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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 medicament 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

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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 preceeding 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-

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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*, PHI DELTA KAPPAN, Sept. 1980, 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-

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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 267-328; Bakalis, *American Education and the Meaning of Scarcity*, PHI DELTA KAPPAN, Oct. 1981, 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 of 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

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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.

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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 Substantially 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 remuneration[323] 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

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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 elections[337]

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328. *See, e.g.*, L. ZEIGLER & M. JENNINGS, GOVERNING AMERICAN SCHOOLS 250 (1974); Kerr, *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 meetings[338] 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 facilities[341] —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

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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. LANOUE & 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 438.

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 compatability 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 rules[352] — 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-

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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

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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.
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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 81-82; Johnson, *supra* note 355, at 325-26; 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 reimagined, 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

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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 addr 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 appeal' .g 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.

Conferring Strike Rights by Statute: Experience Outside California

by

B. V. H. Schneider*

In view of the changing status of the strike in California's public sector, readers may be interested in an up-to-date review of how the strike question has been handled in other states. The following article briefly describes the current standing of the strike in California, summarizes the principal criticisms of the state Supreme Court's controversial *County Sanitation* decision and then discusses how those states that have conferred strike rights by statute have handled the matter.

The compilation of other states' strike laws shows that, although California's new standard for determining whether a strike is legal or illegal was created by different means, the standard itself and the suggested safeguards of the public interest set forth in the court's decision do not vary greatly from those contained in the statutes of most other states. The primary difference lies in the statutory procedures provided elsewhere to encourage dispute resolution short of a strike.

Status of the Strike in California

Local government. In May 1985, in a case arising under the Meyers-Millas-Brown Act (MMBA), the state Supreme Court broke with long-standing precedent both in this state and throughout the United States by ruling that "[T]he following standard may properly guide courts in the resolution of future disputes . . . : strikes by public employees are not unlawful at common law unless or until it is clearly demonstrated that such a strike creates a substantial and imminent threat to the health or safety of the public."[1]

How is this standard to be applied? After noting that the presumption of essentiality of most governmental service is questionable at best and that it is the nature of the service provided which determines its

**Dr. Schneider is Director of the California Public Employee Relations Program and Editor of its CPER magazine.*

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[1] *County Sanitation Dist. No. 2 v. Los Angeles Co. Employees Assn.*, 38 Cal. 3d 564, 119 LRRM 2433; *see CPER* No. 65X (June 1985), pp. 1–3 and appendix, and No. 65 (July 1985), pp. 2–16.

essentiality and the impact of its disruption on the public welfare, the court went on to "recognize that there are certain 'essential' public services, the disruption of which would seriously threaten the public health or safety." The court cautioned "that the right of public employees to strike is by no means unlimited." Strikes of fire fighters have already been prohibited by statute. The legislature "may conclude that other categories of public employees" should be prohibited from striking. Meanwhile, "the courts must proceed on a case-by-case basis" to apply the enunciated standard, perhaps guided by "existing statutory standards" in other states where employees have "a limited right to strike" and where injunctive relief is available to prevent strikes which threaten public health or safety.[2]

Of course, the practical impact of *County Sanitation* could prove to be no greater than an acknowledgement of the existing state of affairs in local government. In the vacuum created by the absence of an administering agency to interpret the MMBA, or even mandatory impasse procedures, local government strikes have occurred, sometimes injunctions have been sought, and sometimes restraining orders have been granted, occasionally because of a demonstrated threat to public health or safety. While the court's departure from common law may have been dramatic, it is unclear what—if anything—will change.

Public schools. Under the Educational Employment Relations Act (EERA), we see a different situation—an administrative agency, the state Public Employment Relations Board (PERB), which has been wrestling for years with the problem of how to deal with strikes when the statute arguably neither grants nor prohibits the right to strike and the impasse procedure terminates in fact-finding. (The court in *County Sanitation* made it clear that it was not deciding the strike question under any statute other than MMBA. The application of the decision to statutes under PERB's jurisdiction remains unresolved.)

A significant series of PERB and court decisions interpreting EERA culminated in *Modesto*, PERB Dec. 291 (1983), in which the board came to two firm conclusions: (1) strikes occurring before completion of the statutory impasse procedures were per se unfair practices and therefore enjoinable and (2) any strike provoked by an employer's bad faith conduct was protected by the act.[3] However, the legality of a strike *after* completion of the impasse procedures (where no employer provocation could be found) was not dealt with directly by the board until last year. In the Oakland Unified School District strike of 1986, PERB refused to enjoin a post-impasse strike but did not issue a written decision explaining its rationale.[4]

[2] *Id.*, 119 LRRM 2441, 2443.
[3] *See CPER* No. 56 (March 1983), pp. 2–10.
[4] *See CPER* No. 68 (March 1986), pp. 44–49.

This year, in *Compton USD*, Ord. IR-50, however, the board did seek an injunction in a post-impasse strike and issued a written decision which moved sharply away from its previous positions. In a 2-1 holding, the board specifically overruled its earlier finding in *Modesto* that at least some strikes are protected (by virtue of employer provocation) and, in the facts of the case before it, held that the strike was unlawful because of the damage done to the educational process.[5] At present, it seems that the board has decided that *no* strike is "protected" by EERA. Whether some or all strikes are actually prohibited—that is, are per se unfair practices—is less clear and probably subject to additional interpretation by the board in the future.

Therefore, at the two levels of government where nearly all strikes occur—local government and public schools—we find a mixed picture. Under the MMBA, the strike is legal, but no state agency or statutory guidelines exist to regulate dispute resolution processes. Both agency and guidelines are present under EERA, but there has not been a clear decision on the circumstances in which the strike can be a legitimate step in the process.[6]

Criticism of *County Sanitation*

Most criticism of *County Sanitation*, starting with Justice Lucas's dissent to the decision, has centered on the comparative advantages of a legislative, rather than judicial, solution to the strike problem.

Justice Lucas, in his dissent, touched on most of the objections later heard from other analysts:

> The decision to allow public employee strikes requires a delicate and complex balancing process best undertaken by the Legislature, which may formulate a comprehensive regulatory scheme designed to avoid the disruption and chaos which invariably follow a cessation or interruption of governmental services. The majority's own proposal, to withhold the strike weapon only where "truly essential" services are involved . . . and a "substantial and imminent threat" is posed will afford little guidance to our trial courts who must, on a "case-by-case" basis . . . decide such issues. In the absence of an administrative agency . . . presumably all strike-related issues will go to

[5] *See CPER* No. 72X, pp. 1–5.

[6] Of course, California's public sector bargaining scheme provides separate statutes for state employees (State Employer–Employee Relations Act) and higher education (Higher Education Employer–Employee Relations Act). Both are under PERB jurisdiction and presumably are subject to the same interpretation of the strike question, although the paucity of strikes in those sectors has provided no opportunity for the board to address the issue. Labor relations of transit districts are governed by each district's enabling statute. Most of the latter laws have been found to grant the right to strike based on language giving employee organizations the right to participate in "concerted activities" or to engage in "collective bargaining."

the courts in the first instance, but the courts are poor forums for the resolution of such issues. Of the few states that permit strikes by public employees, virtually all do so by comprehensive statutory provisions. In contrast, the majority's new California rule is hopelessly undefined and unstructured.[7]

The comments of recent law review articles primarily express (1) indignation at the court's "usurpation" of the legislature's role and (2) dissatisfaction with a system which allows strikes but fails to set clear guidelines for identifying "unlawful" strikes and fails to provide impasse resolution procedures.

For example, in the first category, the focus of attention has been on the *judicial* nature of the action and its infringement on the political role of the legislature:

"The California Supreme Court failed to recognize judicial limitations when it embarked upon this policy analysis, an analysis that all other jurisdictions have reserved for the legislature."[8]

"The legislature necessarily had a purpose in expressly denying public employees the protections afforded private employees. . . . In reaching the opposite conclusion . . . , the court not only intruded upon determinations best left to the legislature, but also unnecessarily reconsidered a decision the legislature had already made. In doing so, the court misconstrued statutory provisions. . . ."[9]

". . . [T]he California Supreme Court has obliterated any conceptual distinction between private sector and public sector impasse resolution. The consequence of doing so is to trivialize the influence of the citizen in public sector labor relations. When the right to strike is granted statutorily, the citizen is at least permitted a voice in designing the system, and that voice presumably assures that the interest of the citizen has been adequately protected. The California common law rule avoids even that degree of electoral power."[10]

On the other hand, one writer sees the decision as likely to start a trend among state courts:

[7] *See* ftn. 1, *supra*, 119 LRRM 2457, 2458.

[8] Note, "California Public Employees Granted Right to Strike Without Legislative Authorization," *Washington University Law Quarterly*, 64 (Winter 1986), 269.

[9] G. Murray Snow, "County Sanitation District No. 2 v. Los Angeles County Employees Association, Local 600: A Study in Judicial Legislation," *Brigham Young University Law Review* (Winter 1986), p. 206.

[10] Raymond L. Hogler, "The Common Law of Public Employee Strikes: A New Rule in California," *Labor Law Journal*, 37 (February 1986), 102–103.

> The common-law rule . . . provided for a wholesale denial of the freedom of public employees to withhold their labor. Such denial is justified only where it has clearly been established that the public welfare is threatened. By granting . . . a limited right to strike, the . . . Court produced a decision worthy of consideration by courts currently advocating the abrogation of the common-law rule. A number of courts are likely to follow the precedent set by this court.[11]

The second category of reaction covers (1) what critics see as a failure of the court to expand on what might constitute a "substantial and imminent threat to the health and safety of the public," that is, what that should mean in a practical context beyond the more obvious cases, such as police and fire fighters, (2) the need for impasse resolution procedures and (3) the lack of uniformity that may result as a number of lower courts, with no particular expertise in labor relations, seek to administer the law in a variety of different fact situations. Some examples are:

> "The opinion of the court in *County Sanitation* stated that 'essential' public employees could be prohibited from striking. However, the court did not state at what point the determination of essentiality is to be made. The statutes of other states . . . provide important guidance on how to deal with the problems which will soon face the California legislature . . . By providing mandatory special impasse procedures such as arbitration, mediation, and fact-finding, the California Legislature can assure that crippling public employee strikes will only occur as a last resort."[12]

> "Public employees [in Pennsylvania] are granted a right to strike, but that right is delimited by various procedural requirements designed to inure reasoned, mature deliberation in the negotiations process. In contrast [the California rule] provides for no impasse techniques . . . nor are there any specified periods during which a strike may not occur."[13]

> "A court is not the governmental body that determines the functions in which government should engage. Therefore, courts should not determine which governmental functions are essential. While some governmental functions are clearly

[11] Lori E. Shaw, "Labor Law: The California Supreme Court Confers a Limited Right to Strike Upon Public Employees Through Judicial Fiat," *University of Dayton Law Review*, 11 (Winter 1986), 436.

[12] Gregory Thomas Fain, "Local Public Employees Right to Strike After County Sanitation District v. Los Angeles County Employees Association," *Pacific Law Journal*, 17 (January 1986), 551–552.

[13] Hogler, *supra*, p. 101.

not essential, a bright line for drawing such distinctions does not exist. States have the right to determine whether certain public employees may strike or whether because of the importance of their function they may not. However, such determinations should be made by the legislature, which is better equipped to draw such important distinctions."[14]

"Although good reason may exist for permitting public employee strikes, the legislature is in the best position to weigh the competing interests of public sector employees and their employers in determining when a strike is permissible."[15]

"It is quite probable . . . that the California legislature would have implemented certain procedural requirements [which are] not only advantageous to the parties involved in a dispute and to the court which must resolve such a dispute, but . . . also beneficial to the general public. . . . Such measures alleviate confusion regarding the appropriate action to be taken to prevent or halt a strike, delineate who is responsible for taking such action, and establish when such action should occur."[16]

The consensus of these critics could perhaps be summarized as, If there is to be a right to strike, it should be granted by the legislature and, if there are to be limitations on the right, explicit procedures should exist to guide the parties and protect the public interest. Two of the authors point out that some states with a statutory strike right provide no more guidance than *County Sanitation*, but both authors emphasize that there is public input implicit in legislation and that a legislature has the capacity to reevaluate its standards on a continuing basis.[17]

Background: The Strike Right Elsewhere

California is the first state to overturn the common law doctrine that there is no right to strike for public employees absent a legislative grant of the right. It is also the only state with a comprehensive statutory system, such as EERA, where the status of the strike is unclear and the administering agency has been left to develop a case law on the subject.

What has happened in other states? Since the late sixties, 10 states have granted legislatively the right to strike to certain groups of public employees—Alaska, Hawaii, Illinois, Minnesota, Montana, Ohio,

[14] Snow, *supra*, pp. 211–212.
[15] Note, *supra*, pp. 269–270.
[16] Shaw, *supra*, pp. 430–431.
[17] *See* Note, *supra*, p. 269, ftn. 52, and Shaw, *supra*, pp. 429–431.

Oregon, Pennsylvania, Vermont and Wisconsin.[18] How did this come about?

In the mid-sixties, the most advanced thinking on the whole issue of public sector employment relations came from New York State's Taylor Commission, which had been convened to study the feasibility of a law for that state. Its terms of reference emphasized two policy goals: "protecting the public against the disruption of vital public services, while at the same time protecting the rights of public employees."[19] In its final report, the committee argued against conferring the right to strike and articulated the tradeoff which has characterized most public sector legislation up to the present time: "It is elementary justice to assure public employees who are stopped from using the strike, that they have the right to negotiate collectively."[20] The upshot for New York State was recommendations for procedures based loosely on the private sector model, but adapted to public sector differences—notably the substitution of mediation and fact-finding for the right to strike, coupled with penalties for violations of the strike ban.

By 1967, legislation in 21 states allowed participation of some public employees through collective bargaining in the determination of their pay and conditions of employment, while the strike remained unauthorized as incompatible with the nature of the government employer. Modified bargaining systems were intended to make the strike unnecessary, and mediation/fact-finding procedures were expected to evolve into an acceptable substitute.

When the Taylor Commission first contended that the strike was inappropriate in the public sector, it based its view on two points. First, the strike is incompatible with the orderly functioning of our democratic form of representative government, in which political forces, rather than economic power, shape governmental decisions. Second, while admitting that some public employees may provide unique but not "essential" services, and others are engaged in work identical to that performed in the private sector, it concluded that "a differentiation between essential and nonessential governmental services would be the subject of such intense and never-ending controversy as to be administratively impossible."[21] It also dispensed with compulsory arbitration as an option: "There is serious doubt whether it would be legal because of the obligation of the designated executive heads of government departments or agencies not to delegate certain fiscal and other duties.

[18] On the other hand, 38 states have statutes which prohibit strikes by all or some public employees. At least 22 states have litigated the strike issue and found that no right exists in common law absent a statutory grant.

[19] New York Governor's Committee (Taylor) on Public Employee Relations, *Final Report* (March 31, 1966), p. 9.

[20] *Id.*, p. 20.

[21] *Id.*, pp. 18–19.

Moreover, it is our opinion that such a course would be detrimental to the cause of developing effective collective negotiations."[22]

The Taylor Commission's views were widely shared. Writing in 1967, Andrew W.J. Thomson observed that no legislature "has yet permitted its employees to strike, and public opinion seems to indicate that such a development is not likely in the foreseeable future. The furthest that any legislative body has gone is to prohibit specifically only strikes which endanger the health, safety or welfare of the public as in Vermont. . . . "[23] A similar view was put forward a year later by Ida Klaus who saw government as unyielding on the strike, in part because of the unwillingness of the public to accept any action that would sanction strikes by public employees.[24] As had the Taylor Commission, both writers emphasized the difficulty of distinguishing between essential and nonessential services.

Pennsylvania was the first state to take a radically different line, moving directly from a 1947 no-strike statute to compulsory tripartite arbitration for police and fire fighters in 1968, and then to a comprehensive law and circumscribed right to strike for other public employees in 1970. The commission that recommended this particular approach took a decidedly different view of the matter: "Twenty years of experience [under a no-strike law] has taught us that such a policy is unreasonable and unenforceable, particularly when coupled with ineffective or nonexistent collective bargaining. It is based upon a philosophy that one may not strike against the sovereign. But today's sovereign is engaged not only in government but in a great variety of other activities. The consequences of a strike by a policeman are very different from those of a gardener in a public park."[25]

"Essentiality" as an insurmountable barrier to the right to strike was dismissed by the Pennsylvania Commission: "The collective bargaining process will be strengthened if this qualified right to strike is recognized. It will be some curb on the possible intransigence of an employer; and the limitations on the right to strike will serve notice on the employee that there are limits to the hardships that he can impose. . . . Strikes can only be effective so long as they have public support. . . . We can look upon the limited and carefully defined right to strike as a safety valve that will in fact prevent strikes."[26]

[22] *Id.*, p. 46.

[23] *Strikes and Strike Penalties in Public Employment* (Ithaca: New York State School of Industrial and Labor Relations, Cornell Univ., 1967), p. 8.

[24] "A Look Ahead," in *Labor-Management Relations in the Public Service*, Pt. 6 (Honolulu: Industrial Relations Center, Univ. of Hawaii, September 1968), pp. 775–776.

[25] Governor's Commission to Revise the Public Employee Law of Pennsylvania, *Report and Recommendations* (June 1968), p. 7.

[26] *Id.*, pp. 13–14. Hawaii took the same step in 1970 and for roughly the same reasons.

Today: Right-to-Strike Statutes

Given the historical aversion to the strike in the public sector, one of the most interesting developments in employment relations has been the statutory granting of this right. The main reasons seem to be those touched on by the Pennsylvania Commission: a belief that the bargaining process will be strengthened and that essentiality can be adequately defined so as to protect the interests of both public employees and the public. It is the latter objective which has most strongly marked these statutes.

In no case is the right to strike unfettered. In all cases, a threat to the public health, safety, and/or welfare triggers some kind of "no-strike" mechanism. In most cases, certain prestrike impasse procedures must be complied with, often involving the passage of considerable time. Others include devices to bring the public into the picture and methods designed to encourage harder bargaining. In states that provide statutory strike rights, where "essential" employees are denied the strike they are given the right to compulsory interest arbitration instead.[27]

Alaska[28] divides its employees into three categories:

1. Those who provide services which may not be given up for even short periods of time—police, fire protection, prison, and hospital employees. An impasse in this case is followed by mediation and binding arbitration.

2. Those whose services may be interrupted for a limited period—public utility, snow removal, and sanitation employees. This class may strike for a limited time after mediation if a majority of employees in a unit vote by secret ballot to do so. The time period is determined by impact on the health, safety, or welfare of the public. Either the employer or the adminstering agency may apply to the court for an order enjoining the strike. The court is to consider the "total equities," *i.e.*, the impact of a strike on the public and the extent to which the parties ha e met their statutory obligations. If an impasse still exists after issuance of an injunction, the parties must proceed to binding arbitration.

3. Those (all other employees) who provide services where work stoppages may be sustained for extended periods without serious effects on the public. A majority of employees in the unit must vote to strike by secret ballot.

[27] Presumably, "essential" employees who are denied strike rights are given arbitration in order to redress the inequity which arises when other employees may strike. It is worth noting, however, that eight states grant compulsory arbitration to at least some of their "essential" employees without providing anything "extra" for the rest of them, i.e., access to the strike is denied for all (Massachusetts, Michigan, Nebraska, New Jersey, New York, Oklahoma, Washington, and Wyoming).

[28] Alaska Stat., Title 23, Secs. 23.40.070–23.40.260 (1972) as amended 1984 (all except teachers).

Under the Alaska act, public school employees are excluded from the definition of "public employee" and therefore have no right to strike.[29]

Hawaii[30] prohibits strikes by (1) employees not in a certified bargaining unit, (2) employees in a unit for which final resolution of disputes is by binding arbitration—police, fire fighters and, where the parties have mutually agreed to its use, (3) essential employees. Essential employees provide services whose disruption, in the opinion of the administering agency, would constitute an "imminent or present danger to the public health and safety."

Other employees may strike after (1) agency-initiated mediation and fact-finding have been complied with in good faith, (2) proceedings for the prevention of unfair practices have been exhausted, (3) 60 days have elapsed since the fact-finding board has made public its findings and recommendations and (4) the exclusive representative has given a 10-day notice of intent to strike to the agency and the employer.

If an employee or employee organization violates the above requirements, or there is reason to believe that there will be a violation, the employer may seek injunctive relief.

Illinois[31] has two laws, one for public schools and the other for the balance of public employees. Both permit the strike (1) if the employee is represented by an exclusive agent, (2) a contract has expired and does not prohibit strikes, (3) disputed issues have not been submitted to voluntary arbitration, (4) mediation is unsuccessful and (5) five days have elapsed after notice of a strike is given.

Under the general law, peace officers, fire fighters, paramedics, and security employees are prohibited from striking. For these groups, mandatory mediation must commence 30 days and compulsory arbitration proceedings 14 days before contract expiration. All terms of the arbitrators' decision are subject to review by the governing body, who may reject any term by a three-fifths vote. In the case of rejection, the parties return to the panel for a supplemental decision.

Under both laws, an injunction may be sought by an employer if a strike is or has become a danger to public health or safety. Under the education law, an employer unfair practice or "other evidence of lack of clean hands" in negotiations with the union may constitute a union defense to an injunction proceeding.

Minnesota[32] allows strikes by employees other than confidential, managerial, supervisory, and essential employees, and principals and

[29] *Anchorage Educ. Assn. v. School Dist.*, 114 LRRM 3377 (1982).

[30] Hawaii Rev. Stat., Ch. 89, Secs. 89-1–89-20 (1970) as amended 1986 (all).

[31] Illinois Stat. Ann., ch. 48, Secs. 1601–1627 (1983) as amended 1986 (all except schools and higher educ.), Secs. 1701–1721 (1983) as amended 1985 (schools and higher educ.).

[32] Minnesota Stat. Ann., Ch. 179A, Secs. 179A.01–179A.25 (1971) as amended 1985 (all).

assistant principals. Essential employees are peace officers, fire fighters, guards at correctional institutions, and employees of hospitals other than state hospitals. For state employees, essential means all employees in law enforcement, health care professional, correctional guard, professional engineering, and supervisory units. Disputes affecting essential employees can be settled by binding arbitration on the request of either side and if the director of mediation services determines that further efforts to negotiate would be fruitless.

Other employees may strike when (1) an agreement has expired, (2) the parties have participated in mediation for at least 45 days (30 days in the case of teachers) and (3) written notice is served on the employer and director of mediation services by the exclusive representative at least 10 days prior to the start of a strike (25 days for teachers).

A strike is also permitted if the employer disregards an arbitration decision, or if the legislative commission on employee relations has not given approval during a legislative interim to a negotiated agreement or arbitration award, or if the entire legislature rejects or fails to ratify a negotiated agreement or arbitration award which has been approved by the legislative commission.

Engaging in an unlawful strike is an unfair practice. Employer unfair practices are not a defense to an illegal strike; however, such factors may be considered by a court in mitigation of penalties.

Montana[33] has three laws. One, passed in 1969, covers nurses in both the public and private sectors, contains no impasse procedures, and allows strikes on 30 days' notice provided there is no other strike at a health care facility within a 150-mile radius.

A law covering fire fighters requires mediation and fact-finding followed by binding arbitration on the application of either party. Regarding strikes, the statute simply states that strikes are prohibited "during the term of any contract and negotiations or arbitration of that contract."

Montana's law covering other employees is of interest because it includes an employee organization right to engage in "concerted activities," which the state supreme court has interpreted to include the right to strike.[34] The court commented that no different interpretation is required because public employees are involved, particularly as nowhere in the law are such employees prohibited from striking.

Ohio[35] has a rather lengthy procedure with particularly stringent safeguards. Mediation is followed by fact-finding, both to take place within 50 days prior to contract expiration. Seven days, at most, after

[33] Montana Rev. Code, Title 39, Ch. 31, Secs. 39-31-101–39-31-409 (1973) as amended 1985 (all); Ch. 32, Secs. 39-32-101–39-32-[ ] (1969) as amended 1983 (nurses); Ch. 472, Secs. 39-34-101–39-34-106 (1979) (fire arb.).

[34] *Montana v. Public Employees Council*, 88 LRRM 2012 (1974).

[35] Ohio Rev. Code Ann., Ch. 4117, Secs. 4117.01–4117.23, and Secs. 4, 5, 7, and 8, as enacted by S.B. 133, L. 1983 (1983) (all).

the fact-finders' recommendations are issued, the parties are asked to accept them as is or as modified. If rejection is considered, votes must be taken. Either the employer or the union membership may reject the recommendations by a three-fifths majority of the total body. (In the case of the state, a 60 percent vote of the members of both houses is necessary to reject a recommended contract.) If the vote by both is at least 41 percent in favor, the contract is ratified. If either rejects the recommendations, an impasse exists and the findings are published. If there is still no agreement within seven days, designated employees (safety services, nurses, corrections employees, mental health attendants and employees of retirement systems) go to final-offer arbitration. All other employees may strike after 10 days' notice, unless they have selected another procedure (*e.g.*, arbitration) in advance.

If a lawful strike is believed to create a danger to public health or safety, the employer may petition the court for a 72-hour restraining order. The employer may then petition the administering agency for permission to require a further enjoinment of up to 60 days on the same grounds. During this period, the parties are expected to continue bargaining with the assistance of a mediator, who may require bargaining in private or in public. At any time after 45 days, the mediator may make public a report on the current positions of the parties, including a statement by each party of its position and offers of settlement.

An illegal strike is an employee organization unfair practice. An unfair practice by the employer is not a defense to an injunction proceeding.

Oregon[36] impasse procedures start when, after "a reasonable period of negotiation," either or both parties notify the board, or the board determines itself, that an agreement cannot be reached. Mediation commences. After 15 days of mediation, either party or the board may initiate fact-finding. A lawful strike is permissible after fact-finding if (1) the employees are in a certified unit, (2) an involved employee is not an emergency telephone worker, police officer, fire fighter, or guard at a correctional institution or mental hospital, (3) mediation and fact-finding have been pursued in good faith, (4) proceedings for the prevention of prohibited practices have been exhausted, (5) 30 days have elapsed since the fact finders' findings have been made public and (6) the exclusive representative has given 10 days' notice and stated the reasons for its intent to strike to the board and the employer.

When mediation and fact-finding have been completed, employees who are prohibited from striking proceed to binding arbitration. The factfinding step can be skipped if neither side requests it.

When, in the view of the employer, a strike occurring or about to occur creates a "clear and present danger or threat to the health, safety

[36] Oregon Rev. Stat., Ch. 243, Secs. 243.650–243.[ ] (1962) as amended 1986 (all).

or welfare of the public," the employer may petition the court for equitable relief. If relief is granted, the court must order that the dispute be submitted to binding arbitration within 10 days. The act specifically states that "danger or threat" does not include an "economic or financial inconvenience to the public or the public employer that is normally incident to a strike by public employees."

An unfair practice by an employer is not a defense to a prohibited strike.

Pennsylvania[37] has two laws. One, covering only police and fire fighters, moves directly from a negotiations impasse or rejection of an agreement by the employer to binding arbitration. Strikes are not permitted.

The general law calls first for mediation. If agreement is not reached within 20 days or in any event no later than 130 days prior to the budget submission date, the board may appoint a fact-finding panel. If the findings are not accepted, they are published. Refusal to submit to these procedures is an unfair practice; a strike during them is prohibited.

Units of prison guards or mental hospital attendants or units of employees directly involved with and necessary to the functioning of the courts are prohibited from striking at any time. They move from mediation to binding arbitration, with the proviso that arbitrators' decisions requiring legislative enactment are advisory only.

Other employees may strike following mediation and fact-finding unless and until a strike creates a "clear and present danger or threat to the health, safety or welfare of the public." In such cases, the employer may initiate an action in court for equitable relief.

An employer unfair practice is not a defense to a prohibited strike, although a court is to consider such actions in fixing fines or imprisonment for contempt.

Vermont's[38] municipal law requires mediation, followed by fact-finding, before a strike is permissible. A strike is not prohibited unless (1) it occurs sooner than 30 days after delivery of the fact finder's report, (2) it occurs after binding arbitration has been agreed to, or (3) it will "endanger the health, safety or welfare of the public." The employer may petition a court for equitable relief in the event of a violation.

Wisconsin,[39] in its municipal law, includes a unique strike/compulsory arbitration procedure. (Police and fire fighters are covered under a separate law allowing binding arbitration on the application of either party, following mediation.) If a dispute has not been settled

[37] Pennsylvania Stat. Ann., Title 43, Ch. 19, Secs. 101–2301 (1970) as amended 1976 (all); Ch. 7, Secs. 1–11 (1968) (police and fire arb.).

[38] Vermont Stat. Ann., Title 21, Ch. 20, Secs. 1721–1735 (1973) as amended 1984 (local).

[39] Wisconsin Stat. Ann., Secs. 111.70–111.71 (1959) as amended 1986 (local); Secs. 111.77 (1971) as amended 1978 (police and fire).

after mediation (and fact-finding if either party requests it and the administering agency agrees), either party may initiate binding, final-offer arbitration. On petition of at least five citizens of the jurisdiction affected, filed within 10 days of the arbitrator's appointment, the arbitrator must hold a public hearing to allow the parties to explain their positions and the public to offer comments. Either party may, within a time limit established by the arbitrator, withdraw its final offer. If *both* withdraw, the employee organization may strike after giving 10 days' notice. If either party does *not* withdraw, the final offer of neither party is deemed to be withdrawn and the arbitration proceeds.

In the case of a prohibited strike or a strike which is a "threat to public health or safety," the employer or any citizen may petition the court to enjoin the strike. Issuance of an injunction must include an order to the parties to submit new final offers for binding arbitration. Penalties for unlawful strikes include fines and loss of dues checkoff.

Finally, as a point of interest, Idaho's law for fire fighters[40] prohibits strikes during the term of a contract. The state's supreme court has interpreted this to mean that firemen have a "residual" right to strike after expiration and before a new contract is consummated; the "parties are free to negotiate one way or another depending upon their relative economic strengths."[41]

Summary

In 1985, the state Supreme Court decided in *County Sanitation* that strikes under MMBA are not unlawful unless they create a substantial and imminent threat to public health or safety. This year, PERB reversed its 1983 ruling that, under EERA, a strike provoked by an employer's bad faith is protected. In both cases, the decisions were made under statutes which contain no clear language on the strike right.

Criticism of the *County Sanitation* decision has focused on the court's alleged usurpation of the legislature's right to act on this subject and on the lack of adequate guidelines and procedures to regulate strikes and the dispute resolution process. (Such criticism could apply equally to current experience under EERA.)

[40] Idaho Code, Ch. 18, Secs. 44-1801—44-1811 (1970) as amended 1977 (fire).
[41] *Firefighters v. City of Coeur d'Alene*, 100 LRRM 2079 (1978).

In no other state has the common law rule on strikes been overturned.[42] However, 10 states permit strikes by statute. An examination of these statutes shows that the standard created by the California Supreme Court and its recommended safeguards of the public interest are not that different from legislative determinations elsewhere. The significant difference between *County Sanitation* and the strike statutes in other states is that almost all of the latter contain elaborate procedures designed to promote settlement without strikes.

[42] A recent article takes a different view, holding that the Montana and Idaho court decisions noted above (*see supra* text and fns. 34 and 41), together with California's recent decision, are all common law decisions "bound together by the underlying assumption that, by not acting to expressly prohibit public employee strikes, the legislatures of the [illegible] states [illegible]actly intended to permit public employee strikes." *See* Tim Schoo[illegible] P[illegible].ment Rights of Striking Public Employees, *Industrial Relations La*[illegible]87), 291. However, of more interest is the author's treatment of disch[illegible]alty for participating in a strike, legal or illegal, and how such discharge can conflict with two important protections possessed by most public employees—discharge only for "just cause" and pre- and post-discipline due process procedures. *Id.*, pp. 283–312.

Teacher arbitration hearings set to begin

TIMES STAFF

Three days of closed-door contract arbitration hearings between the Anchorage School District and the 2,400-member Anchorage Education Association begin today at district headquarters.

Negotiations between the two parties stalled in the first week of December after more than 1,200 hours at the bargaining table. Oregon-based arbitrator George Lehlietner is scheduled to hear the two sides present their cases through Friday.

Lehlietner then will have about a month to produce a report, which either side can accept or reject. If no agreement is reached, the union will ask its members what to do next, including whether to strike.

Of 93 issues on the table, about 30 remain to be settled, Superintendent Thomas O'Rourke said Tuesday. The arbitrator has the option of trying to mediate a settlement but probably won't because of the high number of unresolved issues, O'Rourke said.

Teachers, district OK bargaining timetable

ADN 11/20/91

By PETER BLUMBERG
Daily News reporter

An Anchorage teachers strike over an unsettled contract would not happen before February at the earliest, according to the bargaining timetable agreed on by the teachers union and the Anchorage School District.

It will take at least a month — and probably longer, both sides predict — for a third-party arbitrator to render his opinion after hearing two days of testimony from the district and the Anchorage Education Association in early January.

In several months of negotiating, the district and the union have failed to reach a settlement over a contract that expired in late June.

The decision to call in a professional arbitrator, George Lehlietner of Oregon, marks the final phase of the negotiating process. The arbitrator, who was approved by both sides, hears each side summarize why its contract proposals are fair and then issues a written opinion.

Neither side is obligated to accept the arbitrator's recommendations, but the union cannot legally stage a strike before the opinion is released.

Union representative Arlene Tobias said she's hopeful the contract will be settled even before the arbitrator arrives. She said that a federal mediator who has already helped the two sides make some negotiating progress will return to the bargaining table in early December.

Both sides have agreed until now not to publicize the issues that are at stake in the negotiations, but Superintendent Thomas O'Rourke said the district will make its case public after the arbitrator has visited.

"That is absolutely news to me," said Tobias.

School district, support staff close to settlement

By ED SCHOENFELD
THE JUNEAU EMPIRE

Juneau's school district has reached a tentative contract settlement with the union that represents its clerical and maintenance staff.

The district and the teachers union, meanwhile, are just beginning their contract negotiations, using a non-traditional bargaining style.

No details are being released on the terms of the proposed settlement between the district and Juneau Educational Support Staff. That union, affiliated with the Alaska Public Employees Association, represents about 175 clerical workers, instructional aides, maintenance and custodial staff, nurses and after-school child-care workers employed in Juneau's public schools.

Union president Tom Stephens said workers will hold a meeting Saturday to discuss and vote on the proposal.

School board member Alan Schorr said that panel will take up the tentative contract at its Jan. 7 meeting.

If both groups approve the agreement, details will be released, Stephens said. If not, they will likely return to the bargaining table, he said.

The union's current three-year contract expires Tuesday. It included a provision that allowed wage negotiations in its final year, which resulted in a 3.3 percent raise this past year.

Meanwhile, the district and the Juneau Education Association, which represents about 290 teachers, are just starting their contract talks.

Though terms of the tentative settlement have not been released, the union at one time was asking for a 5 percent raise, according to a Dec. 6. memo from then-acting schools superintendent Elaine Hopson. The district said it had no money for any significant raises, according to the memo.

The talks started in mid-November.

Meanwhile, the district and the Juneau Education Association, which represents about 290 teachers, are just starting their contract talks.

Bargaining committees from the two groups met Dec. 12 to discuss ground rules, said union president Mike Herold and board vice president Dale Staley, a member of the district's negotiating team. The committees are scheduled to resume talks mid-January, they said.

The two committees also attended a Dec. 14 training workshop in collaborative bargaining, a negotiating technique they have agreed to try.

In traditional contract talks, committees present demands or offers and negotiate back and forth until they reach an agreement or declare impasse.

In collaborative bargaining, the committees avoid taking positions, instead working together to identify problems and then trying to solve them, Herold and Staley said.

Both sides have said they want to try collaborative bargaining in part to avoid the confrontational style of contract talks that characterized negotiations two years ago.

"I think it's going to be a worthwhile effort for us, although it's not necessarily going to be easy," Staley said.

"My feeling is that we're committed to it," Herold said.

Because of the style of collaborative bargaining, the teachers union has not publicly set the amount it hopes to see salaries increase, Herold said.

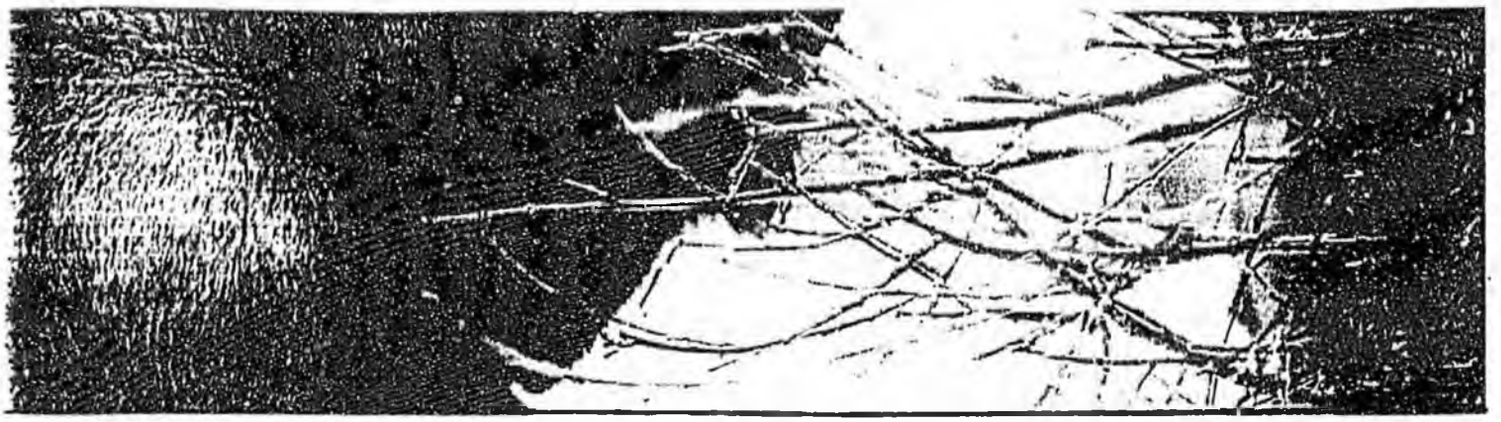
The current two-year contract ends June 30. That contract granted a 3.3 percent across-the-board raise the first year and a 2 percent raise the second year.

As for next year, the district says it has little if any money to work with. Business services director Laraine Glenn earlier this month projected a $1.6 million shortfall for the 1992-1993 school year.

One change in the bargaining sessions for teachers is that they will likely be closed. The last negotiations were largely open to the public.

Herold said his union's membership is interested in open talks, but Staley said they will probably remain closed.

"To use the collaborative approach, it's probably going to be beneficial to have them closed," Staley said.



Times photo by ROB LAYMAN

moose snacks on a few willow trees early Sunday in the Chester Heights subdivision off Northern Lights Boulevard. The calf chomped on the willow branches for almost an hour before trotting off to find its mother.

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PRESS

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See Hickel, back page

Union teachers favor strike

AEA polls 2,400 members as negotiations continue

By JEFF HOUCK

TIMES WRITER

A majority of union teachers in Anchorage favor striking if the city's school district fails to settle a long-disputed contract, a survey's results show.

The Anchorage Education Association began polling its 2,400 members early last week as it continued mediation talks with Anchorage School District negotiators. The two sides have spent more than 700 hours this year trying to hammer out a new contract. The last contract ran out in July, but teachers have been working under its provisions until a new contract could be agreed upon.

Union president Belinda Daniels said that 71 of 76 schools returned ballots and that about 80 percent of polled teachers said they would vote to strike.

"I surely didn't expect that,' Daniels said. "I thought if we got 60 or 65 percent, it would be good and we'd wait on the rest. But it came back real strong."

A Seattle-based independent mediator helped the two sides settle 12 issues on the table last Thursday, which Daniels labeled as "great progress." She did not say what issues were settled. Negotiations are closed to the public.

The district's chief negotiator, Tom Everitt, agreed with Daniels' assessment.

See Teachers, page B?

kers should respect decision in Ra

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ld have won a few more

nds now, the Millers are, in ye, a couple of nasty folks. ng their best to close down Rabbit Creek Trail, which r land within Chugach State ney will, a few hikers have e guns to get their way and e off their property.

Terry Carr

TIMES COLUMNIST

property did not make the trail public land. They said the state had not proved a decade of uninterrupted public use

decision. The Millers can count on that. Their critics now have more ammo to build their self-serving image of the evil, land-devouring Millers.

From that perspective, the Millers may not have solved their problems. This merely may be the beginning of a new stage of the whole mess.

"I just hope there's no gun play, is all I can say," the Millers' lawyer, Edgar Paul Boyko, said Monday.

So should we all.

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y, 63, died Oct.

27, 1991, at his Anchorage home. Funeral arrangements are pending at Evergreen Memorial Chapel, downtown.

George P. Bourdukofsky

George P. Bourdukofsky, 72, died Oct. 27, 1991, at the Alaska Native Medical Center. He was a retired civil servant and a lifelong Alaskan.

Service arrangements are pending at Evergreen Memorial Chapel, downtown.

Donald Vernon McLain

Donald Vernon McLain, 49, died on Oct. 26, 1991, in Humana Hospital-Alaska. Mr. McLain was born on Jan. 18, 1942, in Renton, Wash.

Funeral arrangements are pending at the Witzleben Family Funeral Homes and Crematory, Bragaw Chapel.

Muriel Jessie Ferrians

Muriel "Merlie" Jessie Ferrians, 87, died Oct. 27, 1991, at Providence Hospital. Arrangements are pending at Kehl's Forest Lawn Mortuary & Crematory.

nd Sarah Zaochney, 7 lbs. 13 ozs., Native

John, Longbranch,

Kesley Marie, 8 lbs. 2 ozs., Valley Hospital, Sept. 21.

MRAK, Cheri and William, Palmer, boy, William Michael, 7 lbs. 8 ozs., Valley Hospital, Sept. 27.

Teachers

Continued from page B1

"We're very pleased and have no reason to believe that progress won't be continued," he said.

The union reportedly is asking for a 15 percent wage increase over three years while the district wants a three-year wage freeze.

Based on last week's progress, additional negotiating sessions were scheduled for the next two weeks. The mediator then is scheduled to return for a third round of mediation talks in three weeks.

Nevertheless, both sides are seeking to schedule an arbitrator to hear the contract dispute in about six weeks. If the latest mediation talks fail, an arbitrator would be called in to issue a non-binding ruling that either side could refuse. After that, a strike vote would be taken.

"If it comes down to an agreement with a mediator sometime before then, we'll cancel the arbitrator," Daniels said.

Union organizers and AEA teachers are preparing for a strike, despite the recent contract settlement progress.

The union has notified its state and national organization, the National Education Association, that funds may be needed to supplement teacher incomes should a walkout take place. The last teacher strike in Anchorage took place in 1979.

"I also about a month ago sent out a letter to the members saying they should get their finances in order and not spend a lot of money on something right now," she said.

Daniels also said she has noticed a softer, more receptive attitude by the district at the negotiating table. She speculated it was because of public pressure on the school board to settle the contract.

Everitt said his tactics and style have not changed.

"My job is to get a settlement," he said.

Lands

Continued from page B1

Heinze said Alaska's constitution directs state officials to utilize the land, and that it is "screwball" to argue that the trust should be shelved just because it [illegible]

make up the difference.

The natural resources commissioner also took umbrage at a coalition claim that the trust would be abused by the Hickel administration. The coalition groups alleged in a news release issued Monday that once state officials are freed from public land use laws, they will use the trust

The Anchorage Times
Alaska's Best Newspaper

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ALASKAN OWNED AND OPERATED SINCE 1915

FINE TEACHERS, DISTRICT

Make strike cost $$$

THE SUPERINTENDENT of the Anchorage School District, Dr. Thomas O'Rourke, released a trial balloon last week that is rife with possibilities.

He suggested that Alaska consider enacting a law that would assess daily fines of school teachers and the school district in the event of a strike.

Such a law, he told the Anchorage Assembly, has worked well in New York state, where Dr. O'Rourke worked for many years. How does he know it has worked well? There were no strikes.

He's not talking peanuts when he talks about fines.

O'Rourke's proposal would dock striking reachers twice their daily wage, or about $530 a day. The district itself would be penalized $1.05 million for each day of the strike. Just the fear of hefty fines like these, the superintendent said, would be incentive for both sides to come to agreement during contract negotiations.

THE ANCHORAGE legislative delegation is aware of the superintendent's proposal and we may see some legislation to this effect come next session. It sounds like a great idea to us, with a proviso. Fine money should not revert to the state Department of Education coffers. It should go into a special fund set up to provide education money to those most hurt by teacher strikes: the students.

As the superintendent said, "the district usually wins a little in a contract dispute, the union wins a little, but it's the kids who get chewed up by this sort of thing."

There is much wisdom in that reasoning.

So how could a protracted strike be turned around to help its innocent victims?

HOW ABOUT an endowment that could be drawn on by private schools that might find themselves suddenly with more students during a strike. First, of course, the state would have to commit to the idea of tax rebates — vouchers — for parents who don't want to send their children to public school. The fine money could be earmarked for additional classrooms, textbooks and hiring teachers.

More immediate, and of more assistance to students who would be marooned during a strike, would be money to pay for tutors. That way, students wouldn't fall behind while their teachers marched around carrying signs.

Or how about using some of the fine money to set up a training program to assist uncertified professionals who want to teach, thus enlarging the pool of teachers?

While these ideas may sound preposterous, particularly to those who strongly oppose the voucher system and non-certified professionals in the classroom, we present them to make a point.

It is the students who get hurt in a strike. And if the teachers' union and the district can't come to an agreement in their current negotiations, they should be reminded in the pocketbook that they have forgotten those whom they serve.

* FROM: [illegible] *
* SUBJECT: 92-01-119;PL#2;SB16;1-22-92 *
* PRINT DATE: 01/22/92 TIME: 16:05 *
*

SUBJECT LINE TO READ: TC NO.;PL NO. QR FS;SHORT SUBJECT;DATE

JNU MOD: JAMES

T/C NO: 92-01-119
DATE: JANUARY 22, 1992 WEDNESDAY 4:00-6:00 PM
SPONSOR: SENATE LABOR AND COMMERCE COMMITTEE
SUBJECT: SENATE BILL 16
MODERATOR: KAY GORMAN
SITE: DILLINGHAM

PARTICIPANT LIST

TESTIFIER

NAME/REPRESENTING	ADDRESS	PHONE	BILL NO.
1. LOU ANN NUNN DILLINGHAM SCHOOL BOARD MEMBER			SB 16
2. DON RENFROE DILLINGHAM CITY SCHOOLS			SB 16
3.			
4.			

JNU MOD: JAMES

T/C NO: 92-01-119
DATE: 1-22-92
SPONSOR: SENATE LABOR AND COMMERCE
SUBJECT: SB 16 EDUCATION EMPLOYEES COLLECTIVE BARGAINING
MODERATOR: ALYSON
SITE: SOLDOTNA

PARTICIPANT LIST

****
TESTIFIER

NAME/REPRESENTING	ADDRESS	PHONE	BILL NO.
1. MARILYN DIMMICK/AASB			SB16
2. KAREN MAHURIN/KPESA			
3.			
4.			
5.			

****
OBSERVER

NAME/REPRESENTING	ADDRESS	PHONE

DELIVER TO: LIOCJAM

ORIGINAL
SENT: 01/22/92 TIME: 16:31
FROM: LIOCROS
SUBJECT: ALERT
PRINT DATE: 01/22/92 TIME: 16:31

JAMES, WILLY KASAYULIE IS THE CHAIRMAN OF THE YUPIK SCHOOL DISTRICTS BOARD OF EDUCATION. MIKE WILLIAMS IS UNAVAILABLE AND MR. KASAYULIE IS REPLACING HIM.

Not there! Sam George instead from Akiak.

~~TIME RESTRAINT FOR JUDY SALO, SHE WILL BE UNABLE TO TESTIFY ON FRIDAY PLEASE NOTIFY THE CHAIR. THANKS.~~

ROSETTA AND JUDY

JNU MOD: JAMES

T/C NO: 92-01-119
DATE: 1-22-92
SPONSOR: (S) LABOR & COMMERCE
SUBJECT: SB 16: EDUCATION EMPLOYEE COLLECTIVE BARGAINING
MODERATOR: KAREN JOHNSON & DOUG NEAL
SITE: KOTZEBUE

PARTICIPANT LIST#1

****

TESTIFIER

	NAME/REPRESENTING	ADDRESS	PHONE	BILL NO.
1.	REGGIE JOULE/NWABSD SCHOOL BOARD MEMBER	P.O. BOX 51, KOTZEBUE 99752	442-3311	SB 16
2.	PETE SCHAEFFER/NWABSD BOARD PRESIDENT	P.O. BOX 51, KOTZEBUE 99752	442-3301	SB 16
3.	ED GONION/NWABSD SUPERINTENDENT	P.O. BOX 51, KOTZEBUE 99752	442-3472	SB 16
4.				
5.				

ORIGINAL
SENT: 01/22/92 TIME: 16:18
FROM: LIOCROS
SUBJECT: 92-01-119;PL1;SB16;1/22/92
PRINT DATE: 01/22/92 TIME: 16:18

SUBJECT LINE TO READ: TC NO.;PL NO. OR FS;SHORT SUBJ;DATE

JNU MOD: JAMES

T/C NO: 92-01-119
DATE: 1-22-92
SPONSOR: (S)L&C
SUBJECT: EDUCATION EMPLOYEE COLLECTIVE BARGAINING
MODERATOR: ROSETTA
SITE: ANCHORAGE

PARTICIPANT LIST

TESTIFIER

	NAME/REPRESENTING	ADDRESS/ZIP	PHONE	BILL NO.
1.	JUDY SALO/NEA			
2.	CAROL STOLPE			
3.				
4.				

JNU MOD

T/C NO: 92-01-119
DATE: 1-22-92 - THUR.
SPONSOR: SENATOR LABOR & COMMERCE
SUBJECT: SB 16 - EDUCATION EMPLOYEES
MODERATOR: LORNA STEELMAN
SITE: KODIAK L.I.O.

PARTICIPANT LIST 4

****

TESTIFIER

	NAME/REPRESENTING	ADDRESS	PHONE	BILL NO.
1.	TOM SIMPLER / KBEA			SB 16
2.	MIKE SIROFCHUCK / MYSELF AND FELLOW TEACHERS			SB 16
3.	KIAI TOLLEFSON / KBEA left			SB 16
4.	H. DUTCH LAWSON / MYSELF, TEACHERS AND PUBLIC			SB 16
5.	PAT JACOBSON / KBEA			SB 16
6.	RANDY BUSCH / KBEA & SELF			SB 16
7.	JAN CHATTO / SELF & KBEA			SB 16

left here to testify

****

OBSERVER

JNU MOD: JAMES

T/C NO: 92-01-119
DATE: 1/22/92
SPONSOR: S L&C
SUBJECT: SB 16 ED STRIKE, ETC
MODERATOR: CHARLOTTE
SITE: MATSU LIO

PARTICP LIST # 1

****

TESTIFIER

NAME/REPRESENTING	ADDRESS	PHONE	BILL NO.
1. BOB DOYLE – left early			
~~2.~~ BILL MUNROE			
~~3.~~ JO CLARK			
~~4.~~ JEAN KRAUSE ~~--MAYBE NOT SPEAK--~~ did testify			
5. SUZANNE CYR --MAYBE NOT SPEAK--			

****

OBSERVER

NAME/REPRESENTING	ADDRESS	PHONE	BILL NO.
1.			
2.			

* FROM: EDUBAR *
* SUBJECT: 92-01-119;PL;EDUBAR;1/22/92 *
* PRINT DATE: 01/22/92 TIME: 16:13 *
*

SUBJECT LINE TO READ: TC NO.; PL/ FS;SHORT SUBJECT;DATE

T/ C NO: 92-01-119
DATE: JANUARY 22, 1992
SPONSOR: LABOR & COMMERCE
SUBJECT: EDUC. EMPL. COLL BARG.
MODERATOR: NELSON
SITE: BETHEL

PARTICIPANT LIST

TESTIFIER

NAMES/REPRESENTING	ADDRESS/ZIP	PHONE	BILL NO.
1. DON ~~SANCHEZ~~/LKSD	BOX 2027	543-2326	

Sanchez

BETHEL, AK. 99559

2.
3.
4.
5.

OBSERVER

JNU MOD: LIOCJAM

T/C NO: 92-01-119
DATE: JANUARY 22, 1992
SPONSOR: SENATE LABOR AND COMMERCE
SUBJECT: SB 16:
MODERATOR: FRAN
SITE: FAIRBANKS

PARTICIPANT LIST #2

****

TESTIFIER

	NAME/REPRESENTING	ADDRESS	PHONE	BILL NO.
1.	GENE REDDEN - FAIRBANKS SCHOOL BOARD			
2.	ANN DOUGHERTY - FAIRBANKS SCHOOL DISTRIC T			
3.				
4.				
5.				

****

OBSERVER

	NAME/REPRESENTING	ADDRESS	PHONE	BILL NO.
1.				
2.				

JNU MOD: JAMES

T/C NO: 92-01-119
DATE: 1/22/92
SPONSOR: S L&C
SUBJECT: SB 16 ED STRIKE, ETC
MODERATOR: CHARLOTTE
SITE: MATSU LIO

PARTICP LIST # 2 - UPDATED!!!

****
TESTIFIER

NAME/REPRESENTING	ADDRESS	PHONE	BILL NO.
1. BILL MUNROE			
2. JO CLARK			
3. JO BROOKS			
4.			
5.			

****
OBSERVER

NAME/RERESENTING	ADDRESS	PHONE	BILL NO.
1.			
2.			
3.			
4.			
5.			

****

TESTIFIED: 4
UNABLE:
OBSERVED:
TOTAL:

START TIME: 4 PM END TIME:

DELIVER TO: L1OCACB

ORIGINAL
SENT: 01/27/92 TIME: 16:02
FROM: LIOCROS
SUBJECT: 92-01-148;BL2;(S)L&C;1/27/92
PRINT DATE: 01/27/92 TIME: 16:02

T/C NO: 92-01-148
DATE: 1/27/92
SPONSOR: (S)LABOR AND COMMERCE
SUBJECT: SB 16
MODERATOR: ROSETTA

BRIDGE LIST

1. ANC
2. JNU
3. PSG
4. KOD
5. SOL
6. BAR

SEN. PEARCE -

7. DJT
8. FBX
9. KTN
10. MAT

EMAIL LIOCROS
BACK-UP PHONE 561-1199

JNU MOD: ADAM

T/C NO: 92-01-148
DATE: JANUARY 27, 1992
SPONSOR: SENATE LABOR AND COMMERCE COMMITTEE
SUBJECT: SB 16, EDUCATION EMPLOYEE COLLECTIVE BARGAINING
MODERATOR: JUNE ROBBINS
SITE: KETCHIKAN

PARTICIPANT LIST

****

TESTIFIER

NAME/REPRESENTING	ADDRESS	PHONE	BILL NO.
1. BRUCE STANTON/KEA	177 SHOUP ST. STG KETCHIKAN, AK 99901	225-4436	SB 16
2. DICK CLEVENGER	2403 2ND AVE. KETCHIKAN, AK 99901		SB 16
3. BOB FERNBACK	P.O. BOX 6316	225-5647	SB 16
4.			
5.			

JNU MOD: ADAM

T/C NO: 92-01-148
DATE: 1/27/92
SPONSOR: S L&C
SUBJECT: SB 16 EDUC EMPLOYEE COLLECTIVE BARGAINING
MODERATOR: CHARLOTTE
SITE: MATSU LIO

PARTICIPANT LIST # 3 FROM MATSU

****

TESTIFIER

	NAME/REPRESENTING	ADDRESS	PHONE	BILL NO.
1.	JOHN CYR			
2.	RICHARD BARLOW			
3.	BILL MUNROE			
4.	BOB DOYLE			
5.				

SUBJECT LINE TO READ: TC NO.;PL NO. OR FS;SHORT SUBJECT;DATE

JNU MOD: ADAM

T/C NO: 92-01-148
DATE: 1-27-92
SPONSOR: L&C
SUBJECT: SB 16
MODERATOR: TERRY
SITE: BARROW

PARTICIPANT LIST

****

TESTIFIER

NAME/REPRESENTING	ADDRESS	PHONE	BILL NO.
1. PATSY AAMODT	POB 169	852-4711	SB 16
2.			

SUBJECT LINE TO READ: TC NO.;PL NO. QB FS;SHORT SUBJECT;DATE

JNU MOD: LIOCACB

T/C NO: 92-01-148
DATE: 1-27-92
SPONSOR: SENATE LABOR AND COMMERCE
SUBJECT: SB 16: EDUCATION EMPLOYEES COLLECTIVE BARGAINING
MODERATOR: ALYSON
SITE: SOLDOTNA

PARTICIPANT LIST #2

****

TESTIFIER

NAME/REPRESENTING	ADDRESS	PHONE	BILL NO.
1. GEORGE CARNAHAN/KP CENTRAL LABOR COUNCIL	PO BOX 1757 SOLDOTNA 99669	776-5570	SB16
2. ~~GEORGE~~ LIEBNER/KPEA	207 CORRAL ST.	262-7844	SB16
3. Re Jee			
4.			
5.			

LTG NO: 92-01-148
DATE: JANUARY 27, 1992
SPONSOR: SENATE LABOR AND COMMERCE COMMITTEE
SUBJECT: SB 16, EDUCATION EMPLOYEE COLLECTIVE BARGAINING
MODERATOR: JUNE ROBBINS
SITE: KETCHIKAN

PARTICIPANT LIST

****

TESTIFIER

NAME/REPRESENTING	ADDRESS	PHONE	BILL NO.
1. BRUCE STANTON/KEA	177 SHOUP ST. STG KETCHIKAN, AK 99901	225-4436	SB 16
2. DICK CLEVENGER	2403 2ND AVE. KETCHIKAN, AK 99901		SB 16
3. BOB FERNBACK	P.O. BOX 6316 KETCHIKAN, AK 99901	225-5647	SB 16
4. JUDY JENKINSON	P.O. BOX 5342 KETCHIKAN, AK 99901	225-5839	SB 16
5.			

****

OBSERVER

NAME/REPRESENTING	ADDRESS	PHONE	BILL NO.
1.			
2.			
3.			

JNU MOD: ADAM

T/C NO: 92-01-148
DATE: 1/27/92 - MONDAY
SPONSOR: SENATE LABOR & COMMERCE COMMITTEE
SUBJECT: SB 16 - EDUCATION EMPLOYEE COLLECTIVE BARGAINING
MODERATOR: TINA WITTEVEEN
SITE: KODIAK LEGISLATIVE OFFICE

PARTICIPANT LIST 1

TESTIFIER

NAME/REPRESENTING	ADDRESS	PHONE	BILL NO.
1. JOHN NUTTALL,			SB 16
2.			SB 16
3.			SB 16

* SUBJECT: 92-01-148;PL#1-SB16;1-27 *
* PRINT DATE: 01/27/92 TIME: 15:46 *
*

SUBJECT LINE TO READ: TC NO.;PL NO. OR FS;SHORT SUBJECT;DATE

JNU MOD: LIOCACB

T/C NO: 92-01-148
DATE: 1-27-92
SPONSOR: SENATE LABOR AND COMMERCE
SUBJECT: SB 16: EDUCATION EMPLOYEES COLLECTIVE BARGAINING
MODERATOR: ALYSON
SITE: SOLDOTNA

PARTICIPANT LIST

TESTIFIER

	NAME/REPRESENTING	ADDRESS	PHONE	BILL NO.
1.	GEORGE CARNAHAN/KP CENTRAL LABOR COUNCIL	PO BOX 1757 SOLDOTNA 99669	776-5570	SB16
2.	did not want to testify			
3.				
4.				
5.				

OBSERVER

	NAME/RERESENTING	ADDRESS	PHONE	BILL NO.
1.				
2.				
3.				
4.				
5.				

DELIVER TO: LIOCBBN

ORIGINAL
SENT: 11/01/91 TIME: 10:45
SUBJECT: 91-10-026;FS;SB 16;10\31
PRINT DATE: 11/01/91 TIME: 10:55

SUBJECT LINE TO READ: TC NO., PL/ FS;SHORT SUBJECT;DATE

JNU MOD: N/A

T/ C NO: 91-10-026
DATE 10/31/91
SPONSOR: (S) LABOR & COMMERCE
SUBJECT: SB 16
MODERATOR: BARBARA
SITE: ANCHORAGE

FINAL STATS

TESTIFIER

NAMES/REPRESENTING ADDRESS/ZIP PHONE BILL NO.

3741 W. 42ND ANCHORAGE 99517

[illegible] MICHELLE CASTANEDO 248-7243 CB 16
7513 LORD BARANOF ANCHORAGE 99517

[illegible] DAVID J. BURDETTE 277-5290 CB 16
1501 [illegible] DR [illegible] ANCH 99503

[illegible] [illegible] YOUNG 264-2507 CB 16
P.O. BOX 10[illegible] ANCHORAGE 99510

[illegible] MARCIA SPADLE. CB 16
P.O. BOX 770193 EAGLE RIVER 99577

[illegible] VELMA [illegible] CB 16
P.O. BOX [illegible] ANCHORAGE 99510

8. KATHI RECORD CB 16
1601 HIDDEN LANE ANCHORAGE 99501

[illegible] DAVID SNYDER/STAFF

10. WILLIE ANDERSON 586-2099 CB 16
JUNEAU 99801

11. MARGARET HIATT 277-0961 CB 16
221 E. 14TH ANCHORAGE 99504

12. ROBERT BOYD 272-3351 CB 16
[illegible] W. FLOWER, APT 4 ANCHORAGE 99508

13. BARBARA V. STEH 333-6554 CB 16
[illegible] EASTWOOD CT ANCHORAGE 99504

14. DOROTHY GARRETT 333-7[illegible]
1807 YALGIN STREET ANCHORAGE 99508

15. ELIZABETH LIEN 337-3096 CB 16
4814 MILLS DRIVE ANCHORAGE 99508

****

TESTIFIED: 21
UNABLE:
OBSERVED: 15
TOTAL: 36

START TIME: 1:00 END TIME: 3:15

2. SEN. DUNCAN
3. SEN. HALFORD
4. SEN. COLLINS
5. REP. FARNELL
6. PAUL GARVE 225-3837 SB 16
P.O.BOX 5236 KETCHIKAN
7. BUDDY ANGRIN 277-5260 SB 16
201 STEWARD RD #10 ANCH 99503
8. DAVE SILJEN 248-2826 SB 16
200 W. 100 ANCHORAGE 99517

9. SHIRLEY CRETON 274-4443 SB 16
1835 ELECANTE LANE ANCH 99501
10. DAVID KAISOR 279-1688 SB 16
833 CAMBELL, #A ANCHORAGE 99501
11. DON OBERG/NEA 586-3090 SB 16
1800 F STREET JUNEAU 99811
12. GAYO FRYZAPLISIO 272-4577 SB 16
2501 COMMERICAL DRIVE 99501
13. BELINDA DANIELS 243-1986 SB 16
BOX 140086 ANCHORAGE 99514
14. TRINA RICHARDSON 262-7404 SB 16
BOX 2275 SOLDTNA
15. RICHARD KRONBERG SB 16
3511 CHINIAK BAY DRIVE ANCHORAGE 99515
16. PEG STOUT 337-7947 SB 16
6200 E. 34TH ANCHORAGE 99504
17. LUCILLE HOWITT 277-4371
1716 SCENIC WAY DRIVE ANCHORAGE 99504
18. MARILYN ROZZENE 842-1095 SB 16
P.O.BOX 1170 DILLINGHAM
19. CLAUDIA DOUGLAS SB 16
P.O.BOX 74837 FAIRBANKS 99707
20. JUDY SALO SB 16
SOLDOTNA
21. BOB MANNERS/NEA ANCHORAGE SB 16

****
OBSERVER

NAME/REPRESENTING	ADDRESS/ZIP	PHONE	BILL NO.
1. JIM GRIFFIN/DIV OF LEG AUDIT		465-3830	SB 16
	P.O.BOX 8 JUNEAU 99811		
2. ROBERTA MCCUTCHEON		243-3648	SB 16

3701 W. 42ND ANCHORAGE 99517
3. MICHELLE CASTANDEDU 248-7543 SB 16
2013 LORD BARANOF ANCHORAGE 99517
4. DAVID J. BURDETTE 277-5250 SB 16
201 STEWARD RD #10 ANCHORAGE
5. JAN DE YOUNG 264-2587 SB 16
P.O.BOX 107026 ANCHORAGE 99510
6. MARCIA BRADLEY SB 16

LEGISLATIVE AFFAIRS AGENCY ON LINE **MEMORANDUM**

✓ D. Covey

✓ Rep Boyer - FBX LIO

✓ MAT-SU (RICHARD BARLOW TO TESTIFY)

✓ SOL DOTNA

Rep. ~~Parnell~~ Parnell

LEGISLATIVE TELECONFERENCE NETWORK
SIGN-IN SHEET

SPONSOR: (S) L + C
SUBJECT: SB 16
START/END TIME: 0900 DATE: 10-31-17

	SIGNATURE	PRINTED NAME - REP.	MAIL ADDRESS	ZIP	PHONE	BILL	Testify	Observe
1	Marcia Bradley	Marcia Bradley	PO Box 770182 Eagle River	99577				X
2	Claudia Douglas	CLAUDIA DOUGLAS	P.O. Box 74837 FAIRBANKS, AK	99707			X	
3	[redacted]							
4	Thelma Parnell	Thelma Parnell	PO Box 10-1776, Anchorage	99510				X
5	Kathi McCord	Kathi McCord	1601 Hidden Lane Anch.	99501				✓
6								
7								
8								
9								
10								
11								
12								
13								
14								
15								
16								
17								
18								

LEGISLATIVE TELECONFERENCE NETWORK
SIGN-IN SHEET

SPONSOR:

SUBJECT: SB16

START/END TIME:

DATE: 10/21/91

	SIGNATURE	PRINTED NAME - REP.	MAIL ADDRESS	ZIP	PHONE	BILL	Testify	Observe
1	David Snyder	David Snyder	3111 C St	99503				✓
2	Willie Anderson	Willie Anderson	105 Mc [illegible] Juneau, AK	99801	586-3090			✓
3	~~Dave Wilson~~	~~Dave Wilson~~	~~3500 W. 49~~	~~99517~~	~~248-2826~~		✓	
4	Rich Kronberg	Richard Kronberg	3511 Chinook Bay Dr.		344-9264	SB16	✓	✓
5	Marge Hunt	Margaret A Hendricks-Hunt	221 East 7th Ave #215	99501	277-0062	SB16.		✓
6	Peg Stout	Peg Stout	6208 E. 34th Ave. Anchorage	99504	337-7047	SB16	✓	
7	Robert Boyd	Robert Boyd	601 N. Flower Apt. A Anch.	99508	272-3357	SB16		✓
8	Lu Howitt	Lucille R. Howitt	1716 Scenic Way Drive		2771871	SB16	✓	✓
9	Barbara W Steb	Barbara W Steb	6101 Eastwood Ct Anch AK	99504	3336554	SB16		✓
10	Marilyn Rosene	Marilyn Rosene	PO Box 1170 DILLINGHAM AK	99576	842-1095	SB16	✓	
11	Dorothy Garrett	Dorothy Garrett	1807 Kalgin Street Anc Ak	99508	333-7891	SB16		✓
12	Elizabeth Lien	Elizabeth LIEN	4814 Mills Drive Anch AK	99508	337-5006	SB16		✓
13								
14								
15								
16								
17								
18								

LEGISLATIVE TELECONFERENCE NETWORK
SIGN-IN SHEET

SPONSOR: (S) LABOR & COMMERCE
SUBJECT: SB. 16
START/END TIME: 4-00 DATE: 10-31-91

	SIGNATURE	PRINTED NAME - REP.	MAIL ADDRESS	ZIP	PHONE	BILL	Testify	Observe
1	Jim Griffin	JIM Griffin - Dn. of leg. Audit	P.O. Box W Juneau	99811	465-3830			✓
X2	Paul Jarvi	Paul Jarvi	P.O. Box 5876 Ketchikan, AK	225-3637			✓	
3	Roberta McCutcheon	ROBERTA MCCUTCHEON	3701 W 42nd Anch		243 3648			✓
4	Michelle Castanada	Michelle Castanada	2513 Lord Baranof Anch		248-7343			✓
X5	Buddy Mayfield	Buddy Mayfield	3510 Spenard Rd #110 Anch		277-5200		✓	
6	David C. Burdette	DAVID C. BURDETTE	3510 SPENARD RD #110, ANCH.		277-5200			✓
X7	Dave Wilson	DAVE WILSON	3500 W 42	99517	248-2826		✓	
8	Shirley Treton	Shirley A. Treton	1265 Elegante Ln	99501	276-4443		✓	
9	Jan DeYoung	JAN DeYOUNG	PO Box 107026	99510-702	264-2587			✓
10	DAVID KAISER		833 Gambell St. Ste A Anch	99501	279 1688		✓	
11	BELINDA DANIELS	[illegible]	Box 140006 ANCH	99514	243-1666			
12								
13	Don Oberg	Don Oberg NEA-AK	POB 1. Street Juneau	99811	581-3090		✓	✓
14	*MARC FREY	AK.-AFL-CIO	2600 Commercial Dr.	99501	272-4591		✓	
15	*Trena Richardson	Trena Richardson	Box 2278 Soldotna AK		262-7404		✓	
16								
17								
18	Bob Manners							

Official Business

COMMITTEE:

LABOR & COMMERCE

DATE: January 27, 1992

SIGN-IN

Subject of meeting:

SB 16 - EDUCATION EMPLOYEE COLLECTIVE BARGAINING

PLEASE PRINT!

NAME	ADDRESS (MAILING) & (ZIP)	PHONE	REPRESENTING	DO YOU WANT TO TESTIFY?
BRUCE LUDWIG	340 N. FRANKLIN JNO 99801	6-2334	APEA/AFT	YES

SB

26

SENATE LABOR & COMMERCE COMMITTEE
BILL FILE

BILL NUMBER: SB 26
BILL TITLE: FISH LOANS / LIMITED ENTRY

SPONSOR: ZHAROFF RECEIVED: 1/21/91

WRITTEN REQUEST TO SCHEDULE: DATE 2/20 FROM SEN ZHAROFF
SECTIONAL ANALYSIS RECEIVED: DATE 2/21 FROM MICHAEL FORD
FISCAL NOTE REQUESTED: DATE ~~2/~~ FROM
FISCAL NOTE RECEIVED: DATE 2/8 FROM DR OLDS
FISCAL NOTE CS REQUESTED: DATE FROM
FISCAL NOTE CS RECEIVED: DATE FROM
FISCAL NOTE CS REQUESTED: DATE FROM
FISCAL NOTE CS RECEIVED: DATE FROM
FISCAL NOTE CS REQUESTED: DATE FROM
FISCAL NOTE CS RECEIVED: DATE FROM

FIVE DAY NOTICE GIVEN:
COMMITTEES OF REFERRAL: FIRST: L & C SECOND: FIN THIRD:

DATE	COMMITTEE ACTION
3/13	DRAFTED SEC 2

HEARING NOTIFICATION LIST

1. SPONSOR
2. AGENCY
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____
9. _____
10. _____

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. SB 26

Revision Date: 1/21/91
Department Affected: Commerce & Economic Dev.
Title: An Act relating to loans under the Commercial Fishing Loan Act
BRU: Investments
Component:
Sponsor: Zharoff
Requestor: Labor & Commerce
COMPONENT SERIAL NO.

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	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						
TEMPORARY						

Estimate of current year impact:

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Martin J. Richard, Director
Phone: 465-2510
Division: Investments
Date: 2/7/91

Approved by Commissioner: Glenn A. Olds
Agency: Department of Commerce & Economic Development
Date:

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

Rev 10/90
GW/dg18863D/020791a

SENATOR FRED F. ZHAROFF
ALASKA STATE LEGISLATURE
P. O. BOX 405, KODIAK, ALASKA 99615 (907) 486-6259
DURING SESSION:
P. O. BOX V, JUNEAU, ALASKA 99811 • (907) 465-3473 • 465-3474
DISTRICT N
ALASKA PENINSULA • ALEUTIAN CHAIN • BRISTOL BAY • KODIAK ISLAND • LAKE CLARK/LAKE ILIAMNA • PRIBILOF ISLANDS • SHUMAGIN ISLANDS

MEMORANDUM

TO: Senator Drue Pearce
Chair
Labor and Commerce Committee

FROM: Senator Fred F. Zharoff

DATE: February 19, 1991

RE: Senate Bill 26 - "An Act relating to loans under the Commercial Fishing Loan Act and to limited entry permits pledged as security for those loans; and providing for an effective date."

I respectfully request that SB 26 be scheduled for a hearing before the Labor and Commerce Committee at the committee's earliest convenience.

SB 26 amends the state's Commercial Fishing Loan Program, which is managed by the Division of Investments in the Department of Commerce and Economic Development.

SB 26 solves some of the problems commercial fishermen have experienced with the program by allowing the division to respond to problem loans on a more flexible, case by case basis. By allowing the Division of Investments to have more flexibility -- in the form of less rigid deadlines and more notification to borrowers -- the state will provide Alaska fishermen who fall behind in their payments an opportunity to put their financial affairs back in order.

SB 26 was crafted to protect the state's interests and to safeguard the solvency of the loan program. The bill was written in close cooperation with the Department of Commerce. The Division of Legislative Audit recommended such legislation in its 1988 audit of "Commercial Fisheries Loan Programs' Procedures".

The following backup information is attached:

1. Sectional analysis.

2. Department of Commerce position paper and fiscal note.

3. Resolution from the Bristol Bay Native Convention.

4. Excerpt from the Division of Legislative Audit's "Special Report on the Department of Commerce and Economic Development Commercial Fisheries Loan Programs' Procedures", released March 14, 1988.

5. Commercial Fishing Loan Act statutes.

SENATOR FRED F. ZHAROFF
ALASKA STATE LEGISLATURE
P. O. BOX 405, KODIAK, ALASKA 99615 (907) 486-5259
DUPING SESSION:
P. O. BOX V, JUNEAU, ALASKA 99811 • (907) 465-3473 • 465-3474
DISTRICT N
ALASKA PENINSULA • ALEUTIAN CHAIN • BRISTOL BAY • KODIAK ISLAND • LAKE CLARK/LAKE ILIAMNA • PRIBILOF ISLANDS • SHUMAGIN ISLANDS

(1)

SECTIONAL ANALYSIS

SENATE BILL 26

"An Act relating to loans under the Commercial Fishing Loan Act and to limited entry permits pledged as security for those loans; and providing for an effective date."

SECTION 1

Amendment to 16.10.335(a).

(3) Clarifies existing language by changing "arrearages" to "the debtor's outstanding principal and interest".

(5) Provides debtors with 120 days, rather than the current 60 days, to bring their loans current. This gives the debtors an opportunity to bring their loans current up until the day the limited entry permit is repossessed. The extension will help rural fishermen, in particular, who do not start trying to solve their loan problems until the 60 day time limit has passed. Under current law, a debtor has 60 days to bring the loan current and 60 days to pay off the note in full before repossession proceedings are initiated.

(6) New paragraph. Provides the debtor with the option of submitting a new plan of repayment. The plan is subject to the commissioner's approval.

(7) Clarifies existing language.

SECTION 2

Repeal and reenact 16.10.335(d).

Allows the commissioner of the Department of Commerce and Economic Development to waive any of the time limits in the previous section for good cause. Good cause is left to the discretion of the commissioner.

SECTION 3

Amendment to 16.10.335(e).

Makes existing statute consistent with other amendments.

SECTION 4

Amendment to 16.10.335. New subsection (f).

(f) Eliminates the existing conflict between state statutes -- which require a demand to be issued in all cases -- and the superseding federal bankruptcy statutes which prohibit enforcement action -- such as issuing a demand -- after a debtor files bankruptcy.

SECTION 5

Amendment to 16.10.338. New subsection (b).

(b) In the case of a missed payment or default on a boat loan where a limited entry permit has been pledged as collateral, the commissioner of commerce shall notify the borrower that he has the option of selling the vessel and renegotiating the balance due. Selling the vessel is a possibility under present law, but official notification is needed in order to encourage people to do it. The department also does not now have the authority to renegotiate the remaining payments.

SECTION 6

Amendment to 16.10.350. New subsection (b).

(b) The commissioner is required to submit an annual report to the legislature about the number and nature of reinstatements authorized by this legislation.

SECTION 7

Amendment to 16.30. New section, 16.10.253. WAIVER OF CONFIDENTIALITY.

(a) Makes clear that information about a borrower's loan can be released at any time to any individual authorized by the borrower.

(b) Establishes a form on which the borrower can designate individuals (attorney, accountant, business consultant, trusted friend, etc.) and organizations (Native non-profit association, business development center, etc.) that will automatically receive copies of any default notice the Division of Investments mails out. This would enable individuals and organizations trusted by the borrower to find out when a loan is in trouble. They would then be able to assist the borrower in correcting the situation.

SECTION 8

Amendment to 16.43.960. New subsection (j).

Makes the Commercial Fisheries Entry Commission statutes in Title 16 consistent with the amendment in Section 4.

SECTION 9

Immediate effective date.

Department of Commerce & Economic Development / POSITION PAPER

(2)

SB 26: "An Act relating to loans under the Commercial Fishing Loan Act and to limited entry permits pledged as security for those loans; and providing for an effective date."

SB 26 makes a number of changes to the Commercial Fishing loan program, most dealing with limited entry permits and the foreclosure process. The department recognizes the important role that limited entry permits play in the economies of communities throughout the state and supports legislative efforts to provide additional flexibility to work with delinquent borrowers. Below are the major changes that this bill will make to the Commercial Fishing loan program. The parenthetical notations at the end of each provision reference the appropriate sections of SB 26.

1. The time period during which a delinquent borrower can bring a loan current after the postmark date of the default notice is increased from 60 to 120 days (Section 1).

   This change allows additional time for delinquent borrowers to respond. Existing statute requires that the loan be paid in full after the 60th day.

2. A provision is added that allows the department to waive the 120-day time limit under AS 16.10.335(a) if the debtor shows good cause (Section 2).

   The department strongly supports this provision because it will provide additional flexibility to work with delinquent borrowers that show good cause even in cases where the 120-day time limit has not been met. For example, if a borrower fails to contact us prior to the 120th day and later requests an extension or finds someone to assume the loan, the department would be able to work with the borrower to resolve the delinquency. This is not possible under existing statute. The department already has the ability to negotiate beyond the expiration of a demand notice for vessels, real estate, and gear and strongly supports the ability to do so for permits as well.

   A Legislative Budget and Audit Committee Report dated March 14, 1988, suggested that a change such as this be considered by the Legislature.

3. A provision is added that addresses the situation where a borrower has pledged a limited entry permit for a loan that was used toward a vessel (Section 5). Subject to the commissioner's acceptance, the borrower may sell the vessel and renegotiate payment of the balance due on the loan without loss of the pledged permit.

   The department supports this provision because it provides more flexibility to deal with delinquent borrowers who find themselves in the position of wanting to sell a vessel that is worth less than the outstanding loan balance.

4. A provision is added to terminate a debtor's interest in a limited entry permit when a debtor has filed bankruptcy and the automatic stay is no longer in effect (Sections 4 and 8). This only applies in cases where the debtor has not reaffirmed the debt.

   The department supports this provision as it eliminates the existing conflict between the state statutes which requires that a demand be issued in all cases and the superseding federal bankruptcy statutes which prohibit enforcement action, such as issuing a demand after a debtor has filed bankruptcy. Since the department appears before the bankruptcy court in numerous cases, it is advantageous to eliminate conflicts such as these whenever possible.

5. A provision is added which allows the department to release information about a borrower's loan when authorized by the borrower (Section 7). This section also allows a borrower to designate persons or organizations to whom a copy of any notice of default must be sent.

   This provision codifies existing department policy.

In summary, the department recognizes the ripple effect that can take place when a limited entry permit is repossessed and has always considered repossession a last resort. The department, however, also has an obligation to protect the assets of the loan fund. The provisions contained in SB 26 will provide the department with additional flexibility in its collection efforts and will enable the department to strike a good balance between assisting borrowers who are experiencing difficulties while, at the same time, protecting the assets of the Commercial Fishing Revolving Loan Fund for future loans.

Glenn A. Olds, Commissioner

Date: 2/7/1991

GAO/GW/dgl6346D
020791d

(3)

BRISTOL BAY NATIVE CONVENTION
Resolution 86-22

WHEREAS: commercial fishing within the Bristol Bay watershed has had poor harvest records for some of the Bristol Bay Fishermen; and

WHEREAS: the 1986 projected harvest forecast for Bristol Bay is also low; and

WHEREAS: fishermen from Bristol Bay have no other alternative source of income; and

WHEREAS: many fishermen have obtained from the State of Alaska loans to purchase new boats and permits to enhance their fishing efforts; and

WHEREAS: many fishermen put up their commercial fishing entry permit as collatoral to obtain their state loans; and

WHEREAS: many of these commercial fishing entry permits are now at risk due to poor salmon harvests; and

WHEREAS: the State set up the loan program to help local fishermen become more self sufficient, efficient and competitive and not to take boats and permits from the local residents.

NOW THEREFORE BE IT RESOLVED that the Bristol Bay Native Convention and delegates assembled requests the State Loan Program and Governor of the State of Alaska see and implement ways so that local fishermen do not lose their boats and permits.

CERTIFICATION

I hereby certify that the foregoing is a full, true and correct copy of the resolution adopted by the delegates to the 1986 Bristol Bay Native Convention, February 23, 24, 25, & 26, Dillingham, Alaska, at which a quorum was present.

WITNESS My hand and seal this 26th day of February, 1986.

Willie P. Johnson
Chairman, Bristol Bay Native Convention

WITNESSED:

D. Daisy Sr., Ch.
Chairperson, Resolutions Committee

Excerpt from:
"A Special Report on the Dept. of Commerce and Economic Development Commercial Fisheries Loan Programs' Procedures", March 14, 1988.

(4)

PUBLIC POLICY CONSIDERATIONS

Though no conclusive evidence exists that correlates a reduction of permit flow out of rural areas with the degree of lenient lending practices, the Legislature may want to consider additional forms of subsidization specifically for those rural areas that have become economically distressed due to an outflow of fishing permits. Action such as HB 509 which increases the maximum loan terms on permit loans to 30 years should ease the debt service burden for those finding it difficult to afford purchasing a fishing permit.

It should be noted, however, that the inherent quality of state lending programs creates a two-edged sword. On the one hand, the fiduciary responsibility of protecting the public's assets must be maintained; while at the same time, the socioeconomic aspects of meeting the public need must be considered. Policy decisions are necessary to establish at what point an appropriate balance occurs. If legislative or executive policy is willing to accept a higher risk situation and deems that increased emphasis should be placed on the societal aspects, such direction needs to be expressed. As a result, however, increased delinquencies, foreclosures, and losses may occur.

Consideration may also be given to changing the Commercial Fishing Loan Act to require all repossessed permits be returned to CFEC, who in turn could make the permits available to persons who meet the standards for initial issuance (AS 16.43.250). Areas where commercial fishing provides the primary economic base which can be determined to be economically distressed could be so designated. Applicants residing within these areas who meet CFEC criteria could be chosen, perhaps on a lottery based system, to be given the right of first refusal on the purchase of an available limited entry permit. (Currently, the Commercial Fishing Loan Act requires CFRLP to offer CFEC a right of first refusal at a price equal to the amount outstanding on the foreclosed note plus any costs CFRLP directly incurred in administering the loan. This provision is related to the CFEC's inactive buy-back program under AS 16.43.310 which, in the opinion of the Attorney General, offends the constitutional prohibition against dedication of funds.)

* Consideration may be given to amending the Commercial Fishing Loan Act (AS 16.10.335) to provide more flexibility to CFRLP in allowing borrowers in default who have pledged permits as security, greater opportunities to bring their loans current. Presently, the law establishes a definite timetable in foreclosing on defaulted loans of this nature. DCED feels they have less workout capability in these cases in order to avoid repossession of the permits.

SB

27

SENATE COMMITTEE REPORT
FIRST COMMITTEE OF REFERRAL

DATE: 1/21/91

FURTHER: Resources
Finance

Date of 5-Day Notice: _____
(in accordance with Uniform Rule 23)

DATE TURNED
INTO OFFICE: _____

L&C Committee considered SENATE BILL NO. 27

"An Act establishing a fisheries business tax credit; and providing for an effective date."

and recommended:

[✓] **replace with** _____ **CS** SB 27 (L & C) [✓] same title
[ ] new title

[ ] **attached amendment(s)**

[ ] _____ **letter of intent adopted**

[ ] **do pass**

[ ] **do not pass**

[ ] **no recommendation**

[✓] **individual recommendations**

[ ] **further referral to** _____

ATTACHES NEW FISCAL NOTE(S):

Department(s)/Date:	Department(s)/Date:
[✓] fiscal note(s) Revenue /3-1-91	[✓] zero fiscal note(s) F+C /3-18-91
[ ] appropriation-no fiscal note	[ ] Governor's bill w/fiscal note

SIGNING DO PASS:

Ted Kelleher
Rick Halford

OTHER RECOMMENDATIONS:

Mark Pearce. No Rec
Chair: Signature and Recommendation

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. SB 27 (2)

Revision Date: 3/13/91
Department Affected: Fish and Game
Title: Fisheries Business Tax Credit
BRU: Commercial Fisheries
Component: Commercial Fisheries
Sponsor: Sen. Zharoff
Requestor: Governor
COMPONENT SERIAL NO. 4 5 9

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	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
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	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
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

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Heidi Classy
Phone: 465-4210
Division: Commercial Fisheries
Date: 3/13/90
Approved by Commissioner: DEPUTY Ron Somerville
Agency: ADF&G
Date: 3/13/91

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

Rev 10/90

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. SB27

Revision Date:
Title: Establishing a fisheries business tax credit
Sponsor: Senator Zharoff
Requestor:

Department Affected: Department of Revenue
BRU: Revenue Operations
Component: Income and Excise Audit

COMPONENT SERIAL NO. | 1 | 1 | 3 |

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LANDS & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
REVENUE	0.0	(13,617)	(13,617)	(13,617)	0.0	0.0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0.0	(13,617)	(13,617)	(13,617)	0.0	0.0
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	(13,617)	(13,617)	(13,617)	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: 0.0

ANALYSIS: Attach a separate page for analysis.

See Attached

Prepared By: Carl A. Meyer
Division: Income and Excise Audit Division
Phone: (907) 465-2320
Date: February 26, 1991

Approved by Commissioner: Lee E. Fisher
Agency: Department of Revenue
Date: 3-1-91

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

Rev 10/90

February 26, 1991

SB 27
FISCAL NOTE ANALYSIS
DEPARTMENT OF REVENUE

SB 27 would reestablish the fisheries business tax credit program, similar to the current credit program as provided for under AS 43.75.032, which expires December 31, 1991. The fisheries tax credit program provided by this bill is essentially structured after the current program except for the following differences:

CURRENT CREDIT PROGRAM AS 43.75.032	SB 27 CREDIT PROGRAM AS 43.75.037
Effective July 1, 1986	Effective January 1, 1992
Expires December 31, 1991	Expires December 31, 1994
Credits may be claimed for 3 consecutive years from 1987 through 1989	Credits may be claimed for 2 consecutive years from 1992 or 1993
Last tax year in which a credit may be claimed is 1991 (FY92)	Last tax year year in which a credit may be claimed is 1994 (FY 95)

Both of the programs allow for a maximum credit not to exceed 50% of the tax liability and credits may not be approved for more than 50% of qualifying expenditures. Also, both programs provide that credits may not be carried back to prior tax years and that no credits are allowed to taxpayers in arrears with the department in payment of a fisheries business tax under AS 43.75.015.

The revenue effect is estimated based on the average tax credit generated per year under the current credit program. ($68,083,151 total credits divided by five years, or $13,616,630)

A position paper is attached.

SENATOR FRED F. ZHAROFF
ALASKA STATE LEGISLATURE
P. O. BOX 405, KODIAK, ALASKA 99615 (907) 486-5259
DURING SESSION:
P. O. BOX V, JUNEAU, ALASKA 99811 • (907) 465-3473 • 465-3474
DISTRICT N
ALASKA PENINSULA • ALEUTIAN CHAIN • BRISTOL BAY • KODIAK ISLAND • LAKE CLARK/LAKE ILIAMNA • PRIBILOF ISLANDS • SHUMAGIN ISLANDS

MEMORANDUM

TO: Senator Drue Pearce
Chair
Senate Labor and Commerce Committee

FROM: Senator Fred F. Zharoff

DATE: April 23, 1991

RE: Senate Bill 27 - "An Act establishing a fisheries business tax credit; and providing for an effective date."

SB 27 establishes a new two-year Fisheries Business Tax Credit program, modeled after the credit program that was in existence from 1987 through 1989.

The original program was a tremendous success in encouraging increased investment in Alaska's shorebased seafood processing facilities. According to the Department of Commerce and Economic Development, over $140 million was invested in Alaska seafood plants during the tax credit period. The credit gave many processors the opportunity to expand into groundfish and to make this resource a viable fishery for Alaskans.

SB 27 would reactivate the program for a limited time period, 1992 through 1993. Processors would be able to use up to fifty percent of their annual business tax liability for two consecutive years for capital expenditures that "increase product diversity, or production efficiency and capacity, or improve product quality".

The spinoff effects from the credit include:

-- Economic development in Alaskan coastal communities.
-- More year-round operation of seafood plants, which benefits resident Alaskan processing workers.
-- More markets for Alaskan commercial fishermen.

The credit is particularly crucial at this time due to the competitive threat Alaska's shorebased groundfish processors face from the Outside-based offshore factory trawler fleet.

The following backup information is attached:

1. Sectional analysis.

2. Fiscal note from the Department of Fish and Game.

3. Letter from Mr. Barry Lester, chief executive officer of the Seafood Producers Cooperative.

4. Letter from Mr. William Dignon, president of Hoonah Cold Storage.

5. Letter from Mr. Alvin Burch, executive director of the Alaska Draggers Association.

6. Summary of the Department of Commerce report on the impact of the tax credit, March, 1990.

7. "Fisheries Business Tax Credit Study" by the Department of Commerce.

8. Department of Commerce report on tax revenue projections resulting from the tax credit.

9. Results of Fisheries Business Tax Credit survey.

10. Alaska Seafood Marketing Institute fact sheet about the seafood industry.

11. Tax credit research report by the Senate Advisory Council, November 22, 1988.

12. Tax credit research report by the House Research Agency, September 2, 1988.

13. Fish tax credit application.

14. Fisheries Business Tax Credit statutes and regulations.

SENATOR FRED F. ZHAROFF
ALASKA STATE LEGISLATURE
P. O. BOX 405, KODIAK, ALASKA 99615 (907) 486-5259
DURING SESSION:
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DISTRICT N
ALASKA PENINSULA • ALEUTIAN CHAIN • BRISTOL BAY • KODIAK ISLAND • LAKE CLARK/LAKE ILIAMNA • PRIBILOF ISLANDS • SHUMAGIN ISLANDS

SECTIONAL ANALYSIS

Senate Bill No. 27

"An Act establishing a fisheries business tax credit; and providing for an effective date."

SECTION 1

(a) Establishes a new fisheries business tax credit program to be in effect for the years 1992 and 1993. Same criteria for credits as the previous program.

(b) Prohibition on carrying back tax credit to prior tax years, but credit allowed to be carried forward within the two years available. Same provision in the previous program.

(c) Allows tax credit for contributions to the A.W. "Winn" Brindle memorial scholarship account. Same language as previous program, except for clarification on when the credit can be claimed.

(d) Total tax credit that may be claimed is capped at fifty percent of the taxpayer's business tax liability. Same language as previous program.

(e) Prohibitions on granting tax credits. Same language as previous program.

(f) Provides for application form. Same language as previous program.

(g) Provides for timely consideration of application. Same language as previous program.

(h) Definitions. Same language as previous program.

TAX CREDIT REPORT

Requires preparation of an annual report. Same language as previous program.

SECTION 2

Establishes tax credit for A.W. "Winn" Brindle memorial scholarship account, to take effect when the fisheries

business tax credit program sunsets. Language in paragraphs (a) through (d) copied from previous section.

SECTION 3

(b) Allows municipalities to receive their 50 percent share of fisheries business taxes collected within municipal boundaries. Includes reference to the statute created by this bill.

SECTION 4

Technical amendment for consistency between previous tax credit program and program created in this bill.

SECTION 5

Repeals the requirements for the tax credit report (43.75.039), the definition of "capital expenditure" (43.75.140(1)), the definition of "product diversity" (43.75.140(7)), the definition of "product quality" (43.75.140(8)), and the effective date for Brindle scholarship contributions in the previous law (sec. 10, ch. 79, SLA 1986) upon the sunset date of the new tax credit program, January 1, 1995.

SECTION 6

FISHERIES BUSINESS TAX CREDIT CLAIM IN TAX YEAR 1994.

Makes clear that fisheries businesses that have applied and received approval for two year tax credit projects in 1993 may claim the tax credit in 1994.

SECTION 7

Implements the credit for Brindle Scholarship contributions in Section 2 and the repeal of unneeded statutes when the program sunsets in Section 5.

SECTION 8

Effective date of January 1, 1992 for remaining sections.