial

In our view, another aspect of PERA that promotes both cooperative labor relations and good faith bargaining is the jurisdictional role of the Alaska Labor Relations Agency (ALRA). Although as we report in the Auditor Comments and Report Conclusion sections, ALRA has in some respects been slow to respond to the demands of the education community; we feel that its structure and approach are of great potential benefit. Placing public school employees back under the provisions of Title 14 as currently written, will eliminate this important benefit of PERA.

AS 14.20, Article 6 has not promoted harmony or cooperative relations between school districts and its employees. There had been a growing frustration on the part of employees, prior to the 1990 legislation, with the labor relation provisions of Title 14.

These employees had been lobbying the legislature for fifteen years for a means to resolve their dissatisfaction. PERA status and classification as (a)(3) employees under AS 23.40.200 does represent a compromise that, for the most part, has satisfied school district employees. We anticipate that if school district employees are returned to the labor relations provisions of AS 14.20, the lobbying effort will begin anew. In our view, the legislature made an important step towards settling public policy in this area with passage of Chapter 180, SLA 1990. To return public school employees to Title 14 after the two year trial period would not be in the State's best interests.

Laws applicable to school employees and other public employees should be more alike

In their ruling on the Anchorage strike case (see inset on page 16), a majority of the Alaska Supreme Court presumed that the legislature had a public policy purpose for classifying teachers differently than other public employees. The court felt that absence of an oversight agency, no specific mention of teachers in PERA, and a lack of a clear right to strike under Title 14 was indicative of the legislature's desire to treat teachers differently. However, in our view the placement of teachers in Title 14 compared with statutory declaration of policy contained in AS 23.40.070 is inconsistent. Besides the language of AS 23.40.070, we are

also persuaded by the observations of Chief Justice Rabinowitz, who wrote in a dissenting opinion in the Anchorage strike case that

If public school teachers are so essential to society that they must be denied the right to strike then they should also be given the right to compulsory arbitration. On the other hand, if teachers are not so essential as the 'critical' employees then they should enjoy the same limited strike rights given to other 'semi-critical' public employees.

In line with Chief Justice Rabinowitz's reasoning, we believe that retaining public school employees under PERA is in the best interests of the State and more consistent with previously established public policy in the area of public employee labor relations.

Recommendation No. 2

If certificated public school employees remain subject to the provisions of PERA, the legislature should consider adopting legislation to clarify what issues are negotiable.

When the legislature first developed labor relations statutes for teachers in 1970, it provided that nothing in the law 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 policy (AS 14.20.610). As observed by the courts in the Kenai '77 case, to a degree this statutory provision conflicts with the requirements of AS 14.20.550 that districts bargain with employees regarding their employment and professional duties.

Admittedly, in view of the emphasis that state public policy has traditionally placed on local control of schools, this conflict between employee rights and board prerogatives is difficult to resolve. As discussed on page 11, the Alaska Supreme Court made its distinctions about what they thought could be negotiated without abrogating the local board's legal authority over policy. However, the courts did so rather reluctantly, stating in their decision that *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.*

At the present time under PERA, there is even more uncertainty on the part of public school employees and administrators as to what issues are subject to negotiation. It is uncertain under PERA if the guidelines set down in the Kenai '77 case still apply. We suggest the legislature should assess this situation and consider legislation that sets out negotiable issues as compared to the policy prerogatives of local school boards. If the legislature does not address this issue, then it is most likely that future decisions regarding negotiable items will be made either by ALRA or again by the courts.

APPENDIX A

RESULTS OF SCHOOL DISTRICT SURVEY

Listed below are 20 questions on the topic of moving teachers into class (a)(3) of PERA. This classification change gave teachers the right-to-strike. This classification allows both teachers and school boards to file Unfair Labor Practice charges with the Alaska Labor Relations Agency. Another effect of this change is that the Alaska Labor Relations Agency certifies union elections.

Please circle the response to each question that reflects your school district's experience with Title 23. If you wish to offer additional comments, please feel free to attach a memorandum. Thank you for your time.

1. *Who negotiates on behalf of your school district?*

Superintendent	23
Personnel Director	4
Attorney	3
Hired Consultant	5
School Board Member(s)	17
Business Manager	3
School Principal	2
Labor Relations Director	1

2. *Do you feel that it costs more to negotiate a contract under Title 23 than it did to negotiate a contract under Title 14?*

Yes	13
No	12
No Opinion	13

3. *Under Title 23 as compared to Title 14 has the time involved in negotiating labor agreements with teachers:*

Not Applicable	11
Increased	8
Decreased	1
Remained the same	18

APPENDIX A

RESULTS OF SCHOOL DISTRICT SURVEY
(cont.)

4. *Do you feel that your district has conceded more in negotiations under Title 23 than it would have under Title 14?*

Not Applicable	16
Yes	5
No	17

5. *Do you feel that it will become a common practice for teachers in your district to go on strike?*

Yes	3
No	33
No Opinion	2



6. *Have you seen items that were non-bargainable under Title 14 now being addressed in negotiations under Title 23?*

Yes	6
No	19
No Opinion	13

7. *Have you filed an Unfair Labor Practice charge with the Alaska Labor Relations Agency against your teachers union?*

Yes	3
No	35

8. *Has the school district been charged with an Unfair Labor Practice?*

Yes	3
No	35

APPENDIX A

RESULTS OF SCHOOL DISTRICT SURVEY

(cont.)

9. *Have you experienced any direct increase in legal services costs that was attributable to Title 23?*

Yes	11
No	27

10. *If your previous answer was "Yes", were the legal costs attributable to:*

Negotiations	8
Preparations for ULP charge	6

11. *Do you feel that the negotiations process is more clearly defined under Title 23 than under Title 14?*

Yes	2
No	32
No Opinion	4

12. *Under Title 14 did you ever impose a contract on your teachers?*

Yes	4
No	30
No Opinion	4

13. *Have you had any experience with the Alaska Labor Relations Agency certifying a union election?*

Yes	2
No	36

14. *Has being under Title 23 affected the way in which your administration deals with teachers?*

Yes	5
No	31
No Opinion	2

APPENDIX A

RESULTS OF SCHOOL DISTRICT SURVEY (cont.)

15. *Have you received any formal training about the provisions of Title 23?*
- | | |
|-----|----|
| Yes | 26 |
| No | 12 |
16. *Do you feel that being under Title 23 is an improvement over being under Title 14?*
- | | |
|------------|----|
| Yes | 1 |
| No | 32 |
| No Opinion | 5 |
17. *Have you gone to advisory arbitration under Title 23?*
- | | |
|-----|----|
| Yes | 3 |
| No | 35 |
18. *Would you prefer a return to Title 14 over remaining under Title 23?*
- | | |
|------------|----|
| Yes | 28 |
| No | 9 |
| No Opinion | 1 |
19. *Would you prefer that teachers be classed as (a)(1) or (a)(2) under Title 23, which would permit binding arbitration?*
- | | |
|------------|----|
| Yes | 2 |
| No | 33 |
| No Opinion | 3 |
20. *Would it be acceptable to you if the two-year repeal provision were lifted and teachers remained classified as (a)(3) employees under Title 23?*
- | | |
|------------|----|
| Yes | 8 |
| No | 29 |
| No Opinion | 3 |

APPENDIX B

RESULTS OF PUBLIC SCHOOL EMPLOYEES SURVEY

Listed below are 20 questions on the topic of moving public school employees into class (a)(3) of Title 23. This classification change gave public school employees the right to strike. This classification allows both public school employees and school boards to file Unfair Labor Practice charges with the Alaska Labor Relations Agency. Another effect of this change is that the Alaska Labor Relations Agency certifies union elections.

Please circle the response to each question that reflects your local union's experience with Title 23. If you wish to offer additional comments, please feel free to attach a memorandum. Thank you for your time.

1. *What local union are you filling out this survey on behalf of?*

Responses 38

2. *Do you feel that it costs your union more to negotiate a contract under Title 23 than it did to negotiate a contract under Title 14?*

Yes 0
No 34
No Opinion 4

3. *Under Title 23 as compared to Title 14 has the time involved in negotiating labor agreements:*

Not Applicable 14
Increased 1
Decreased 15
Remained the same 8

4. *Do you feel that your union has gained more in negotiated contract concessions under Title 23 than it would have under Title 14?*

Not Applicable 12
Yes 11
No 15

APPENDIX B

RESULTS OF PUBLIC SCHOOL EMPLOYEES SURVEY
(cont.)

5. *Do you feel that it will become a common practice for your union members to go on strike?*

Yes	1
No	37

6. *Do you believe that the decision reached in the Kenai court decision on what items are bargainable and nonbargainable still applies now that public school employees are under the provisions of Title 23 rather than the provisions of Title 14?*

Yes	18
No	8
No Opinion	12

7. *Under Title 23, has your union addressed any items at the negotiating table that would not have been addressed under Title 14?*

Yes	5
No	28
Not Applicable	5

8. *Have you filed an Unfair Labor Practice charge with the Alaska Labor Relations Agency against your school district?*

Yes	6
No	32

9. *Has your local union been charged with an Unfair Labor Practice by the school district?*

Yes	2
No	36

APPENDIX B

RESULTS OF PUBLIC SCHOOL EMPLOYEES SURVEY

(cont.)

10. *Have you experienced any direct increase in legal services costs that was attributable to Title 23?*

Yes	1
No	37

11. *Under Title 14 did your union ever take a vote to hold an illegal strike?*

Yes	5
No	33

12. *Do you feel that the negotiations process is more clearly defined under Title 23 than under Title 14?*

Yes	34
No	3
No Opinion	1

13. *Under Title 14 was a contract ever imposed on your union?*

Yes	16
No	22

14. *Has a contract been imposed on your union now that you are under the provisions of Title 23?*

Yes	0
No	38

15. *Have you had any experience with the Alaska Labor Relations Agency certifying a union election?*

Yes	3
No	35

APPENDIX B

RESULTS OF PUBLIC SCHOOL EMPLOYEES SURVEY (cont.)

16. *Have you received any formal training about the provisions of Title 23?*

Yes	24
No	14

17. *Do you feel that being under Title 23 is an improvement over being under Title 14?*

Yes	36
No	1
No Opinion	1

18. *Would you prefer a return to Title 14 over remaining under Title 23?*

Yes	0
No	37
No Opinion	1

19. *Would you prefer being classed as (a)(1) or (a)(2) under Title 23, which would permit binding arbitration?*

Yes	32
No	3
No Opinion	3

20. *Would it be acceptable to you if the two-year repeal provision were lifted and you remained classified as (a)(3) employees under Title 23?*

Yes	36
No	0
No Opinion	2

WALTER J. HICKEL, GOVERNOR

GOLDBELT PLACE
801 WEST 10TH STREET, SUITE 200
JUNEAU, ALASKA 99801-1894

DEPARTMENT OF EDUCATION

OFFICE OF THE COMMISSIONER

January 7, 1992

Randy S. Welker
Division of Legislative Audit
P.O. Box W
Juneau, AK 99811-3300

RECEIVED
JAN 7 1992

LEGISLATIVE AUDIT

RE: Audit Control Number 05-4419-92

Dear Mr. Welker:

This is a reply to your preliminary audit report, "Impact of the Public Employment Relations Act on Local School Districts", dated November 8, 1991. The Department has reviewed the findings and recommendations and provides the following response:

Recommendation No. 1

Public school employees should remain under the provisions of the Public Employment Relations Act (PERA), classified as (a)(3) employees.

The Department does not concur with Recommendation No. 1. Clear direction for negotiations between local school boards and unions was established by Title 14 and further defined by two Alaska Supreme Court decisions as referenced in the audit report. Placement of public school employees under PERA (AS23.40) has the effect of re-opening issues previously set by past practice and the court decisions. Having a right to strike does not necessarily cause strikes. Under any circumstance, teacher strikes are not good for students.

Local school boards have lost their authority to negotiate evenly with unions under Title 23, and prefer, as evidenced by your report, to negotiate under Title 14. Yet the "opt out" provision which applies to municipalities is denied to school districts. Teachers have achieved and maintained the highest average teacher salaries in the nation under Title 14, and as such have not suffered at the hands of local boards. According to the September 1991, Institute of Social and Economic Research (ISER) report to the legislature, "salaries for many Alaska teachers remain substantially higher than national averages". In fact, "The average fiscal year 1989 teacher's salary and benefits cost the school district \$50,000 in Anchorage, \$53,000 in Fairbanks, and \$58,000 in Juneau. Using ISER Anchorage/U.S. and McDowell's (1988) within Alaska differentials, these salaries are 22 percent, 24 percent, and 37 percent higher, respectively, than the U.S. average of \$36,000." The report does indicate that teacher salary schedules and total compensation varies throughout the State. However, due to local control, "the difference reflects to some extent different attitudes about encouraging teachers to remain and make a commitment to the community."

SB 15 should be allowed to sunset in order to return to a system which has overwhelming local support and interpretation and guidance established by the court.

Randy S. Welker
Page 2
January 7, 1992

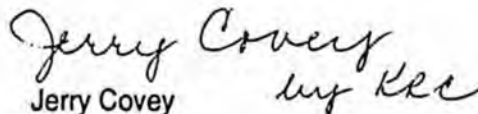
Recommendation No. 2

If certificated Public School Employees remain subject to the provisions of PERA, the Legislature should consider adopting legislation to clarify what issues are negotiable.

The Department does not concur with Recommendation No. 2. SB 15 should sunset due to the many uncertainties associated with public school employees remaining under PERA as (a)(3) employees.

Other provisions such as 2-year tenure, rehire, dismissal, non-retention, and teacher retirement which are related to total compensation and employment security are already provided for under Title 14 or have been granted by the Legislature.

Sincerely,


Jerry Covey
Commissioner

cc: Duane Guiley, Director, EFSS
Mike Maher, Special Assistant



NEA-ALASKA

AFFILIATED WITH THE NATIONAL EDUCATION ASSOCIATION

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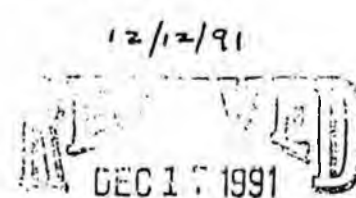
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Randy S. Welker
Legislative Auditor
Legislative Budget and Audit
P.O. Box W
Juneau, AK 99811-3300



LEGISLATIVE AUDIT

Dear Mr. Welker:

Thank you for providing NEA-Alaska with a copy of the "CONFIDENTIAL" PRELIMINARY REPORT ON:
"IMPACT OF THE PUBLIC EMPLOYMENT RELATIONS ACT ON LOCAL SCHOOL DISTRICTS."

We find the Report extremely comprehensive, thorough, and precise in its attention to the detail which pertains to the various nuances of the public school district collective bargaining process. LB & A staff are to be commended for this energetic effort.

We are also gratified to learn that LB & A intends to supplement the Report with a survey of public school employee bargaining agent union presidents, similar to the survey of superintendents. The results of this particular survey will bring more balance and broadened insights.

It is appropriate to provide some brief comments on some components of the Report before responding to the specific recommendations.

- > On page 5, in the third paragraph, the number of public school teachers in Alaska is probably understated by 700+.
- > On page 7, it may be more accurate to say that impasse "may" exist after a mediator and advisory arbitrator have tried to resolve issues; and, is probably more accurately described when both parties acknowledge that they are unwilling to make further modification of their positions on the issues in dispute.
- > On page 8, in the second paragraph, seldom, if ever, was an actual written report produced by the mediator under AS 14.20.550.
- > On page 9, from our perspective, it is also appropriate to emphasize that PERA contains provision for finality through right to strike or binding arbitration as one of its significant differences from AS 14.20.550.
- > On page 10, the conclusion in the third paragraph is somewhat general in nature and while it may be true in some instances, it is certainly not accurate to all districts and/or each round of negotiations in a district.
- > On page 12, in the paragraph relative to school district taxing authority it may be more accurate to say there "may be a reluctance" rather than an "unwillingness" to support additional property taxes.

- Recent national polls in fact show that the general public is willing to pay more taxes for public schools and the recent school bond vote in Anchorage is indicative of their willingness to support the operation of schools.

- In the same paragraph, it should also be noted that teachers contribute 8.65% of their pay to the retirement system and that part of that cost increase is due to benefit improvements and the RIP.

> On page 21, in the second paragraph, settlement of a pending ULP is not necessarily a prerequisite for continuation of negotiations. Naturally, resolution of ULPs is desirable for the successful potential of the negotiations process.

> In the last paragraph on page 21 the reasons given for causing strikes are not the exclusive reasons although they are certainly contributing ones. The presence of unresolved ULPs and provocative and offensive conduct are frequently major contributing factors when employees strike.

RECOMMENDATION # 1: Public School Employees Should Remain Under the Provisions of the Public Employment Relations Act (PERA). Classified as (a) (3) Employees.

NEA-Alaska agrees with this recommendation and will be working aggressively in the legislative process for the removal of the "sunset" provision from the current legislation. We will continue training programs for our members in better understanding of their rights and responsibilities under the PERA. We will seek its full implementation on behalf of all employees covered by it with a minimum of conflict and confrontation.

We will continue to work closely with the AJRA to facilitate their procedures and seek resolutions to problems and conflicts at the earliest administrative levels.

We will seek the opportunity for joint training and seminars with AASB and ACSA on our common concerns under the PERA. Pilot efforts in this regard in Anchorage and Fairbanks in the fall of 1990 were moderately successful.

RECOMMENDATION # 2: If Certificated School Employees Remain Subject to the Provisions of the PERA, the Legislature Should Consider Adopting Legislation to Clarify What Issues are Negotiable.

It is desirable to have clarity on the scope of negotiations and which issues are mandatory or permissive topics of negotiations. NEA-Alaska is confident that the "Kenai" decision will continue to provide a general frame of reference for the parties. However, over the extended period of time both circumstances and dynamics of process change.

The diversity and the magnitude of differences in public education in Alaska school districts may in fact require some flexibility in the articulation of mandatory and permissive subjects of negotiations. The policy responsibilities of school boards as employers will continue to provide sufficient guidance on disputes pertaining to negotiability.

There are two examples from the Kenai decision which may serve to emphasize the need for some flexibility in definition over the extended period and because of changing circumstances.

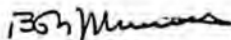
The Kenai decision makes class size a non-mandatory topic for negotiations because it is more in line with policy than with the economic interests of employees. However, increasing student enrollments, limited funding, reductions to student programs and services are just a few components which all contribute to significantly increasing class sizes, especially in urban areas. Administrators, school boards, employees and the general public are all interested in finding viable solutions to the problem.

Because a solution has not been found and because the problems continue to exacerbate it is becoming one of a "condition of employment" as well. Increasing class sizes increase negligence and liability potential, contribute to the possibility of increasing student discipline problems, mean more out of pocket employee expenses for classroom supplies and materials, contribute to an increased workload in homework, tests, preparation, and may constrain one's ability to achieve annual performance goals thereby contributing to possible negative annual evaluations. There is a point where the class size problem becomes a condition of employment and should be negotiable.

A similar scenario exists on the issue of employee workload, especially for rural secondary teachers who may be required to teach subjects out of their areas of certification. Again, adverse impacts on employee evaluations can be the direct result and a similar conclusion on negotiability is valid.

Thank you again for the opportunity to respond to the Preliminary Audit Report. I hope that our comments and recommendations are helpful to your process.

Respectfully submitted:



Bob Manners
Executive Director

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STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. SB 19

Revision Date: _____ Department Affected: Department of Law
 Title: "An Act relating to treatment BRU: Legal Services
related to the use of alcohol & other Component: Operations
drugs."
 Sponsor: Senator Uehling
 Requestor: Senator Uehling COMPONENT SERIAL NO.

		9	3
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: -0-

ANALYSIS: (Attach a separate page if necessary.)

 Please see the attached analysis.

Prepared By: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services Date: 01/24/91
 Approved by Commissioner: Charles E. Cole, Attorney General
 Agency: Department of Law Date: 01/24/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 19

This bill amends AS 47.37, the state's Uniform Alcoholism and Intoxication Treatment Act, to extend the provisions of the Act to drug addicts. The bill also amends state policy concerning the treatment afforded to alcoholics, drug addicts, and intoxicated persons to be within available funds. Numerous other changes are included in the bill, which among other things would extend the emergency detention period from 48 to 72 hours, extend the long-term commitment period from 30 to 60 days, permit treatment personnel at an approved treatment facility to use reasonable physical restraint to retain an incapacitated or gravely disabled person for up to 72 hours from the time of admission, and provide for early release for a person to a less restrictive treatment program before expiration of the period of commitment.

As its stretched resources permit, the Department of Law represents the Department of Health and Social Services in court actions involving involuntary commitments, except for persons taken into protective custody due to incapacitation. Consequently, Law's involvement is somewhat limited. The expansion of the Act, to include drug addicts, would normally cause a substantial fiscal impact for the Department of Law. However, because of the lack of available treatment facilities, a fiscal impact is not expected. Without such facilities, commitment cannot take place.

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. SB 19

Revision Date: _____
 Title: An Act relating to alcohol and other drugs treatment
 Sponsor: Uehling
 Requestor: _____

Department Affected: Administration
 BRU: Office of Public Advocacy
 Component: _____
 COMPONENT SERIAL NO.

--	--	--	--

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
---------	---	---	---	---	---	---

REVENUE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary.)

The fiscal impact of this bill upon the Office of Public Advocacy (OPA) is totally dependent on the willingness of government entities to employ the statute in order to involuntarily commit alcoholics and drug addicts. Unless a concerted effort is made by some agency to use the statute the impact upon OPA will be minimal, as the Alaska Public Defender Agency will provide the required representation to all but those with whom it has a conflict of interest.

Prepared by: Braht McGee, Director
 Division: Office of Public Advocacy

Phone: 274-1684
 Date: _____

Approved by Commissioner: Millett Keller
 Agency: Administration

Date: 1/28/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

CONTINUATION OF FISCAL NOTE ANALYSIS

For SB 19

According to recent press reports, the prosecutor's office of the Municipality of Anchorage is determined to find a means to remove chronic alcoholics from downtown streets. No details of its plan, if any, have been publicly reported. However, this statute could provide a vehicle for the involuntary treatment of some of these street alcoholics.

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. SB 19

Revision Date: _____ Department Affected: Department of Administration
 Title: "An Act relating to alcohol and other drugs treatment..." BRU: Public Defender Agency
 Component: _____

Sponsor: Uehling
 Requestor: _____

COMPONENT SERIAL NO.

4	2		
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-	-0-
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary.)

Please see attached.

(Handwritten initials/signature)

Prepared By: John Salemi, Public Defender Phone: 279-7541

Division: Public Defender Agency Date: _____

Approved by Commissioner: Millett Keller *(Signature)*

Agency: Department of Administration Date: 1/28/91

Distribution (by preparer). Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 19

To date the statute which this proposed legislation targets enjoys little use in terms of providing a vehicle for placing citizens in protective custody. Therefore little litigation has been generated. If police agencies or other governmental authorities begin employing these provisions to "clean up the streets" or otherwise utilize the protective custody concept, considerable attorney time might come into play. It is estimated that a lawyer would invest 2 to 3 hours on each protective custody case brought under Title 47 (preparation, witness interviews, hearings).

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. SB 19

FEB 26 1991

Revision Date: _____ Department Affected: Health & Social Services
 Title: "An Act Relating to Treatment
Related to the Use of Alcohol and Other
Drugs." BRU: Alcoholism & Drug Abuse
 Sponsor: Uehling Component: Alcoholism & Drug Abuse Grants
 Requestor: _____ COMPONENT SERIAL NO.

3	0	4
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

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

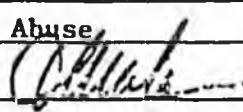
POSITIONS:

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

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

See Attached

Prepared By: Suzanne W. Perry Phone: 586-6201
 Division: Alcoholism & Drug Abuse Date: 2/25/91
 Approved by Commissioner: 
 Agency: Department of Health & Social Services Date: 2/25/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: "An Act relating to treatment to the use of alcohol and other drugs "
 Sponsor: Uehling
 Requestor: _____

Agency Affected: Health and Social Services
 BRU: Alcohol and Drug Services
 Components: Alcohol Grants

EXPENDITURES/REVENUES: (Thousands of Dollars)

- OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Senate Bill 336 will not have any FY90 fiscal input.

M.F. by Leg. Council

Prepared by: Matthew C. Felix Phone: 586-6201
 Division: Office of Alcoholism and Drug Abuse Date: 2/13/90

Approved by Commissioner: Myra M. Munson Date: 2/20/90
 Agency: Health and Social Services

Distribution (by preparer):

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R E C E I V E D

FEB 22 1990

Senator Rick Uehling

Downtown, Elmendorf, Northeast Anchorage



Senate Finance Committee
International Trade & Tourism Committee
State Affairs Committee

BILL SUMMARY

SB 19

"AN ACT RELATING TO TREATMENT RELATED TO THE USE OF ALCOHOL AND OTHER DRUGS..."

The main changes achieved by SB 19 are to provide for emergency and involuntary commitment procedures for drug addicts similar to those that currently exist for alcoholics, and to clarify that treatment in public facilities is subject to the availability of funds for treatment. Certain time limits relating to commitment proceedings are also changes and new sections relating to evidence used in the proceedings are added.

I introduced a similar bill last year which had a zero fiscal impact.

Senator Rick Uehling

Downtown, Elmendorf, Northeast Anchorage



Senate Finance Committee
International Trade & Tourism Committee
State Affairs Committee

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DIVISION OF LEGAL SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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(907) 465-3867 or 465-2450
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*Deliveries to: 240 Main Street
Court Plaza, Room 500
Mail Stop 3101*

MEMORANDUM

January 21, 1991

SUBJECT: Sectional Summary (SB 19)

TO: Senator Rick Uehling

FROM: Terri Lauterbach 
Legislative Counsel

Following is the sectional analysis you requested for SB 19:

The main changes achieved by the bill are to provide for emergency and involuntary commitment procedures for drug addicts similar to those that currently exist for alcoholics and to clarify that treatment in public facilities is subject to the availability of funds for treatment. Certain time limits relating to commitment proceedings are also changed and new sections relating to evidence used in the proceedings are added.

Sec. 1. Changes the policy declaration for the chapter.

Secs. 2 - 3. Add drug addicts to the voluntary treatment statute.

Secs. 4 - 9. Modify the protective custody statute (AS 47.37.170) by changing the criteria for protective custody, changing certain time limit requirements for action, authorizing reasonable physical restraint to retain certain persons for up to 72 hours, and emphasizing that decisions must be based on availability of appropriate treatment.

Secs. 10 - 12. Modify the emergency commitment statute (AS 47.37.180) by adding drug addiction, emphasizing availability of treatment, increasing the time period applicable to medical examinations before commitment, and increasing from 48 to 72 hours the time a person can be held before court review.

Secs. 13 - 19. Modify the involuntary commitment statutes (AS 47.37.190 - 47.37.200) by adding placement of drug addicts, adding provisions related to persons who

Senator Rick Uehling
January 21, 1991
Page 2

repeatedly require detox or treatment, changing certain time limit requirements, and allowing telephonic testimony.

Sec. 20. Adds a new section relating to early release of persons from commitment.

Secs. 21 - 22. Add new language that will make it easier for medical records to be used as evidence in commitment proceedings.

Sec. 23. Prohibits DHSS from refusing service to persons who cannot pay, but allows DHSS to limit acceptance of patients in order to stay within budgetary constraints.

Sec. 24. Clarifies that treatment services are not an entitlement.

Sec. 25. Technical amendments.

Sec. 26. Changes the definition of "alcoholic."

Sec. 27. Changes the definition of "incapacitated by alcohol" by adding references to drugs and by including self-harm as a criteria for determining incapacitation.

Sec. 28. Changes the definition of "intoxicated person" by adding a reference to drugs.

Sec. 29. Changes the definition of "treatment."

Sec. 30. Adds new definitions of "drug addict" and "gravely disabled by alcohol or other drugs."

Sec. 31. Repeals a recommitment provision.

TL:pl
91-011.plm

Senator Rick Uehling

Downtown, Elmendorf, Northeast Anchorage



Senate Finance Committee
International Trade & Tourism Committee
State Affairs Committee

Senate Bill 19

"An Act relating to treatment related to the use of alcohol and other drugs...."

List of Statutes Affected by SB 19:

AS 47.37.
47.37.010
47.37.160 (a)
. (c)
47.37.170 (b)
. (d)
. (e)
. (f)
. (h)
. (J)
47.37.180 (a)
. (b)
. (c)
47.37.190 (a)
. (b)
47.37.200 (a)
. (b)
. (c)
. (e)
. (g)
47.37.210
47.37.240
47.37.250 (a)
47.37.270 (l)
. (10)
. (13)
. (14)