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STATE OF NEW JERSEY.



² PUBLIC EMPLOYER-EMPLOYEE RELATIONS STUDY COMMISSION.

REPORT TO THE

GOVERNOR AND THE LEGISLATURE

(Pursuant to P.L. 1974, c. 124).

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State of New Jersey

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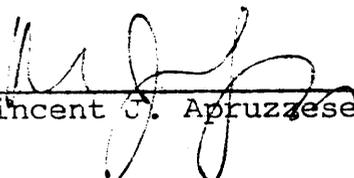
February 2, 1976

Governor Brendan T. Byrne
Members of the Legislature
Gentlemen and Ladies:

The Public Employer-Employee Relations Study Commission is pleased to present herewith its report and recommendations, including the text of proposed amendments and supplements to the "New Jersey Employer-Employee Relations Act" (P.L. 1941, c.100; C 34:13A-1 et seq.) in Appendix B which would effectuate the Commission's statutory recommendations.

After extensive study and consultation on the questions that it was instructed to consider, the Commission has arrived at a consensus with respect to the set of recommendations contained in this report. Although individual members may differ somewhat on the details of particular recommendations, the Commission is in general accord that the recommendations as a whole constitute a constructive, balanced program that is in the public interest and should serve to promote beneficial employment relations in government service in New Jersey.

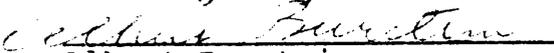
Respectfully submitted,



Vincent C. Apruzzese



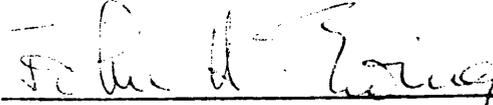
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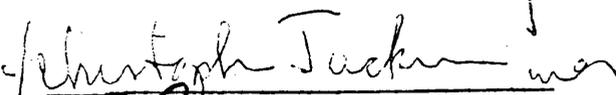
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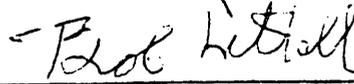
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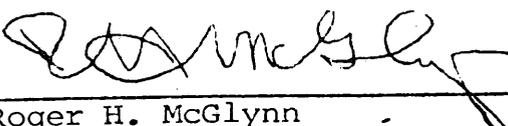
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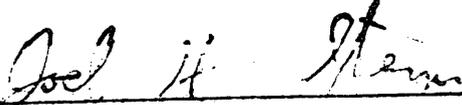
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* * A statement by these members expressing reservations on certain items appears on pp 72-76.

NEW JERSEY PUBLIC EMPLOYER-EMPLOYEE RELATIONS

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1. INTRODUCTION

This Study Commission was created pursuant to Assembly Bill No. 814, which was introduced on January 21, 1974; was passed by the Assembly on October 7, 1974 and by the Senate on October 21, 1972; and was approved by the Governor on October 21, 1974, as Chapter 124 of the Laws of 1974. Also on October 21, 1974, Senate Bill No. 1087, which amended and supplemented the "New Jersey Employer-Employee Relations Act," was approved as Chapter 123 of the Laws of 1974. Appointments to the Commission by the Legislature and the Governor were completed soon thereafter, and the Commission organized at a meeting held on December 23, 1974, in the State House.^{1/}

The Commission was given by Chapter 124 (contained in Appendix A of this report) broad authorization to study and analyze the "New Jersey Employer-Employee Relations Act" (P.L. 1941, C.100: C.34:13A-1 et seq.), as amended and supplemented, and implementation of the law since it was amended by Chapter 303 of the Laws of 1968.

Chapter 124 instructs the Commission to study the statute's effectiveness "in encouraging the impartial, timely and effective resolution of negotiating impasses in the public sector," to consider whether the "statute should be altered to provide alternative methods of resolving all forms of disputes in public employment," to look into

^{1/} Due to his involvement with another Legislative Study Commission, Senator John J. Horn resigned from this Commission and was replaced by Senator Martin L. Greenberg.

questions concerning "the scope of bargaining or of grievance arbitration," to determine whether "the existing structure of the New Jersey Public Employment Relations Commission is appropriate to fulfill the purposes of the 1968 Act," and to address itself to other issues and proposed changes in the statute.

In pursuing its assigned task, the Commission held a dozen meetings between December 23, 1974 and January 15, 1976, and, in addition, there were several subcommittee meetings. As indicated in Appendix E, fourteen persons, eight from outside the State, gave the Commission the benefit of their experience and views at four of its meetings.

The Commission held open hearings on March 5 and April 30, 1975 in Trenton at which the 21 persons listed in Appendix E testified and were questioned by Commission members.

In addition, 19 persons (also listed in Appendix E) submitted written statements, letters, or data bearing on the Commission's assignment.

The Commission has also benefitted from conversations and discussions, singly and in small group meetings, with public officials, officials of employee organizations, officials of associations of public employers (e.g., municipalities and school boards), lawyers knowledgeable in labor relations matters, and mediators and arbitrators. Thirty-nine of them are listed in Appendix E.

Thus, the Commission had the advantage of advice and views, based on practical experience in New Jersey and other states, from more than 70 individuals. Also, members of the Commission and staff attended conferences dealing with public employment relations.

In addition, important published material on subjects pertinent to the Commission's inquiry was distributed to members of the Commission and discussed at Commission meetings. Such material, in some cases articles written by persons appearing before the Commission, is contained in the bibliography in Appendix F. Helen E. Fairbanks, Librarian of the Industrial Relations Section of Princeton University, and Marjorie Watson, Information Specialist, Institute of Management and Labor Relations Library, Rutgers University, are largely responsible for the development of this bibliography.

Impasse procedures were the main topic of discussion with at least half of the 70-odd persons with whom discussions were held. Out of such discussions three conclusions soon developed. They are: that the statute should provide for some kind of finality for negotiating impasses, that the provisions for finality should apply to all employers and employees covered by statute, and that some form of forced-choice, last-offer arbitration^{1/} should be employed for achieving finality where other means of resolving a persistent negotiating impasse either are not promising or have been exhausted.

The form of forced-choice, last-offer arbitration developed by the Commission from talks with persons experienced with various aspects of public employment relations is last-offer arbitration with the arbitrator(s) selecting between the two parties' last offers on the economic issues as a package and between their last offers on noneconomic issues on each issue separately.

^{1/}The precise meaning of special terms used in this report is explained in the Glossary of Terms, located at the back of the document.

The Commission appreciates especially the frank, thoughtful, and public-spirited way that persons in positions in labor and management expressed their views on the impasse problem and alternative methods of dealing with that problem.

On the basis of extensive conversations, the Commission's set of recommendations for negotiating impasses, especially the particular form of arbitration to compel finality, seems to be, at this time, the single position that would be acceptable to the most persons in the spectrum of parties in public employment relations in New Jersey, with whom various alternative forms of impasse finality were discussed.

In considering the statute's effectiveness and ways to promote constructive relations in public employment in New Jersey, the Commission ranged fairly widely. At the Commission's meeting on December 13, 1975, the issue of union security, including the idea of a service fee for representation of nonmembers by the majority employee organization, was brought up for the first time. Various aspects of the problem were mentioned. The discussion of the matter was inconclusive.

The Commission also discussed in several meetings a proposal for the establishment of a Labor Part of the Chancery Division of the Superior Court to deal with legal matters involving labor relations in both the public and private sectors in the State. Under the proposal, the Labor Part would deal with labor issues that might involve such items as the issuance of an injunction, appeals from arbitration awards on grounds of noncompliance with the statute, and, in some versions of the proposal,

initial hearing and decision on unfair labor practice charges and possibly scope-of-negotiation issues.

Support for the proposal for a Labor Part of the Chancery Division of the Superior Court rests primarily on grounds of expert and knowledgeable judicial treatment, with increased consistency and continuity. A Labor Part with two or more judges (the number flexible with the current caseload) would have the advantages of specialization in the handling of rather complicated issues, along with the independence that Superior Court judges enjoy.

A subcommittee of the Study Commission, consisting of four attorneys (Messrs. Appruzzese, Greenberg, McGlynn, and Sterns), was appointed on December 13, 1975 to prepare a specific proposal statement, as a basis for exploring with the Chief Justice and members of the Supreme Court, the possibility of establishing a separate Labor Part within the Superior Court of New Jersey. The proposal statement, reproduced in Appendix C, was forwarded to the Chief Justice later in December.

Because of time limits and the Court's response, the Commission took no additional action on this matter. In a letter dated January 9, 1976, the Court indicated that a proposal for a unified court system for New Jersey was in a project-planning stage and that serious exploration of a proposal for a Labor Part of the Superior Court should, under the circumstances, be deferred until a later point in the developments with respect to a unified court system.

As the foregoing information clearly indicates, this report is the result of a wide range of cooperative activity, to which many persons have

made valuable contributions. Very special credit and appreciation are owed to the following: William M. Weinberg, the Executive Director, who participated fully and creatively in every aspect of the Commission's work, including the drafting of this report; Peter P. Guzzo, the efficient Secretary of the Commission, who, along with Dan Ben-Asher, also with the Legislative Services Agency, drafted legislation encompassing the proposed amendments and supplements to the "New Jersey Employer-Employee Relations Act" presented in Appendix B: Robert B. Gidding, Research Consultant, who diligently performed a variety of functions including the preparation of the charts and a record of the Commission's activities; and Jeffrey B. Tener, Executive Director of the Public Employment Relations Commission, who was so helpful in so many ways, including supplying information and ideas for improvement of the report and the statutes.

Secretarial assistance was provided for the Commission's work by Betty-Lou Heffernan, Alida Jagt, and Judith Von-Loewe of the Rutgers Institute of Management and Labor Relations and by Dorothy Silvester, Phyllis Ventigli, and Karen Wiley of the Princeton Industrial Relations Section.

To all who have been so helpful, the Commission expresses its sincere appreciation.

2. SUMMARY OF RECOMMENDATIONS

This chapter presents the gist of the principal recommendations of the Study Commission. Appendix B contains a draft of legislation encompassing the proposed amendments and supplements to the "New Jersey Employer-Employee Relations Act."

1. The Commission recommends the enactment of specific procedures to bring about the peaceful settlement of a persistent impasse in negotiations that occurs in any public employment covered by the statute, including state, county, municipal, and school-district employment. Public employers and employee organizations would be stimulated to adopt, by mutual agreement, one of 6 statutory procedures for resolving deadlocks that develop in negotiations. Should the parties fail to agree on an appropriate procedure, the statute would require submission of a continuing controversy to a form of binding arbitration, under which the arbitrator or panel of arbitrators would make an award by choosing between the final offers of the two parties (a) on the economic issues as a single combined package and (b) on the noneconomic issues on an issue-by-issue basis. The parties would be given an appropriate period of time to take those impasse procedures into account before the negotiation of a new agreement would be subject to them.

2. The statute would require that negotiated agreements in covered employment provide binding arbitration as a terminal step in a procedure for the settlement of grievances that concern the interpretation or application of the provisions of a collective agreement. The parties could, by mutual agreement, exclude individual items from such binding arbitration, or develop a substitute provision for arbitration as the final step in their grievance procedure, provided such substitute provision has the

approval of the Public Employment Relations Commission. Statutory requirement for arbitration of unsettled grievances would not take effect before the parties had adequate time in which to discuss and to embody the necessary changes in a new, negotiated agreement.

3. Included in the Commission's recommendations regarding the scope of negotiations are: (a) that the Public Employment Relations Commission be given statutory authority to determine which are and which are not "required subjects" or "permissive subjects" for negotiation, and (b) that public employers not be required to negotiate concerning matters of intrinsic managerial policy or function.

4. With regard to the jurisdictional overlap and conflict that exists between public employment relations law and other state and local government laws (e.g., civil service and education laws, regulations, and procedures), it is proposed that a special commission be established, with a membership that would include the appropriate range of interests and expertise, to examine in detail such jurisdictional problems and make recommendations for their solution.

5. It is recommended that the Public Employment Relations Commission be changed, from a tripartite membership (one member-chairman serving full-time and 6 members serving part-time) with 3-year terms, to a 3-member, all-public Commission with 6-year terms, all three serving on a full-time basis. A bipartisan Council on Public Employment Relations would be established to meet with the Public Employment Relations Commission for certain purposes, including possible assistance in the settlement of

individual disputes and in the screening of arbitrators for a Commission-established list, from which the parties and the Commission would select neutrals for binding arbitration.

6. The Commission recommends in Chapter 9, seven amendments in the statute that are primarily for purposes of clarification and efficient administration.

7. A recommendation is made for the systematic development of objective, comparative data for use by the parties, by arbitrators (especially in applying statutory standards under interest arbitration), for the training of arbitrators, and for analyses of the effects of the proposed changes in the law. The recommendations regarding binding arbitration will necessitate some additional trained arbitrators. In view of the provisions already in the statute, this set of recommendations can be implemented with little change in the act.

3. HISTORICAL DEVELOPMENTS IN DISPUTE SETTLEMENT

New Jersey has a rather extended history of legislation concerned with the settlement of labor disputes, starting in 1880. Although an early pioneer, New Jersey during the last half century has not been a pathbreaking or experimenting state with respect to labor relations law. Instead, it has tended to occupy a middle-ground position among industrial states, with developments in its labor-relations and disputes-settlement legislation influenced by the State's particular economic, political, and social characteristics. New Jersey did experiment with voluntary arbitration in manufacturing in the 1880's and 1890's and with compulsory arbitration in public utilities in the late 1940's and early 1950's.

The 1880 Act^{1/} provided for the establishment of ad hoc tripartite boards of arbitration which the parties could use for the settlement of particular disputes in manufacturing. In 1886, an amendment^{2/} gave such local arbitration boards (increased to 5 members, including the neutral member serving as chairman) the power to subpoena documents but no funds for their operation. The Arbitration Act of 1892^{3/} provided for a tripartite State Board of Arbitration, composed of 3 members appointed by the Governor for a term of 5 years. The Board was empowered to mediate and to arbitrate, directly in the first instance if the parties so elected, or on appeal from a decision of a local arbitration board. Members of the State Board were paid a per diem plus expenses. During its first year the State Board handled 60 cases.

^{1/} P.L. 1880, Chapter 138.

^{2/} P.L. 1886, Chapter 211.

^{3/} P.L. 1892, Chapter 137.

The local boards appear to have had some degree of success in settlement of disputes for a time, but they soon ran into trouble in trying to adjudicate disputes that involved the closed shop. The State Board took positions on major issues, especially against the closed shop, which made organized labor reluctant to use the agency. Between 1895 and 1897, the State Board operated with decreasing effectiveness as a hostile state government curtailed its travel expenses. The Board ceased to function in 1901.^{1/} In the history of labor relations, there have been a number of occasions when national or state boards have, by taking positions on issues, alienated one or both parties and thus seriously limited their usefulness for disputes-settlement purposes.

Strikes tend to stimulate the enactment of labor-relations legislation and machinery for disputes' settlement. In the mid-1930's, several major cities (e.g., New York, Philadelphia, Toledo) established local disputes-settlement agencies. The then mayor of Newark had a high regard for the Toledo tripartite labor relations board. In 1936, he appointed a tripartite committee of some 25 persons to consider the question of establishing a similar board for Newark. Upon the committee's unanimous favorable recommendation and with approval of the City Council, a Newark Labor Relations Board was set up in 1937. The board served primarily as a mediating agency, and did not have powers to rule on unfair

^{1/} Sketchy material on this early experience is to be found in Philip C. Newman, The Labor Legislation of New Jersey, American Council of Public Affairs, Washington, D.C., 1943; and George S. Odiorne, "Arbitration under Early New Jersey Law," The Arbitration Journal, Vol. 8, No 3, 1953, pp. 117-25.

labor practices, or to certify the majority representative, as most labor-relations boards currently do.

In 1937, unsuccessful efforts were made in the State Legislature to enact an anti-injunction law (along the lines of the Norris-LaGuardia Act of 1932) and a state labor relations law (similar to the National Labor Relations Act of 1935). However, in 1941 a state anti-injunction act was approved, and a tripartite State Board of Mediation was established, as recommended by a tripartite study commission. The State Board, in effect, displaced the Newark Board, taking over most of the staff of the latter. Its main function was to assist in the voluntary settlement of labor disputes in the private sector of the State's economy.

The rash of strikes right after World War II led to the enactment of laws in 10 states prohibiting strikes in public utilities. Among those states were Michigan, Pennsylvania, Wisconsin, and New Jersey. The New Jersey Public Utility Labor Disputes Act of 1946 authorized the governor to seize any public utility plant for operation by the State if, in the opinion of the Governor, that was necessary in order to assure continuous service. A tripartite fact-finding panel was to conduct public hearings and to report to the Governor its recommendations, which were not binding. Reliance was placed on public opinion to encourage acceptance of the panel's recommendations.

Because seizure by the State did not prevent strikes against the State during seizure, especially in a New Jersey Bell Telephone Company

strike that was part of a nationwide work stoppage against the Bell System, the Act was amended in 1947 to prohibit strikes or lockouts while the State was technically in possession of a utility, and to provide for compulsory arbitration of the dispute following seizure.

For such arbitration, the Act provided that each of the two parties to the dispute was to choose a partisan member for the arbitration board, and that those two should choose three impartial members for a board of 5 persons. If the two partisan members were unable to agree upon the three neutrals, the Governor was authorized to select them. In practice, the Board of Mediation sent a list of available arbitrators to the parties, who, if unable to agree on the three neutral arbitrators, indicated to the Governor their preferences among those on the list. The Governor usually took such preferences into account in selecting three neutrals. Of the 26 boards appointed, the neutrals were chosen by the partisan members in 7 cases, and were named by the Governor in 19 cases. Of the disinterested members appointed, approximately 60 percent were New Jersey residents, and about 70 percent were academics.^{1/}

In 1949, a State Supreme Court decision declared the Act unconstitutional on grounds that the legislature had delegated powers to arbitration boards without prescribing proper limits in the form of standards that arbitration boards should apply in determining their awards. Immediately after the Court's

^{1/} For a study of experience under the New Jersey Public Utility Labor Disputes Act, see Robert R. France and Richard A. Lester, Compulsory Arbitration of Utility Disputes in New Jersey and Pennsylvania, Industrial Relations Section, Princeton University, 1951, 90 pp.

decision, the Act was amended to add 5 statutory standards. The next year the Act's provision for fact-finding panels was deleted as unnecessary in view of the arrangements for compulsory arbitration.

In February 1951, the United States Supreme Court declared unconstitutional the Wisconsin statute providing for compulsory arbitration of labor disputes in public utilities on the grounds that the Wisconsin Act sought to abrogate the right to strike, which was protected for workers in interstate commerce by the Labor Management Relations Act of 1947. In other words, the Taft-Hartley Act preempted the area of strikes "affecting commerce" between the states. In view of the decision declaring the Wisconsin Act unconstitutional and concerns about the way the New Jersey Act was functioning, the law became inoperative toward the end of the administration of Governor Driscoll in 1953. Since then, the Public Utility Labor Disputes Act, though still on the statute books, has been ignored.

In 1954, Governor Meyner established a tripartite Study Commission to report on the future of the Act, which was composed primarily of union and management officials from the utility industries. David L. Cole was chairman, Richard A. Lester was vice chairman, and Allan Weisenfeld was director. The Commission recommended that the law be repealed, but no legislative action was taken, and the Act was left in limbo.

The rapid spread of collective bargaining in the mid-1960's into state, county, and municipal governments and public school systems led to the appointment of state study commissions in several states, and, in a dozen states, to legislation dealing with public labor relations.

In 1966 an Act^{1/} was passed providing for a Commission to study the need for a procedure for the presentation of the grievances of public and school employees and to make such recommendations for legislative enactment as it might deem necessary. The Public and School Employees' Grievance Procedure Study Commission consisted of 12 members, including two senators, two assemblymen, and 8 persons appointed by the Governor. Marver H. Bernstein served as chairman, William M. Weinberg as vice chairman, and Harry Stark as executive director. The Commission made its report and recommendations on January 9, 1968.

The Commission's recommendations for legislative action included the customary provisions in labor relations legislation, such as duty of the parties to meet and seek to resolve grievances and proposals, an election in an appropriate unit to establish labor representation, the certified labor organization to be the exclusive representative for all employees in the unit. The Commission's recommendations placed primary responsibility on the parties to develop effective procedures for dispute

^{1/}Laws of 1966, Chapter 170.

settlement. It was proposed that discretionary authority be provided to a State Division of Dispute Settlement to provide a range of procedures to resolve an impasse in joint negotiations, including voluntary mediation, fact-finding, public reporting of fact-finding results, advisory arbitration, and, where acceptable to the parties involved, binding arbitration.^{1/} The Commission, with three members dissenting, recommended that the responsibility for the administration of mediation and other methods of dispute settlement in both private and public employment be combined in a single, new state agency.

The essence of most of the Study Commission's recommendations is embodied in Chapter 303 of the laws of 1968, which amended and supplemented the "New Jersey Employer-Employee Relations Act" (C. 34:13A-1 et seq.), and contains suggestions made by organized labor and employer representatives. Chapter 303 continued intact the dispute settlement role of the New Jersey State Board of Mediation in the private sector, and established a separate tripartite Public Employment Relations Commission for public sector disputes resolution, both for the determination of negotiating units and agents for employee representation, and for mediation and fact-finding in negotiating disputes.

^{1/} Final Report of the Public and School Employees' Grievance Procedures Study Commission to the Governor and the Legislature, State of New Jersey, January 9, 1968, p. 20.

4. PUBLIC EMPLOYMENT RELATIONS LAWS OF OTHER STATES

This chapter provides a summary statement of certain characteristics of state statutes concerned with public-sector labor relations. It also indicates the new developments and trends in such legislation in the past five years. The summary statement is based largely on the material in the charts in Appendix D.

In considering the content of state laws dealing with public employment relations, the following items need to be borne in mind:

1. The laws show considerable variation and experimentation as well as many common characteristics and much imitation. State laws for the public sector have borrowed heavily from Federal and state legislation developed for private-sector labor relations.

2. Diversity in state legislation seems to depend somewhat on the law-makers' conceptions of the proper role for collective bargaining in various parts of the public sector. Those who strongly favor collective bargaining are prone to press for application of the private bargaining pattern and legal framework in state public employment relations legislation.

3. The state laws are in different stages of development. Those in the early stages deal with the recognition of employee organizations, an obligation of the public employer to meet and confer, and state provision of mediation service. Later stages involve prohibition of specified unfair labor practices, and fact-finding and arbitration to provide finality for impasses in negotiations.

4. Industrial states generally are well along toward a fully-developed or fairly complete public labor relations law.

5. Since 1972 there has been a marked growth in state legislation providing forced-choice, last-offer arbitration for continuing impasses in negotiations in the public sector.

This discussion of the provisions of state public employment relations laws will treat subjects in the following order: the right to strike, compulsory arbitration, scope of negotiations, and statutory provisions regarding public labor relations agencies.

The Right to Strike

Most state statutes concerned with public employment relations forbid strikes by public employees. A recent analysis of strike prohibitions and strike rights in state and municipal laws ^{1/} found that 42 of the 59 laws examined contained provisions specifically forbidding strike activity in part or all of the applicable employment. In New Jersey the courts have held that public employees do not have a right to strike.^{2/}

Six states^{3/} have laws that permit certain categories of public employees to strike, but forbid a strike to occur or to continue if it

^{1/} Helene S. Tanimoto and Joyce M. Najita, Guide to Statutory Provisions in Public Sector Collective Bargaining: Strike Rights and Prohibitions, Industrial Relations Center, University of Hawaii, Honolulu, Hawaii, October 1974, 93 pp.

^{2/} See 53 N.J. 29 Board of Education, Borough of Union Beach v. N.J.E.A., et al, 1968.

^{3/} Alaska, Hawaii, Montana, Oregon, Pennsylvania, and Vermont.

threatens public health and safety. In four of those six states, police, fire-fighters, and other security personnel do not have such limited strike rights.

Compulsory Arbitration

The public employment relations laws of 18 states provide for binding arbitration as the terminal step (after mediation and possibly fact-finding) in the statutory procedure for settling interest disputes. In seven of those states, the statutory provision with regard to binding arbitration specifies that the arbitrator(s) must select between the final offers of the two parties to the dispute. Of those seven forced-choice, final-offer states, four (Indiana, Massachusetts, Minnesota, and Wisconsin) provide that the arbitrator(s) must select either the entire final offer of the employer or the entire final offer of the employee organization. That is known as the "package" form of final-offer arbitration. The laws of the other three states (Connecticut, Iowa, and Michigan) provide that the arbitrator(s) must select between the parties' final offers on an issue-by-issue basis, choosing the offer of one party or the other on each issue in dispute.^{1/}

Of the eleven states that have conventional arbitration--the arbitrator(s) is free to develop an award according to his own judgment--as a terminal step, two (Maine and New York) allow the parties freedom to negotiate their own procedure, which presumably could include a form of final-offer arbitration. The statutes of nine states specifically allow mediation to occur during the course of arbitration, whereas five state laws forbid recourse to mediation

^{1/}The Iowa statute provides for a choice among three positions on each issue, the third position being the recommendation of the fact-finder on that issue.

or further negotiation once arbitration proceedings have begun.

In states with compulsory arbitration as a terminal step for interest disputes, the categories of public employees so covered usually include police and fire-fighters. In recent years there has been a notable move by states to apply compulsory arbitration to impasse situations involving such personnel. Of the 18 states with compulsory arbitration of interest disputes for police, fire-fighters, or both, eleven extend such arbitration to additional categories of public employment. The laws of four states (Indiana, Maine, Nebraska, and Rhode Island) apply compulsory arbitration to virtually all state and local employees. Iowa and Oregon cover state employment, as well as police and fire-fighters. However, Minnesota covers only state employees, Connecticut law applies only to municipal employees, and Nevada includes state nurses and school teachers in addition to municipal employees.

As indicated in Chapter 5, five states have statutes that require that the grievance procedure in a negotiated agreement provide binding arbitration as the terminal step. The statutes of an additional three states require binding arbitration of an unsettled grievance if one of the parties requests such action.

Scope of Negotiations

The problem of scope of negotiations concerns the issues that are subject to bilateral determination by labor and management through the process of collective bargaining. Basically, the question of scope involves the subjects concerning which management must negotiate to avoid a valid charge of "refusing to bargain in good faith," which in many states

(including New Jersey) is an "unfair labor practice."

Over 30 states have a statute providing that certain public employers have a duty to negotiate in good faith with the recognized representative of the employees concerning such matters as "wages, hours, and other conditions of employment."^{1/} Approximately half of the state laws contain provisions which, in one way or another, restrict the scope of negotiations.^{2/} Exclusions from determination through collective negotiations may include such items as reserved functions of management and subject areas covered by merit or civil service. At least 7 state statutes do not contain any specific exclusions (see Chart 1, p. 48).

Public Labor Relations Agencies

Although public labor relations boards or commissions vary somewhat in composition and other features, they have many similar characteristics. And, as their functions and caseloads increase, the public labor relations agencies tend to resemble one another more closely.

With respect to composition, 16 out of 22 state public labor relations agencies have three-member boards. Of the other 6 agencies, five have five-member boards, and New Jersey has a seven-member board. Fifteen of the 22 have only nonpartisan membership, the other 7 have tripartite membership.

All board members have full-time appointments on seven boards. On five boards, the chairman is full-time and the others are part-time. In the case of nine boards, mostly in states with relatively low caseloads,

^{1/} Joyce M. Najita, Guide to Statutory Provisions in Public Sector Collective Bargaining: The Public Employer and the Duty to Bargain, Industrial Relations Center, University of Hawaii, Honolulu, Hawaii, July 1974, 93 pp.

^{2/} Ibid., p. 6 and Table 4, pp. 90-91.

all board members are on part-time appointment. In New Jersey, the chairman is full-time and the other members serve on a part-time basis.

Where the statute specifies the term of appointment of board members, it is four years in 9 states and six years in 7 states. New Jersey is one of two states with a three-year term for board members.

In 14 states, a separate agency is established to handle labor relations matters in the public sector, which is the case in New Jersey. In 8 states,^{1/} a single agency deals with cases in both the public and private sectors.

As the state boards have been given more responsibilities and their caseloads have expanded, there has been some tendency to move toward an impartial, professional membership for such boards and to increase the size and quality of the professional staff.

^{1/}Vermont is included in the 8; it has one agency for state employees and another agency that covers both private and municipal employees.

5. RESOLUTION OF INTEREST DISPUTES

Throughout the country, collective bargaining in the public sector has experienced rapid development and expansion. Employee unrest that expresses itself by job action (strikes, sick-outs, etc.) is to be expected when a marked expansion in collective negotiations takes place in the midst of inflationary pressures, declining employment, budget stringency, and growing taxpayer resistance. The consequence has been an intense search for appropriate means for resolving public employment problems and disputes in a manner that will be fair and attentive to the needs of both public employees and public management and, at the same time, consistent with the public interest.

This section discusses the special characteristics of government from a labor-relations viewpoint, the procedures developed for public sector disputes in other states, and forms of arbitration in case of impasses, and then sets forth in detail a proposed set of procedures when there is an impasse in the negotiation of a new agreement in the public sector in New Jersey.

Special Conditions in Government

Impasses in labor negotiations present special problems in state and local government because of certain distinctive characteristics of governmental operations:

1. Such government processes as elections, referenda, legislation, and court decisions are themselves means for settling disputes and conflicts of interest.

2. With three branches of government (executive, legislative, and judicial) as well as the voters sharing governmental powers, employer authority is often divided, overlapping, and somewhat ambiguous.
3. Decisions on public expenditures are subject to certain procedures and constraints, including approval by legislatures and votes of approval by the electorate in the case of some school district budgets, thus raising questions of budget authority, budget deadlines, the availability of funds, and uncertainty of legislative and judicial approval of negotiated terms and conditions of employment.
4. Governments have sovereign powers, which include the power to compel compliance with laws and court decisions as well as the power to levy taxes, subject to approval under democratic processes and written constitutions.
5. The voters or their representatives, whose approval is often necessary, have a direct interest in the results of collective bargaining both as consumers of public services and as taxpayers.
6. For many public services, government is a monopolistic supplier, with no feasible substitute service or alternative source of supply (e.g., police, firemen, custodial care, licensing bureaus, etc.), so that the economic pressures of loss of customers, loss of employment, and loss of profits cannot be relied upon to induce negotiated settlements of labor disputes.

Impasse Procedures

The provisions of state laws with respect to government intervention in labor disputes in the public sector have certain features in common. At least 25 states provide in some way for mediation services when requested or deemed desirable in negotiations between a public employer and a representative of public employees over a new agreement. At least 23 states provide for fact-finding with settlement recommendations in case that is requested or deemed desirable to aid in the settlement of a dispute between the parties (see Chart A-3, Appendix D).

Under the New Jersey Employer-Employee Relations Act, the Public Employment Relations Commission (PERC) supplies a certain amount of mediation service free of charge, and, if mediation fails to resolve the dispute, the Commission is empowered to recommend, or to invoke, fact-finding with recommendation for settlement. The cost of fact-finding is also borne by the Commission.

With respect to impasse disputes, Section 6(b) of P.L. 1941, c.100 (C.34:13A-6(b)), as amended, provides:

Whenever negotiations between a public employer and an exclusive representative concerning the terms and conditions of employment shall reach an impasse, the commission, through the Division of Public Employment Relations shall, upon the request of either party, take such steps as it may deem expedient to effect a voluntary resolution of the impasse. In the event of a failure to resolve the impasse by mediation the Division of Public Employment Relations is empowered to recommend or invoke fact-finding with recommendation for settlement, the cost of which shall be borne by the commission.

Where an impasse persists after the fact-finding process has been completed, existing legislation makes no provision for further procedures for the government to aid in settling such a continuing impasse.

Since 1968, a growing number of states have provided binding arbitration as the final step in the resolution of interest disputes for certain groups of state and local public employees. At least 12 states^{1/} provide for some kind of arbitration with binding decision for negotiating impasses involving police and firemen. Five states^{2/} provide binding arbitration for impasses that involve state employees. Connecticut requires arbitration with a binding decision for municipal employees in case of impasse, and Iowa has binding arbitration for impasses for virtually all state and local employees including school teachers.

In recent years there has been a move toward some form of final-offer, binding arbitration as the legislated settlement method for negotiations impasses. Final-offer arbitration was adopted for police and fire-fighter impasses by Michigan effective in 1972, by Wisconsin in 1973, by Massachusetts in 1974, and by Iowa for all state and local public employees in 1975. The laws of eight states now provide for final-offer arbitration (see Chart A-1, Appendix D).

Forms of Interest Arbitration

State laws contain a variety of forms of arbitration of disputes over the provisions of a new agreement. The principal forms are: conventional arbitration; final-offer, entire package arbitration; and final offer, issue-by-issue arbitration.

Conventional arbitration allows the arbitrator(s) to fashion the award according to the arbitrator(s) best judgment, constrained only by provisions in the parties' stipulation to arbitrate and any provisions of the state

^{1/} States with compulsory arbitration for police and/or fire-fighter bargaining impasses include: Alaska, Massachusetts, Michigan, Minnesota, Nebraska, New York, Oregon, Pennsylvania, Rhode Island, South Dakota, Washington, and Wyoming.

^{2/} Alaska, Maine, Nebraska, Oregon, and Rhode Island.

law with respect to standards to be applied by the arbitrator(s). Thus, conventional arbitration typically permits arbitrator(s) considerable discretion in ruling on each issue in dispute.

Final-offer package arbitration forces the arbitrator(s) to choose between the entire final offer of the employer on all issues in dispute and the entire final offer of the union on the same issues.

Final-offer, issue-by-issue arbitration forces the arbitrator(s) to choose between the final-offer positions of each party on each issue.

Particular experience and statistical results can be cited in favor of each of the three forms. Support for a particular form is likely to be influenced by such considerations as the following:

- a. Which form is most likely to discourage resort to arbitration and to minimize the number of unsettled issues and the differences between the positions of the parties on unsettled issues, in case arbitration does occur?
- b. Which form is likely to result in an award that is most acceptable, or least objectionable, to both parties?
- c. Which form is likely to encourage constructive collective bargaining and settlements that are in the public interest?

Views of Interest Arbitration

It is interesting to note that the positions of the parties are quite mixed concerning binding arbitration as the means for settling impasses, and concerning the forced use of different forms of arbitration. Public employers and unions can be found in support of one form of impasse arbitration yet objecting to other forms.

In the hearings held by the Commission, the New Jersey Policemen's Benevolent Association made a statement favoring binding arbitration of impasses involving the police, without indicating a preference for a particular form of arbitration. The Firemen's Mutual Benevolent Association of New Jersey similarly favored final and binding arbitration of impasses in their negotiations, also without specifying a particular form. The New Jersey State Employees Association, which, with the New Jersey Civil Service Association, represents approximately 30,000 employees in administrative, clerical, and professional services and in primary level supervision, also recommended an unspecified form of binding arbitration.

On the employer side, the New Jersey School Boards Association supported binding arbitration on the basis of selection of the entire final offer of one of the two parties, if an impasse is reached and one of the parties requests arbitration. The Committee on Industrial Relations of the New Jersey Manufacturers Association also recommended binding arbitration on the basis of the final offer of each party as a single package.

At the hearings, some speakers opposed compulsory arbitration of interest disputes.

Later, in informal discussions with union and management officials and with lawyers with practice in public employment relations, members of the Commission and its staff found more support for some form of binding arbitration than was evidenced at the hearings. To the suggestion that New Jersey at this time consider first experimenting with binding impasse arbitration for uniform personnel (police, fire-fighters, and prison guards), the response from significant sections of public labor and management was that most or all public employment should be included if any such program of arbitration were to be adopted.

A recent study analyzes six years of experience in Pennsylvania, five years in Michigan, and two years in Wisconsin, with binding arbitration as the means of resolving impasses in negotiations in the case of police and fire-fighters.^{1/} The Pennsylvania statute provides for conventional arbitration. The Michigan legislation first required conventional arbitration and then was amended to specify final-offer, issue-by-issue arbitration on each economic issue in dispute, retaining conventional arbitration for non-economic issues. Wisconsin adopted the final-offer, entire-package form of arbitration in place of fact-finding with recommendations.

Among the conclusions drawn from the experience in those three states are the following:

Today, in the public sector, interest arbitration is emerging as a politically acceptable means of resolving impasses, endorsed by those unions with the greatest power to disrupt the health and safety of the community. It has not had an adverse economic effect so far as can be determined, nor has it damaged the bargaining process. The evidence suggests that it would be wise to consider its adoption in other areas in which there is dissatisfaction with alternative methods of dispute resolution.^{2/}

Finally, it should be noted that in each jurisdiction, the parties and the neutrals tended to prefer their own procedure to those of the other states with which they were not familiar. It seems, therefore, that the ideal solution is the one designed by the parties themselves for their own use.^{3/}

^{1/} James L. Stern, Charles M. Rehmus, J. Joseph Loewenberg, Hirschel Kasper, and Barbara D. Dennis, Final-Offer Arbitration: The Effects on Public Safety Employee Bargaining, D. C. Heath and Co., Lexington, Mass., 1975.

^{2/} Ibid., p. 196.

^{3/} Ibid., p. 197.

Fair and Constructive Results

In legislation providing for binding arbitration of impasses, it is desirable to provide the parties with the opportunity in each case to select by agreement such items as: the arbitration instrumentality (single arbitrator or tripartite panel), the particular arbitrator(s), and the form of arbitration, including the possibility of working out a modified or special form and procedure.

Setting forth choices in such matters in the legislation has a number of advantages. The several benefits include: (1) the parties are encouraged to assume responsibility for arbitration of their dispute; (2) the arbitration process and award are apt to be suited to the existing circumstances in each case and the parties avoid being stuck, for an indefinite period, with a single, uniform system with which they may become dissatisfied; and (3) the parties are able to apply lessons from their experience in making choices for each dispute on an ad hoc basis.

Arbitration of impasses that ends in a binding award should aim at settlements that are fair to the parties and in the public interest. To aid in achieving such results, state laws which provide for binding arbitration of impasses in public employment are likely to contain a set of standards or statutory criteria that an arbitrator is to apply in rendering an award. An arbitrator's emphasis (in his opinion and award) on particular standards is likely to vary somewhat with the circumstances in the particular case.

Statutory standards, by focussing attention on facts, can serve to narrow differences in the positions of the parties. And, while the several

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standards in state statutes may not, in practice, provide unambiguous guidance, they do place some limits on the discretion that arbitrators can exercise.

The binding arbitration provisions of some state statutes distinguish between "economic" and "noneconomic" issues in dispute. The Michigan law establishing binding arbitration for police and fire-fighters, for example, provides for final-offer, issue-by-issue arbitration on each economic issue and for conventional arbitration on noneconomic issues. That provision permits the award on noneconomic issues to differ from the parties' positions. The standards or factors, on which arbitration findings, opinions, and awards should be based "as applicable," are the same list for both economic and noneconomic issues, although obviously some standards apply primarily to economic issues. Economic issues include wages (salaries), insurances, vacations, holidays, and similar items that have a direct relationship to employee income and can be readily calculated.^{1/} Under the Michigan statute the tripartite arbitration panel decides whether or not a particular issue should be classified as "economic."

Under statutory provision for arbitration of impasses, it is desirable for PERC to have a special panel of experienced, able arbitrators, from which the parties or PERC can select a neutral arbitrator. Under the Michigan statutes, a special panel of about 40 experienced arbitrators is picked from some 150 arbitrators on the state agency's list, to be used for last-offer arbitration of police and fire-fighter impasse cases. One of

^{1/} Maine public employee bargaining statutes covering municipal employees (including public schools and the Maine Turnpike Authority) and university employees provide for advisory arbitration on salaries, pensions, and insurance and binding arbitration on all other issues not otherwise settled.

the functions of the proposed New Jersey Council on Public Employment Relations would be to assist in the selection of such a panel of arbitrators. All arbitrators selected for the panel should have a three-year term. PERC should continue to provide fact-finding free to the parties as a public service. Normally, fact-finding should serve as the final step in the resolution of impasses. If a dispute does persist into the arbitration stage, the law should encourage the parties to devise their own terminal procedures, and the parties should themselves share the cost of such an extraordinary process. Recognizing that some public employers and public employee representatives may not have the resources to meet the cost of arbitrating an interest dispute, it is proposed that PERC establish a procedure that would nevertheless enable parties too poor to pay their share of the cost to participate in mandatory arbitration of a persistent impasse.

PERC's Caseload for Disputes Settlement

The dispute settlement activities of PERC during the past six years are indicated in Table 1. There is an evident upward trend in the number of cases in which intervention took place in the form of mediation and fact-finding. The increase is especially marked between fiscal 1974 and 1975 for mediation (an increase from 387 to 609 cases) and for fact-finding (an increase from 114 to 232 cases).

Table 1

Dispute Cases Filed with PERC, Fiscal Years 1969 to 1976

<u>Type</u>	<u>1969</u>	<u>1970</u>	<u>1971</u>	<u>1972</u>	<u>1973</u>	<u>1974</u>	<u>1975</u>	<u>July- Oct. 1974</u>	<u>July- Oct. 1975</u>
Mediation	143	281	337	332	336	387	609	84	123
Fact-finding	27	99	109	105	130	114	232	35	112

The rate of increase, year to year, continued for the first four months of fiscal 1976. Indeed, the number of cases in which fact-finding was instituted more than tripled. There is some concern that fact-finding may be decreasing in its effectiveness.

Commission members and staff, in informal discussions with various public employer and employee representatives, found strong and widely held sentiment in favor of legislation to provide some form of finality for negotiating impasses. There was also pervasive opinion that any statutory provision for finality should apply to all or practically all state and local public employees in New Jersey. Surprisingly strong opposition was expressed to the application of binding arbitration, even as an initial step, to certain groups such as police and fire-fighters. The selection of particular occupations or functions for coverage under binding arbitration has been supported on such grounds as the essentiality of services of those employees and the expressed views of the parties in favor of some form of binding arbitration for negotiating impasses in their jurisdictions.

In view of public sector sentiment in support of legislation providing some form of finality that would apply to all state and local public employment, the Commission has decided to recommend such legislation. The Commission's recommendation, which follows, is designed to give the parties a variety of alternatives and choices so that they can assume a considerable measure of responsibility for the process and can adapt it to suit their particular circumstances and experience.

Recommendation on Dispute Settlement Procedures:

- a. The procedures for settling disputes over the terms of an agreement, which are described below, shall apply to all public employers and employees covered by "the New Jersey Employer-Employee Relations Act."

- b. When direct negotiations fail to result in an agreement, either one or both parties may petition PERC for the assignment of a mediator to assist the parties in reaching mutual agreement. PERC may, on its own motion, assign a mediator in an negotiations dispute. Mediation shall be without cost to the parties.
- c. PERC shall provide fact-finding with recommendations upon the request of either one or both parties. In deciding PERC's response to such a request, the use of fact-finding, including a fact-finding proceeding, should not serve to delay or interfere with the commencement of terminal arbitration under the impasse procedures described below. The costs of fact-finding shall be borne by the Commission. The fact-finder shall recommend the settlement of all issues presented by the parties, unless the parties reach a voluntary settlement prior to the issuance of the fact-finder's report and recommended terms of settlement. The fact-finding is limited to those issues that are within the required scope of negotiation unless the parties agree to fact-finding on permissive subjects.
- d. If the parties have not arrived at agreement by 60 days prior to the public employer's required budget-submission date, the parties shall notify PERC as to whether they have agreed upon a terminal procedure for resolving the open items in dispute. Any terminal procedure mutually agreed upon by the parties must be reduced to writing, provide for finality in resolving the open items in dispute, and be submitted to PERC for approval. A terminal procedure may provide for arbitration by a single arbitrator or by a tripartite board of arbitration.
- e. Terminal procedures that are approvable include, but are not limited to, the following:
- (1) conventional arbitration of all unsettled issues.

- (2) arbitration under which the award of an arbitrator or board of arbitration is confined to a choice between (1) the last offer of the employer and (2) the last offer of the employees' representative, as a single package.
- (3) arbitration under which the arbitrator(s) award is confined to a choice between (1) the employer's last offer on each issue in dispute, and (2) the last offer of the employees' representative on each issue in dispute, with the decision on an issue-by-issue basis.
- (4) If there is a fact-finder's report with recommendations on the issue in dispute, the parties may agree to arbitration under which the arbitrator(s) award would be confined to a choice among three positions: (1) the last offer of the employer as a single package, (2) the last offer of the employees' representative as a single package, or (3) the fact-finder's recommendations as a single package.
- (5) If there is a fact-finder's report with a recommendation on each of the issues in dispute, the parties may agree to arbitration under which the arbitrator(s) award would be confined to a choice on each issue from among three positions: (1) the employer's last offer on the issue, (2) the employee representative's last offer on the issue, or (3) the fact-finder's recommendation on the issue.
- (6) Arbitration under which the arbitrator(s) award on the economic issues in dispute is confined to a choice between (1) the employer's last offer on the economic issues and (2) the employee representative's last offer on the economic issues, as a single package; and, on any noneconomic issues in dispute, the arbitrator's award is confined to a choice between (1) the employer's last offer on each noneconomic

issue and (2) the employee representative's last offer on each noneconomic issue.

- f. In the event that the parties fail to agree upon an acceptable terminal procedure before the 50th day prior to the public employer's budget-submission date, each party shall by that date notify the Public Employment Relations Commission of such failure in writing, indicating the reasons for the parties' inability to agree on a procedure and the issues that remain in dispute. The substance of a written notification shall not provide the basis for any delay in effectuating the provisions of this subsection.

Upon receipt of such notification from either party or on Commission's own motion, the following terminal procedure shall apply for the settlement of the issues remaining in dispute:

- (1) Binding arbitration under which the award of the arbitrator(s) on the economic issues in dispute shall be confined to a choice between: (a) the employer's last offer on such issues and (b) the employee representative's last offer on such issues, as a single package; and, on the noneconomic issues in dispute, the arbitrator(s) award is confined to a choice between (a) the employer's last offer on each open issue and (b) the employee representative's last offer on that issue.
- (2) For the purpose of such binding arbitration, a single arbitrator may be chosen by the parties from a special panel of arbitrators supplied by PERC in accordance with the Commission's rules, or the parties may choose to use a tripartite arbitration panel, in which case the procedure for choosing the neutral chairman

shall be the same as in the case of selection of a single arbitrator.

The chosen arbitrator(s) may, following appointment, mediate or otherwise assist the parties in reaching a mutually agreeable settlement.

The Commission shall take measures to assure the selection of an arbitrator from a special list of arbitrators maintained by the Commission.

Appointment of an arbitrator to the Commission's special list shall be for a three-year term, with reappointment contingent on the same kind of screening process used for determining initial appointment.

- (3) Prior to the arbitration hearings the parties shall submit to the arbitrator(s), pursuant to rules and procedures established by the Commission, their final offers in two separate parts: (1) a single package containing all the economic issues in dispute, and (2) the individual issues in dispute not included in the economic package, each set forth separately by issue. In the event of a dispute, the Public Employment Relations Commission shall have the power to decide which issues are economic issues, subject to court review. Economic issues shall include those items which have a direct relation to employee income including wages, salaries, hours in relation to earnings, and other forms of compensation such as paid vacation, paid holidays, health and medical insurance, and other economic benefits to employees. The arbitration is limited to those issues that are within the required scope of bargaining, except that the parties may agree to submit to arbitration one or more permissive subjects of negotiation.
- (4) The decision of an arbitrator or board of arbitration shall include an opinion and an award, which will be final and binding upon the parties and shall not be reversible, and must stand except for those safeguards established in New Jersey Law (N.J.S. 2A:24:1 et seq.)

or for failure to apply the factors specified in subsection (6).

- (5) PERC shall provide procedures for choosing and appointing the arbitrator, arranging for the arbitration proceedings, and handling the administration of the arbitration proceeding, including the initiation by PERC of arbitration in accordance with f above. The parties shall bear the costs of arbitration equally, subject to a fee schedule approved by the Commission.
- (6) The arbitrator or board of arbitrators shall decide the dispute, based on a reasonable determination of the issues, giving due weight to those factors listed below that are judged relevant for the resolution of the specific dispute.
- (a) The interests and welfare of the public.
 - (b) Comparison of the wages (salaries), hours, and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours, and conditions of employment of other employees performing the same or similar services and with other employees generally:
 - i. in public employment in the same or similar comparable jurisdictions.
 - ii. in comparable private employment.
 - iii. in public and private employment in general.
 - (c) The overall compensation presently received by the employees, including direct wage (salary) compensation, vacations, holidays, and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of

employment including seniority and tenure rights, and all other economic benefits received.

- (d) Stipulations of the parties.
- (e) The lawful authority of the employer.
- (f) The financial impact on the governing unit, its residents and taxpayers.
- (g) The cost of living.
- (h) Such other factors not confined to the foregoing which are ordinarily or traditionally considered in the determination of wages, hours, and conditions of employment through collective negotiations and bargaining between the parties in the public service and in private employment.

(7) The provisions of this subsection of the act dealing with terminal procedures shall apply to all negotiations for new agreements, renewals of existing agreements, or reopener provisions of existing agreements that are effective the first full fiscal year of the public employer following the effective date of this subsection. The effective date of this subsection of the act is 60 days after enactment.

g. Information that a party to a dispute discloses to a mediator, fact-finder, or arbitrator while he is functioning in a mediatory capacity shall not be divulged voluntarily or by compulsion, and all files, records, reports, documents, or other papers received or prepared by a mediator, fact-finder, or arbitrator so functioning shall be classified as confidential. A mediator, fact-finder, or arbitrator shall not produce any confidential records or testify with regard to

mediation conducted by him on behalf of any party to any cause pending in any type of proceeding including, but not limited to, unfair practice proceedings under this act. Nothing contained herein shall exempt such an individual from disclosing information relating to the commission of a crime.

6. ARBITRATION OF GRIEVANCES

Arbitration as the final step in the settlement of grievances is one of this country's major contributions to constructive, equitable labor relations. It provides adjudication of differences over the interpretation and application of a negotiated agreement in place of the use of economic or political strength for settlement of such disputes.

Where a grievance procedure culminates in a binding arbitration, the outside neutral arbitrator is customarily limited in his decision to the interpretation and application of one or more specific provisions of an existing agreement. Thus, a nonarbitrable grievance would be one that is not covered by, or cannot be considered to fall under, any provision of a negotiated agreement, or one that concerns a subject expressly excluded from grievance arbitration by the agreement.

The growth of arbitration of grievances has been an important factor for the development of stability in the relationship between labor and management in the United States. In the private sector in this country, over 95 percent of all negotiated agreements provide for the arbitration of all or most grievances as the final step in the grievance procedure. The commitment by the parties to arbitrate their unresolved grievance disputes has been closely tied to the acceptance of a no-strike pledge. The arbitration of grievances has served as a substitute for recourse to a strike during the life of a contract. The combined notion of arbitration and peaceful settlement during an agreement with a fixed term has distinguished American labor relations from many other collective bargaining systems in the world. The parties commit themselves for a period of time, usually one to three years, bar resort to the strike, and further agree that differences arising during this period

should be subject to a third party decision if the parties themselves cannot resolve the problem.

Five states^{1/} require by statute that a grievance procedure in a negotiated agreement provide for final and binding arbitration as the terminal step. Three other states^{2/} have statutes providing that binding arbitration of an unsettled grievance may be required, if one of the parties requests such action. In some parts of the public sector in New Jersey a very high percentage of negotiated agreements likewise provide for binding arbitration of grievances. Employee relations grievances may be adjudicable under several procedures and statutes. In order to enhance justice and to avoid the confusion and risk of cases being decided on the technicalities of filing, jurisdiction, and timeliness, a grievant should be permitted to utilize only one grievance procedure for a particular issue. The use of one grievance procedure should bar recourse to any other dispute-settlement grievance procedure with respect to that particular grievance.^{3/}

In some negotiated agreements, one or more items are excluded from the final step of binding arbitration in the grievance procedure. For example, work standards are so excluded in the General Motors-UAW agreement.

In the past, many public jurisdictions have resisted using a neutral third party on any matter within their sovereign authority. But now that all recognition disputes are subject to adjudication by the Public Employment Relations Commission and, if unresolved interest disputes are to be resolvable by recourse to a third-party neutral professional as proposed in Chapter 4, there seems to be little reason for the parties to avoid the peaceful neutral

^{1/} Alaska, Florida, Pennsylvania (all categories of public employees except police and firefighters), Vermont (all state employees), and Minnesota.

^{2/} Hawaii (the Public Employment Relations Board decides), Massachusetts (the Labor Relations Commission may order binding arbitration), and New Mexico (for state employees, State Personnel Board may direct that the unsettled grievance be referred to arbitration).

^{3/} This conforms with an Attorney General's opinion stating that "a grievance may not be processed through both procedures and that an election of one procedure precludes utilization of the other for that particular grievance." George F. Kugler Jr. (by Erminie L. Conley, deputy attorney general) to James A. Alloway, President, Civil Service Commission, May 22, 1973.

Table 2. Frequency of Grievance Arbitration in New Jersey, 1969-76

Fiscal Years	Public Employment Relations Commission (PERC) ¹		N.J. State Board of Mediation (NJSBM)		American Arbitration Association (AAA) ⁴					
	<u>public sector</u>		<u>private sector</u>		<u>public sector</u> ⁵		<u>private sector</u>		<u>public sector</u>	
	Filed	Awards	Filed ³	Awards	Filed	Awards	Filed	Awards	Filed	Awards
1969	1	N.A. (not available)	1,038	305	N.A.	N.A. (not available)				
1970	14	N.A.	1,154	361	N.A.	N.A.				
1971	38	N.A.	1,509	380	N.A.	N.A.				
1972	42	N.A.	1,398	406	N.A.	N.A.	184	92	91	45 ⁷
1973	55	N.A.	1,453	409	N.A.	N.A.	353	177	150	75
1974	83	N.A.	1,360	396	9	N.A. ⁶	402	201	250	125
1975	115	N.A.	1,497	464	26	N.A. ⁶	205	102	158	79
1976	29 ²									

^{1/} PERC maintains a file of cases filed and cases closed. The cases closed equals the cases filed over the long term. PERC does not maintain information on the number of cases in which a request for an arbitration was filed but no award was issued; it is the impression of the executive director that there would not be many cases in which no award was issued (letter of 10/27/75 from Jeffrey B. Tener, Executive Director, PERC to Robert Gidding, Consultant to Study Commission).

^{2/} Through September 15, 1975:

^{3/} Cases filed includes cases pending as of July 1 and cases opened during fiscal year.

^{4/} Year defined as June 1 through May 30. The AAA began operating an office in New Jersey in 1972.

^{5/} NJSBM does not adjudicate public-sector disputes since the advent of PERC except if the parties explicitly provide for arbitration by the NJSBM in their contract.

^{6/} The NJSBM does not divide its statistics into public and private sector categories concerning arbitration awards. The private sector figures for awards include the 35 public sector cases.

^{7/} AAA estimates that 50% of those cases filed resulted in awards.

Note: Since the parties may choose their arbitrators directly without recourse to an agency, the actual number of all grievance arbitrations in New Jersey is probably about 10 percent greater than the sum of the total arbitration cases reported in the table for the three agencies.

resolution of any differences that may arise concerning the interpretation and application of their collective agreement.

The volume of grievance arbitration in the private and public sectors in New Jersey is indicated in Table 2. The number of cases filed and of awards appear to have been fairly stable in the private sector during the five-year period from 1971 through 1975. In the public sector the number of cases filed with PERC, the American Arbitration Association, and the New Jersey Board of Mediation rose from 133 in 1972 to 341 in 1974, declining to 299 in 1975. The figures in Table 2 indicate that the volume of grievance arbitration in the public sector in 1974 and 1975 in New Jersey was about one-fifth of the amount in the private sector.

Recommendation: That binding arbitration is required as the final step in the procedure for the settlement of grievances arising out of the interpretation or application of the provisions of a negotiated agreement, except for those items or provisions in the agreement that the parties themselves, by mutual agreement, specifically exclude from binding arbitration as a final step in the grievance procedure. The arbitrator may neither add to, subtract from, or in any way alter, the agreement of the parties. It is his role to adjudicate the differences between the parties by providing interpretation, clarification, and analysis of the dispute within the confines of the agreement. The parties may agree on a procedure for the selection of an arbitrator or arbitrators, including agreement on an appropriate agency to provide them with lists of arbitrators, or if they are unable to agree on a procedure or agency, an arbitrator must be selected

from a list drawn from the commission's panel of arbitrators.

Any collective agreement entered into after the effective date of this subsection shall be subject to all the provisions of this subsection.

The effective date of this subsection is 60 days after enactment.

A grievant may utilize only one grievance procedure for the resolution of a particular issue.

7. THE SCOPE OF NEGOTIATIONS

The scope of negotiations is a rather complicated matter. The definition of the scope of negotiations involves the determination of those subjects concerning which a public employer is required to negotiate and those concerning which a public employer is not required to negotiate. The problem of scope concerns the specification of (1) the subjects on which the parties are not legally permitted to negotiate, (2) the mandatory subjects of negotiation on which the parties must negotiate if one of them wishes to do so, and (3) the permissive subjects of negotiation on which a public employer may consult with the majority representative but is not required to negotiate. States that have granted collective bargaining rights to public employees typically specify as mandatory subjects of negotiation "the terms and conditions of employment."

Scope of Negotiations in the Act

The "New Jersey Employer-Employee Relations Act", as supplemented by Section 1 of P.L. 1974, c.123 (C:34:13A-5.4), declares a refusal on the part of management to negotiate "terms and conditions of employment" to be an unfair labor practice. The law does not specify the subjects that are included in "terms and conditions."^{1/} It requires the parties to negotiate a grievance procedure and new rules or modifications of existing rules governing working conditions before they become effective (Section 7 of P.L. 1968, C. 303 (34:13A-5.3)). The law prohibits bargaining concerning pensions and denial of individual rights contained in Civil Service laws or regulations. However, Chapter 123 also provides that the negotiated grievance procedure shall be utilized, notwithstanding the procedures prescribed in any other legislation.

^{1/} According to Ernest Gross, in "Scope of Bargaining in the Public Sector," unpublished paper delivered at Temple University Conference, September 3-4, 1975, p. 24, legislators framing Chapter 123 made attempts to define "terms and conditions" without success. Supporters of wide scope, i.e., no exclusions from bargaining, inserted the word "pension" as an excluded subject so that hopefully, by implication, other subjects would be bargainable.

Defining Terms and Conditions

Some states define "terms and conditions" more specifically than New Jersey does (see Chart 1). The N.J. Supreme Court in Dunellen Board of Education v. Dunellen Education Association (1973) pointed out that the legislature failed to define "terms and conditions", stating:

The lines between negotiable and nonnegotiable will often be shadowy and the legislative reference to "terms and conditions of employment" without further definition hardly furnishes any dispositive guideline.^{1/}

The effect of the broad reference to "terms and conditions" is to ensure that scope will be defined by the parties themselves, by PERC, or by the courts, without legislative guidance.

Writers on the subject of scope of negotiation have expressed a variety of views. Rehmus^{2/} contends that the inclusion or exclusion of particular subjects of negotiation has important social policy implications and, therefore, scope should be guided by legislative enactment and not be relegated to bargaining between the parties. The Taylor Committee concluded that scope should be determined by the parties themselves, only if

The public through the action of its legislature is ready to delegate to a bargaining "team" composed of executives of government agencies and the negotiators for employee organizations, the virtual determination of its budget, the allocation of public revenues to alternative uses and the setting of the tax rate necessary to balance the budget.^{3/}

Rehmus complains that the Michigan Employment Relations Commission has overruled other state laws, municipal home rule, and university autonomy.^{4/}

^{1/} 64 NJ 25 (1973).

^{2/} Charles Rehmus, "The Scope of Bargaining in Michigan," delivered at Temple University, September 5, 1975 (unpublished manuscript).

^{3/} Final Report of the Governor's Committee on Public Employee Relations, State of New York, March 31, 1966, pp. 60-61.

^{4/} See Rehmus, op.cit.; and Patricia N. Blair, "State Legislative Control over the Conditions of Public Employment: Defining Scope of Collective Bargaining for State and Municipal Employees," Vanderbilt Law Review, Vol. 26 (January 1973), pp. 1-21.

Chart 1. STATUTORY PROVISIONS CONCERNING SCOPE OF NEGOTIATIONS

state	Nature of Definitions of Terms and Conditions				Statutory Relationship of Collective Bargaining Agreement to Conflicting Law			
	management rights clause	broad definition	one or two specifications	highly specific	terms of collective bargaining agreement supercede terms and conditions in conflicting law	all terms and conditions in conflicting laws are excluded from scope	exclusion from scope of all terms and conditions in civil service law only	selective exclusion from scope of terms and conditions in civil service or other laws
California				X	X ¹			
Connecticut		X			X			
Hawaii	X			X				X
Indiana	X	X			statutes silent			
Iowa	X			X			X	
Maine				X				X
Massachusetts		X						X ²
Michigan		X			statutes silent			
Nevada	X			X	statutes silent			
New Jersey			X				X	
New York ³			X		statutes silent			
Oregon		X			X ⁴			
Pennsylvania	X			X		X		
Rhode Island		X			statutes silent			
Vermont	X			X		X		
Washington		X			X		X	
Wisconsin	X			X			X	

¹ Teachers law effective July 1, 1976, Article 1, section 3540; class size is mandatory subject of negotiations.

² Massachusetts is unique in that it provides that the collective bargaining agreement will prevail over various sections of other laws (S.7), actually listing those sections.

³ Excluded from scope are terms and conditions covered in civil service law but this fact is not found in the Taylor Law; it is found in the civil service law.

⁴ Local ordinances only.

On the other hand, proponents of (free) collective bargaining, such as Wollett, argue that scope is a function of the relationship between the parties and that a bilateral determination of scope is essential to a healthy relationship between management and union.^{1/} Archie Kleingartner, restating views of a Los Angeles report, writes that there is no effective way of determining in advance and for all time the range of subjects over which parties should or may negotiate; scope depends on the relationship between the parties.^{2/}

Various public employers and outside experts expressed to the Commission a need for the identification of management functions in a public-sector act.

Even though lack of a detailed definition of "terms and conditions" may result in uncertainty and a lack of uniformity, determination of scope on a case-by-case basis may nevertheless be preferred. For example, Loewenberg finds that in Pennsylvania "few consistent principles have emerged to define scope."^{3/} A Pennsylvania legislative study committee concluded that the statute "should be permitted to age without premature enactment," because "It is believed that the case law which will develop will be far more helpful in delineating the extent of managerial prerogatives than hasty legislative enactments...."^{4/}

From an examination of New Jersey judicial decisions, Gross found a lack of uniformity regarding those subjects to be included in or excluded from negotiations; he emphasized that it is too early to draw any definitive conclusions regarding the scope issue in New Jersey. By mid-January, PERC had issued only three scope decisions under its new power granted by Chapter 123.^{5/} In its Fairlawn decision, the Commission adopted the concept that, while certain decisions are not required

^{1/} See Wollett et al, in Smith, op.cit.

^{2/} Paul Prasow et al, Scope of Bargaining in the Public Sector, U.S. Department of Labor, Labor Relations Information Exchange, Washington, D.C., 1972, p. 52.

^{3/} Joseph Loewenberg and James Klinger, "Scope of Bargaining in the Public Sector: The Pennsylvania Experience," unpublished paper given at a Temple University Conference, September 4-5, 1975, p. 27.

^{4/} Government Employee Relations Report, Bureau of National Affairs, Inc., Washington, D.C., No. 578 (January 6, 1975), p. E-5.

^{5/} Fairlawn Board of Education and Fairlawn Administrative and Supervisory Association (PERC No. 76-7), City of Trenton and Trenton PBA Local No. 11 (PERC No. 76-10), and Hillside Board of Education and Hillside Education Association (PERC No. 76-11).

subjects of negotiations, the impact of such decisions on terms and conditions of employment is within the scope of negotiations. This distinction between a decision and its impact on terms and conditions of employment also has been adopted by the New York State Public Employment Relations Board.^{1/}

It is evident that a detailed statutory definition of scope may not reduce the amount of litigation in this area. Gross writes in this connection:

The New Jersey Supreme Court has sensed that the bilateral model [of collective negotiations] is not sufficient. In the very cases where it held that there were mandatory subjects for bargaining and prohibited subjects, the court made the strong point [that] although certain subjects were non-negotiable, there should have been consultation and discussion with the employees' organization and also with other interested groups.^{2/}

There is a question, however, whether the statute should include language that would formally establish the category of "permissive subjects" for negotiations. In that event, a party could not press its demands on permissive subjects beyond the fact-finding stage, and management could insist that the subject not be included in the final agreement. Similarly, a party could not press a demand for grievance arbitration on any item in the agreement other than a mandatory subject of negotiations.

A permissive category has advantages. It would allow management the flexibility to negotiate matters that are not illegal subjects but also are not required subjects, thus permitting the scope of negotiation to fit specific bargaining contexts. Although a subject may not be a mandatory subject for negotiation, informal discussion often aids management in creating mutually agreeable working arrangements. Legislative recognition of a permissive category may stimulate constructive consultation between the parties.

With the scope of negotiations being worked out by PERC and the courts, on a case-by-case basis, it seems desirable that the statute contain a provision (a) recognizing the need for public employers to be legally free to perform their

^{1/} See the following New York PERB cases: School District...New Rochelle...v. Federation of Teachers, Local No. 280, AFT, AFL-CIO, July 1, 1971; and New York Supreme Court, 3d, West Irondequoit Teachers Association v. Robert D. Helsby et al., July 19, 1973.

^{2/} Gross, op.cit., p. 32.

constitutional and statutory mandates and responsibilities, and (b) recognizing the need for public employers to maintain initiative of action with respect to intrinsic managerial functions and duties.

When a public employer's action has an evident significant impact on the terms and conditions of employment, the employer should negotiate in good faith with the organization representing employees experiencing such an impact. The impact, as part of the terms and conditions of employment, should be considered within the scope of negotiations.

Recommendation: Amend Section 7 of P.L. 1968, c.303 (C.34:13A-5.3), as amended, to read as follows (underlined material to be added; bracketed material to be deleted):

A majority representative of public employees in an appropriate unit shall be entitled to act for and to negotiate agreements covering all employees in the unit and shall be responsible for representing the interest of all such employees without discrimination and without regard to employees organization membership. A majority representative of employees and a public employer or his designated representative have the mutual obligation to negotiate in good faith. After the effective date of this act [Proposed] proposed new rules or modifications of existing rules [governing] changing working conditions covered by a collectively negotiated agreement shall be negotiated with the majority representative before they are established. [In addition, the majority representative and designated representatives of the public employer shall meet at reasonable times and negotiate in good faith with respect to grievances and terms and conditions of employment.

When an agreement is reached on the terms and conditions of employment, it shall be embodied in writing and signed by the authorized representatives of the public employer and the majority representative.] Public employers shall not be required to negotiate collectively any term or condition of employment concerning matters of intrinsic managerial policy or function, or that contravenes any constitutional or statutory mandate.

Relationship with other Legislation

One argument against a broad definition of scope, without specific exclusions or inclusions, is that it would result in a wider scope of negotiations than would occur with a more specific definition. However, a statute may leave wide latitude for scope in its definition of "terms and conditions of employment" but greatly restrict scope by subordinating collective agreements to other laws. The "New Jersey Employer-Employee Relations Act," supplemented by section 7 of P.L. 1968, c. 303 (C.34:13A-5.3), as amended, provides the following: "Nothing herein shall be construed to deny any individual employee his rights under Civil Service laws or regulations." Several labor organizations testified that the "New Jersey Employer-Employee Relations Act's" relationship to civil service law needs clarification.^{1/}

Gross explains the problem:

New Jersey Civil Service laws and regulations are a complete personnel system. In addition to merit system standards for hiring and promotion, sick leave, leave of absence, hours of work, assignments and transfer, classifications and compensation plans are covered. The Civil Service laws also contain an appeals system for individual aggrieved employees. Does the statutory protection for individual employees' Civil Service rights simply mean that the statutory appeal procedure cannot be bargained away for, say, a binding arbitration clause?^{2/}

Section 7 of P.L. 1968, c. 303 (C.34:13A-5.3), as amended, also states the following:

Notwithstanding any procedures for the resolution of disputes, controversies or grievances established by another statute, grievance procedures established by agreement between the public employer and the representative organization shall be utilized for any dispute covered by the terms of such agreement.

It is not clear which grievance procedure should prevail in a particular case, the negotiated one or the one provided in the civil service law. Merit

^{1/} N.J. State Employee Association, the Council of N.J., State College Locals (AFT), and Teamsters, Local 286.

^{2/} Gross, p. 30.

principles dictate that personnel be hired, promoted, and transferred on the basis of an objective evaluation of relative competence. Given a collective bargaining agreement that provides for promotion on the basis of seniority, it may be unclear which standard should apply in a particular case. The potential area of conflict has been indicated by the executive director of PERC as follows: "It is not clear whether scope of negotiations determinations are intended to be exclusively within the jurisdiction of the Public Employment Relations Commission, as is the case with unfair practice proceedings, or whether the Commissioner of Education and the Civil Service Commission also have jurisdiction in this area."^{1/}

State statutes can be classified into four categories with respect to their treatment of the problem of overlap or conflict between a public employment relations law and other legislation. The statutes of at least nine states are silent with respect to the matter. Three states (see Chart 1) exclude from scope of bargaining all items that are covered in other laws. Five states, including New Jersey, exclude matters covered specifically in the Civil Service law. Three states selectively exclude only certain merit-related items and/or certain provisions of other laws (see especially Massachusetts).

A selective exclusion of certain provisions in the civil service and other laws from collective negotiations would seem desirable because statutory specification would clarify legislative intent and help remove present ambiguities. The Commission, however, has not given the problem the detailed study and analysis necessary to attempt to delineate the exact jurisdictional

^{1/} From statement of Jeffrey B. Tener submitted to Public Employer-Employee Relations Study Commission, Public Hearings held March 5, 1975, Senate Chamber, State House, Trenton, p. 12.

boundaries by subject area through legislative enactment. Nor is it desirable that a study commission, charged with the responsibility of examining and recommending concerning employee relations problems from a statutory viewpoint, make recommendations concerning policy and the institutional relationships between governmental agencies such as civil service, the education establishment, PERC, and local government merit systems. The conflict and overlapping of laws should be considered within a broader context of public policy than this Commission's mandate.

The State merit system (with nonpolitical recruitment, selection, and promotion, reinforced by a classification system) is established by law. However, some public employee benefits flow from the legislature directly, others emanate indirectly through the Civil Service Commission, and still others may be negotiated directly with the employees' representatives.

Overlap exists between education law and employee relations law. It is not clear which issues are bargainable and which are matters of educational policy to be determined by administrators or elected officials. Local governments also are involved in issues of jurisdiction that are ambiguous.

At present it is not clear where the locus of authority resides for the establishment of policy and for the conduct of negotiations within the State Government. The Office of Employee Relations was established by executive order, functions under the governor's direct supervision, and is guided by the Employee Relations Council. But the employee relations role as compared to that of civil service is not clear. The Civil Service Commission has the characteristics of a neutral agency yet at the same time functions as a management personnel department. The relationship of Civil Service to State employees, to the Office of Employee Relations, to the negotiations with unions,

and to the executive branch of the State Government, should be clarified. These issues and procedures should not necessarily be analyzed and decided only on the basis of employee relations and dispute settlement procedures, important though those aspects may be.

1. Recommendation: The statute shall state specifically that PERC has exclusive jurisdiction to determine the scope of collective negotiations. PERC shall continue to determine the scope of "terms and conditions of employment" for the parties on a case-by-case basis. PERC shall be given, by statute, the power to determine which are "required subjects" for negotiation, and which are "permissive subjects" for negotiation, and which are not either required or permissive subjects of negotiation.

2. Recommendation: A study commission should be established and charged with the responsibility to examine and make recommendations that would clarify and delineate the relationships between laws that now seem to overlap and conflict, particularly Title 11 of the Revised Statutes, concerned with Civil Service; Title 18A of the New Jersey Statutes, concerned with education; and Title 40 of the Revised Statutes and Title 40A of the New Jersey Statutes, concerned with municipalities and counties. The commission should also look into inconsistencies between an arbitrator's award under a collective agreement and provisions of other laws, including the state arbitration statute (2A:24-7 et seq.). The commission should be instructed to study the relationship between the Public Employment Relations Commission, the Civil Service Commission, the Department of Education, the Department of Higher Education, all relevant aspects of state and local government, and any other laws or procedures that may overlap and conflict in the area of employee relations. The commission should utilize the services of experts in employment relations, dispute settlement, civil service, education (including higher education), state and local government, and public policy.

8. STRUCTURE OF THE COMMISSION

In the legislation establishing the Study Commission, it is instructed to consider "Whether or not the existing structure of the New Jersey Public Employment Relations Commission is appropriate to fulfill the purposes of the Act."

The Public Employment Relations Commission has a tripartite structure. It is composed of 7 members, of whom "two shall be representatives of public employers, two shall be representative of public employee organizations and three shall be representative of the public" including the Chairman. They are appointed by the Governor, by and with the advice and consent of the Senate, for a term of three years. The Chairman is the Commission's chief executive officer and administrator, serving on a full-time basis. The other six members are part-time, compensated on a per diem basis.

The functions performed by the Public Employment Relations Commission include the following:

1. provision of services for the purpose of mediation, fact-finding, and other means of aiding in the settlement of labor disputes, including maintaining a panel of arbitrators from which the parties can select for the arbitration of an impasse in negotiations.
2. determination of the appropriate unit of employees for representation and collective bargaining purposes.
3. conduct of elections to determine employee representation.

4. determination of whether an issue is within the scope of collective negotiations.
5. determination of the validity of charges of unfair labor practices specified in the law.

A tripartite structure for a state labor relations board can contribute to informed application of the law, and can facilitate the settlement of individual labor disputes. Participation of partisan members of a board in policy-making in the early stages of development under new legislation may help to avoid mistakes and promote the enactment of practical improvements in the law.

However, partisan participation on a labor relations board may cause problems in individual cases where the issues before the board involve a difference between the parties as to what is the appropriate bargaining unit for employee representation, or whether a particular subject is one concerning which the parties are required to bargain, or whether one or the other of the parties has committed an unfair labor practice. In such cases, it is important to have confidence in the independence and impartiality of the decision-making process.

Of the 21 states that have a board or commission that has the power in the public sector to decide whether particular labor practices are or are not unfair, only 5, including New Jersey, have a tripartite board.^{1/} Among the 16 states with all public members on their labor relations boards are New York, Pennsylvania, Michigan, and Wisconsin.^{2/}

^{1/}The others are: Hawaii, Kansas, Maine, and New Hampshire (see Chart A-2).

^{2/}The others are: Alaska, Florida, Indiana, Iowa, Kansas, Kentucky, Massachusetts, Montana, Nevada, Oregon, Vermont, and Washington.

In the public hearings held by the Study Commission, a representative of the N.J. School Boards Association, a representative of the N.J. State Employees Association, a member of the Public Employment Relations Commission (who is also Secretary of the Department of Civil Service), and the Mayor of Trenton, spoke in favor of a Public Employment Relations Commission composed of members without current partisan connections. The representative of the State AFL-CIO spoke in favor of continued tripartite composition of the Commission, with the public membership reduced from three to one, and an additional employer member and labor organization member. The chairmen of state boards dealing with labor relations in the public sector are reported at a recent meeting to have generally favored an all public board.^{1/}

With the added functions of deciding unfair labor practices and scope of negotiations as well as administering programs of arbitration for interest disputes and for grievances, PERC should be structured to serve those purposes with the full confidence of the parties and the public. That means PERC should be an impartial, fully-functioning administrative commission with the chairman and two other members appointed and serving on a full-time basis. The Chairman shall have the responsibility of directing all aspects of PERC. It would be administratively advantageous to have one of the other commission members specialize in dispute settlement and the third member handling the administrative

^{1/} Statement of Dr. Robert Helsby, Chairman of New York State Public Employment Relations Board, at a meeting with the Study Commission, April 2, 1975.

responsibilities connected with representation elections and the determination of scope and unfair practices.

Recommendation: The Commission recommends that the New Jersey Public Employment Relations Commission be composed of three full-time public members, appointed for terms of 6 years, except that the initial appointments be staggered with one for two years, one for four years, and the chairman for six years. The chairman of the Commission shall be appointed to that position for a fixed term corresponding to and concurrent with his appointment as a member of the Commission. Appointment to the Commission and to the chairmanship of the Commission shall be by the Governor, by and with the advice and consent of the Senate. Members of the Commission shall receive an annual salary at the level of that of a trial judge of the Superior Court. The chairman shall receive an additional \$2,500 a year in salary. No more than two members of the Commission shall be of the same political affiliation.

In support of the Recommendation, it should be pointed out that the Commission's responsibilities include adjudication of disputes

regarding the appropriate unit for representation and negotiation, which may be of vital importance to rival labor organizations and to a public employer -- the Governor or a mayor. Also, the Commission may have to decide whether a union, a mayor, or the Governor has committed an unfair labor practice. Consequently, the Commission needs a structure and status that will preclude partisanship and that will encourage confidence in its independence and integrity. For such reasons the Commission and its staff need to be able to maintain a position of autonomy and a reputation for independence.

The independence, integrity, and competence of the Commission would be facilitated by various means. One is the provision of 6-year appointment for the members, which is a common term of office for public employment relations boards (see Chart A-2). Another is appointment to the chairmanship for a fixed term. It is also important that the level of compensation for Commission members be such as to attract well qualified, experienced persons who will command respect for their professional competence. Labor arbitrators, lawyers practicing in the labor field, and labor-relations practitioners in the upper levels of management and of labor organizations generally have earnings well above salaries paid to full-time members of state public employment relations boards. It is from such sources, and from public labor relations agencies in other states, that experienced Commission members would need to be drawn. Experience in the states with labor-relations legislation covering public employees underlines the importance of having

well-qualified, respected board or commission members adjudicating cases that involve unfair labor practices, the subjects within the scope of bargaining, and the appropriate units for collective negotiations.

In order to assist in maintaining the agency's neutral status, it should be assured of independent legal representation. For a number of years the agency has employed full-time independent counsel with the full cooperation of the Attorney General's Office and the Governor's office under the provisions of section 13 of P.L. 1944, c. 20 (C.52:17A-13). In order to codify the existing arrangement and to ensure the appearance, as well as the fact, of independence, the Commission recommends amendment of section 5.1(a) of P.L. 1968, c.303 (C.34:13A-5.1(a)), as amended, which reads as follows:

(a) The Division of Public Employment Relations shall be concerned exclusively with matters of public employment related to determining negotiating units, elections, certifications and settlement of public employee representative and public employer disputes and grievances. For the purpose of complying with the provisions of Article V, Section IV, paragraph 1 of the New Jersey Constitution, the Division of Public Employment Relations is hereby allocated within the Department of Labor and Industry, and located in the City of Trenton, but notwithstanding said allocation, the office shall be independent of any supervision or control by the department or by any board or officer thereof.

by adding the following:

Notwithstanding the provisions of section 4, 11, 12 and 13 of P.L. 1944, C.20 (C.52:17A-4, 11, 12 and 13), the commission shall have the power to appoint and employ a general counsel and such other attorneys or counsel as it may require, for the purpose, among other things, of giving to the commission and to the personnel of the Division of Public Employment Relations legal advice on such matters as they may from time to time require, of attending to and controlling all litigation, controversies and legal matters in which they may be a party or in which their rights and interests may be involved, and of representing them in all proceedings or actions of any kind which may be brought for or against them in any court of this State, and with respect to all of the foregoing shall be independent of any supervision or control by the Attorney General, by the Department of Law and Public Safety, or by any division or officer thereof. This authority shall not be construed to empower any attorney of the Commission to prosecute, or assist in the prosecution of, any unfair practice charge before the Commission.

A Council on Public Employment Relations

The tradition of tripartism in labor relations boards in New Jersey has been pointed out, and the valuable contributions that experienced practitioners can bring to the intelligent application of labor relations legislation have been noted. It is important for the Commission, the Governor, and the Legislature to have the benefit of parties' special knowledge and thoughtful views based on analysis of experience.

At the same time, it is necessary to comply with the Conflict of Interest Law. That can be done by structural arrangements that permit free exchange of information and views among practitioners on a bipartisan council or board, but do not involve a person with direct interest in a particular case being present or participating in any manner during the Commission's discussion and decision on that case. In the meetings of the Commission with a bipartisan Council composed of practitioners, the focus would be on the lessons of experience, desirable changes in the application of the law, and recommendations for revisions in the law in the light of experience. Discussion of the proper decision in a particular pending case would be avoided.

Recommendations: A Council on Public Employment Relations should be established, to consist of 8 members: four representative of public employers and four representative of public employee organizations, appointed by the Governor, by and with the advice and consent of the Senate. The term of appointment of Council members shall be three years, except that the initial appointments should be staggered with the 4 employer representatives and the 4 representatives of employee organizations distributed so that, for each group, one is for one year, one is for two years, and two are for three years. The employer representatives shall choose a chairman and the representatives of employee organizations shall choose a chairman, who will serve as co-chairmen of the Council, alternating in chairing meetings of the Council.

The Council should meet with the three members of the Commission at least 4 times a year. Expenses of members in connection with Council meetings shall be paid by the State.

The duties and functions of the Council should include: to help promote the effective functioning of collective negotiations in public employment in the State; to assist the Commission in its selection of panels for ad hoc mediation, fact-finding, and arbitration under the jurisdiction of the Commission; to aid in the settlement of individual disputes under collective negotiations; to review the administration of the Act, including the Commission's rules and regulations, and to advise the Commission regarding desirable changes in the administration and enforcement of the Act; and to recommend to the Governor and the Legislature any amendments to the law that, in the Council's judgment, are desirable.

9. CLARIFYING AND ADMINISTRATIVE AMENDMENTS

In addition to the recommendations set forth in the preceding chapters, the Commission recommends several changes in the statute that are primarily for purposes of clarification and better administration of the statute. In the Commission's hearings and discussions, there appeared to be general support for such amendments.

Seven recommended changes are stated below, followed by an explanation of the basis for the recommendation.

1. Recommendation: Replace "assistant superintendent" with "assistant superintendents" wherever "assistant superintendent" appears in the "New Jersey Employer-Employee Relations Act."

When the "New Jersey Employer-Employee Relations Act" was amended and supplemented by Chapter 123, P.L. 1974, a definition of the term "managerial executive" was inserted (C.34:13A-3(f)); those employees were specifically excluded from the definition of "public employee" contained in section 3(d) of P.L. 1941, c.100 (C.34:13A-3(d)). The definition of "managerial executives" provides that in a school district the term "...shall include only the superintendent of the district." However, section 7 of P.L. 1968, c.303 (C.34:13A-5.3), as amended, indicates that the rights protected by the Act shall not extend to managerial executives "...except in a school district the term managerial executive shall mean the superintendent or his equivalent."

Because there is more than one assistant superintendent in some school districts, the statute should include assistant superintendents in the definition of managerial executives and, for consistency, section 7 of P.L. 1968, c.303 (C.34:13A-5.3), as amended, should be amended to provide that managerial executives in school districts include assistant superintendents.

2. Recommendation: Provide in the statute a definition of "supervisory employees" and make the necessary amending adjustments that are required in the statute.

Amend section 3 of P.L. 1941, c.100 (C:34:13A-3), as amended, as follows:

(h) "Supervisory employees" of a public employer means employees having the power to hire, evaluate, discipline, discharge, or to effectively recommend the same.

3. Recommendation: Bi-state agency employees should be covered under the statute to the extent possible under existing law. For that purpose, the definition of "public employer," defined in section 3(c) of P.L. 1941, c.100 (C.34:13A-3(c)), as amended, should be amended by adding the underlined portion of the following sentence:

This term shall include "public employers" and shall mean the State of New Jersey, or the several counties and municipalities thereof, or any political subdivision of the State, or a school district, or any special district, or any authority, commission or board, or any branch or agency of the public service, including bi-state agencies provided such coverage is permitted pursuant to the terms of the compacts establishing such bi-state agencies.

This recommendation is designed to assure that New Jersey-based public employees are included under the provisions of the New Jersey Employer-Employee Relations Act, if the legislation establishing the bi-state agency permits or provides for such coverage.

4. Recommendation: The statute should definitely provide that the Public Employment Relations Commission has subpoena power in unfair practice

and scope of negotiations proceedings. To that end, section 6 of P.L. 1941, c.100 (C.34:13A-6(e)), as amended, should be amended by adding the underlined words, so that it would read as follows:

For the purposes of this section and section 1 of P.L. 1974, c.123 (C.34:13A-5.4) the Division of Public Employment Relations shall have the authority and power to hold hearings, subpoena witnesses, compel their attendance, administer oaths, take the testimony or deposition of any person under oath, and in connection therewith, to issue subpoenas duces tecum, and to require the production and examination of any governmental or other books or papers relating to any matter described above. Subpoenas issued in proceedings under this section shall be enforceable in the Superior Court by commission application for compliance on notice.

Section 1 of P.L. 1974, c. 123 (C.34:13A-5.4) should also be amended by the insertion of a new subsection to read as follows:

For the purposes of this section the Division of Public Employment Relations shall have the authority and power to hold hearings, subpoena witnesses, compel their attendance, administer oaths, take the testimony or deposition of any person under oath, and in connection therewith, to issue subpoenas duces tecum, and to require the production and examination of any governmental or other books or papers relating to any matter described in this section. Subpoenas issued in proceedings under this section concerning scope of negotiation proceedings shall be enforceable in the Superior Court by commission application for compliance on notice. Failure to obey a subpoena issued in unfair practice proceedings under this section shall be punishable by the Superior Court in the same manner as like failure is punishable in any action pending in the Superior Court, and the matter shall be brought before the court by the commission.

The Legislature undoubtedly intended the pre-existing language of section 6(e) concerning commission subpoena power to apply to the unfair practice and scope of negotiations functions added by chapter 123. This recommendation would clarify the commission's subpoena power in such proceedings. Furthermore, this proposal would distinguish the enforcement procedures applicable to unfair practice subpoenas from other commission subpoenas, in recognition of the quasijudicial and adversary nature of unfair practice proceedings. Subpoenas issued in unfair practice proceedings are stated to be akin to those issued in purely judicial proceedings. It is anticipated that the Commission's

unfair practice function will be more efficacious under such circumstances. The recommended dichotomy in enforcement of subpoena procedures is consistent with the approach of the Court Rules. See R. 1:9-6.

5. Recommendation: Amend section 1(c) of P.L. 1974, c.123 (C.34:13A-5.4(c)) to eliminate the provision that PERC "shall have authority to issue and cause to be served" upon a party charged with an unfair labor practice "a complaint stating the specific unfair practice charged," and instead provide only that PERC simply issues a notice of hearing, with the charging party filing a "complaint" and carrying it forward before the Commission.

Most other state public employment relations agencies do not issue "complaints" in unfair labor practice proceedings. Also PERC, like its counterpart in other states, does not prosecute unfair labor practice charges as the National Labor Relations Board does. The role of PERC is confined to the more passive one of determining whether the Act has in fact been violated. Also PERC, like its counterparts in other states and unlike the National Labor Relations Board, is charged with providing mediation and other disputes-settling assistance to the parties. It would be better able to retain its acceptability as a truly neutral agency if it were not required to issue "complaints" in unfair practice cases.

6. Recommendation: Add to section 3(g) of P.L. 1941, c.100 (C.34:13A-3(g)), as amended, the following sentence: "All employees of the Public Employment Relations Commission are to be considered as 'confidential employees.'"

The employees of the Commission deal with issues and handle materials involved with the process of collective negotiations, unfair labor practices, and similar matters. Consequently, preservation of neutrality and confidentiality for all employees is necessary to ensure the independence and impartiality of the Commission.

7. Recommendation: The Study Commission recommends that there be no barriers to the negotiation and implementation of multi-year collective agreements.

Experience has indicated that, under certain conditions, negotiated agreements that have a term of two or more years can contribute to constructive labor relations.

10. DATA DEVELOPMENT, RESEARCH, AND TRAINING

This section deals with (1) the need for an independent, research-oriented agency to develop, analyze, and make available to the parties and the public, material on the substantive issues in public collective negotiations in New Jersey; and (2) the need for additional efforts and resources to recruit and train skilled arbitrators especially for disputes settlement in the public sector.

Data Collection and Analysis to Aid the Parties and Arbitrators

With over 1,200 units of government in New Jersey and a large number of negotiations in particular sectors and occupations (e.g., teachers, police, fire-fighters), the need for a single, impartial agency to collect, analyze, and provide useful data and interpretations of data to the parties for informed negotiations has become increasingly evident. Objective factual material and critical analysis of it can reduce misunderstanding and disagreements and assist in making collective negotiations well informed and constructive in terms of results.

Under legislated arbitration to settle impasses in negotiations as proposed in Chapter 4, it is highly important to have for New Jersey an independent agency designated and supported to assemble and evaluate data to aid the parties and arbitrators in making decisions. Arbitrators, in applying the criteria or standards (embodied in the statute as provided in the Commission's recommended impasse procedure), would particularly benefit from being able, in making their awards, to draw on data developed by a research-oriented agency, separate from government and employee organizations and commanding their respect for its expertise and objectivity.

Such basic information would also help the bipartisan Council on Public Employment Relations (proposed in Chapter 8) in deciding on policy recommendations and in recommending changes in the statute, and would assist the Legislature in judging the desirability of proposed statutory changes.

A research-oriented agency is necessary for this purpose. What is needed is not just compilation of statistics and descriptive material but also critical analyses of data and experience to assure intelligent use of the data by the parties: by mediators, fact-finders, and arbitrators, and by researchers studying the experience.

Critical interpretation of data and analysis of experience would also be valuable in the training of negotiators and of arbitrators.

Increase in the Supply of Qualified Arbitrators

Under Section 12 of P.L. 1968, c. 303 (C.34:13A-8.3), the Institute of Management and Labor Relations of Rutgers, The State University, has, in conjunction with PERC, been operating a program to provide guidance, technical advice, and training of public employers and public employees in employee-management relations. The program has included the development and training of individuals to qualify to serve as arbitrators in the public sector in the State.

Undoubtedly, there will be an increased need for well qualified arbitrators in New Jersey if this Commission's recommendations with respect to arbitration of negotiating impasses and unsettled grievances are enacted. Also, it is desirable to increase the number of women and members of minority groups who are qualified and experienced as arbitrators.

The advantages of combining the development of statistical and other knowledge for application in the public sector with the guidance and training

of practitioners and arbitrators, are apparent. The Commission, therefore, believes that the proposed program of objective data collection and analysis should be made part of the existing program of assistance, guidance, and training operated by the Institute of Management and Labor Relations of Rutgers University.

Recommendation: The Commission recommends that Section 12 of P.L. 1968, c.303(C.34:13A-8.3), as amended, be amended by adding the underlined words so that it reads as follows:

The commission in conjunction with Rutgers, the State University, shall develop and maintain a program for the guidance of public employees and public employers in employee-management relations [, to]; provide for the objective collection, analysis, and publication of data and their application; provide for the training of mediators, fact-finders, and arbitrators; provide technical advice to public employees and public employers on employee-management programs [, to]; assist in the development of programs for training employee and management personnel in the principles and procedures of consultation, negotiation and the settlement of disputes in the public service [,to]; and provide for the training of employee and management officials in the discharge of their employee-management relations responsibilities in the public interest.

STATEMENT OF DISAGREEMENT CONCERNING TWO RECOMMENDATIONS
AND COMMENT ON ABSENCE OF A RECOMMENDATION ON TWO SUBJECTS,
SUBMITTED BY SENATOR MARTIN L. GREENBERG, ASSEMBLYMAN
CHRISTOPHER J. JACKMAN, JOEL H. STERNS, ESQ., ON JANUARY
21, 1976

On January 15, 1976, the Commission agreed to accept the Recommended Draft Report on modifying the Public Employer-Employee Relations Law, with certain changes which were discussed on that date. At that time, we joined with the Commission in stating that the majority of the recommendations were a real step forward to assisting the entire dispute settlement and collective negotiations mechanisms for public employees in New Jersey. However, we must respectfully issue this statement concerning certain recommendations of the Commission.

I - Dispute Settlement

We join with the Commission in its recommendations for providing a terminal point for collective negotiations, through some form of arbitration. The history of the present Act over the past seven years demonstrates clearly that the only practical solution of concluding interminable negotiations concerning terms and conditions of employment is to seek the assistance of an outside arbitrator. While we would favor a resolution of negotiations on contract interests through conventional arbitration, we are willing to accept the option of a final offer arbitration on an issue by issue basis. However, the Commission has chosen to allow issue by issue final offer arbitration for non-economic issues alone. The Commission proposes that final offer arbitration on economic issues be on a package basis. We strongly recommend that economic matters be arbitrated on an issue by issue basis as well. We are gravely concerned that there will be attempts to misconstrue this area so as to define practically everything as economic. We believe this to be the case even though we welcome the Commission's attempt to narrow the scope of its recommendations by defining economic issues as only those which have "direct relation to employee income."

Nevertheless, we believe the Commission's proposal would allow for an arbitrator to consider on final offer basis, "trade offs" of even the most peripheral economic considerations in deciding the acceptability of

economic proposals. Public employee organizations will be faced with the unfair dilemma of giving up basic benefits for any advancement in wages and salaries. This will be particularly onerous in the times in which we now live, with community after community taking the position that salary increases can only come about through layoffs or an abandonment of minimum manning requirements or class size.

II - Scope of Negotiations

We strongly believe that it would have been the wiser policy to leave the Scope of Negotiations language as it exists in the present law (P.L. 1968, c. 303. § 7, as amended by P.L. 1974, c. 123, § 4; C. 34:13A-5.3) unchanged. The parties have had only a few months to work under this law, and no significant problems have been reported. We strongly believe that the commission should be given a reasonable period of time to determine the dimensions of the scope of negotiations under the existing legislation.

III - Service Fee

We believe it would have been helpful had the Commission recommended some agency shop or service fee provision. This could have been accomplished by a simple modification of the New Jersey Employer-Employee Relations Law.

IV - Automatic Injunction

We would have included a recommendation that some provision be allowed for a public employee organization to have an opportunity to present arguments or evidence in court, prior to the issuance of an injunction against such organizations, based upon the application of a public employer. We do not believe injunctions should be automatically issued in the public employee area.

Although we respectfully submit these comments, we do want to express our view that by and large, the Commission's recommendations are extremely beneficial to the public interests, and the final Report

clearly exhibits the high degree of professionalism and dedication shown by all who participated.

APPENDIX A

STATUTE ESTABLISHING THE STUDY COMMISSION

P.L. 1974, c. 124
approved October 21, 1974

[SECOND OFFICIAL COPY REPRINT]
ASSEMBLY, No. 814

STATE OF NEW JERSEY

INTRODUCED JANUARY 21, 1974

By Assemblymen BURSTEIN, BAER, MARTIN, VISOTCKY,
GLADSTONE, CONTILLO and HOLLENBECK

Referred to Committee on Labor Relations

AN ACT creating a commission to study and analyze the "New Jersey Employer-Employee Relations Act," approved April 30, 1941 (P. L. 1941, c. 100) as said short title was amended by P. L. 1968, c. 303 (C. 34:13A-1 et seq.) with the aim of insuring that statute's effectiveness in encouraging the impartial, timely, and effective resolution of negotiating impasses in the public sector *and making an appropriation therefor*.

1 WHEREAS, The "New Jersey Employer-Employee Relations Act"
2 was enacted to promote public employer-employee relations
3 through the prevention or prompt settlement of labor disputes;
4 and

5 WHEREAS, The persistence of unresolved employment impasses,
6 work stoppages, lockouts and strikes are unduly costly and
7 detrimental to the general welfare of the citizens of this State;
8 and

9 WHEREAS, There have been major changes in thinking within the
10 public sector leading to significant developments in the laws of
11 other states for the conclusive and equitable resolution of labor
12 dispute impasses; and

13 WHEREAS, Recent decisions of the New Jersey Supreme Court have
14 been compelled to interpret vague and imprecise parts of present
15 law, which vagueness has generated excessive litigation; and

16 WHEREAS, After more than 5 years of implementation throughout
17 this State, it is fitting that this statute which was enacted with
18 bipartisan support be studied and analyzed by a bipartisan com-

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill
is not enacted and is intended to be omitted in the law.

19 mission containing both executive and legislative appointees, to
20 insure that prompt settlement of public employment disputes be
21 fulfilled in the mid-1970's in the most expeditious and efficient
22 manner; and, if any changes are necessary, that they be aimed
23 at making the statute a more effective tool for the prevention or
24 expeditious settlement of labor disputes in the public sector;
25 now, therefore

1 BE IT ENACTED by the Senate and General Assembly of the State
2 of New Jersey:

1 1. There is hereby created a commission to be known as the Public
2 *Employer-Employee Relations Study Commission consisting of
3 *[two]* *four* members of the Senate to be appointed by the
4 President thereof, *[two]* *four* members of the General
5 Assembly to be appointed by the Speaker thereof, and four citizens
6 of this State to be appointed by the Governor. No more than *[one
7 Senator, one Assemblyman, and two citizens]* *two of any group
8 of four members* appointed to the commission shall be members
9 of the same political party. Vacancies in the membership of the
10 commission shall be filled in the same manner as the original
11 appointments were made.

1 2. The commission shall organize as soon as may be after the
2 appointment of its members and shall select a chairman from among
3 its members and a secretary who need not be a member of the
4 commission.

1 3. It shall be the duty of the commission to study and analyze the
2 "New Jersey Employer-Employee Relations Act," as said short
3 title was amended by P. L. 1968, c. 303 (C. 34:13A-1 et seq.), and
4 the implementation of said law since 1968, with the aim of insuring
5 that the purposes of such legislation concerning the prevention or
6 prompt settlement of labor disputes purposes thereof are fulfilled
7 in the most expeditious and efficient manner, and, if any changes
8 are necessary, to insure that they be aimed at making that statute
9 a more effective tool in encouraging the impartial, timely and effec-
10 tive resolution of negotiating impasses in the public sector.

11 In addition to considering any proposed changes in the "New
12 Jersey Employer-Employee Relations Act," which it deems rele-
13 vant to its study and analysis, the commission shall address itself,
14 among others, to the following questions:

15 a. Whether or not that statute should be altered to provide for
16 alternative methods of resolving all forms of disputes in public em-
17 ployment, based on an examination and analysis of nationwide
18 trends and experience, to determine whether any such methods shall

19 be permitted to supersede the provisions of Education Law (Title
20 18A) or civil service requirements;

21 b. Whether or not that statute should be altered to establish
22 guidelines for the timing of negotiations with due regard for
23 budgetary determinations and taxation programs;

24 c. Whether or not it is necessary and desirable either to define
25 the phrase "terms and conditions of employment" as used in
26 section 7 of the 1968 act (C. 34:13A-5.3) and, in so doing, specify
27 what subjects are mandatory, voluntary, or illegal within the scope
28 of bargaining or of grievance arbitration, or to require that pro-
29 cedural guidelines be established for determining same;

30 d. Whether or not the existing structure of the New Jersey Public
31 Employment Relations Commission is appropriate to fulfill the
32 purposes of the 1968 act;

33 e. Whether or not various classes of public employees, either
34 associated with transit authorities, public safety agencies, school
35 systems, or other functionally distinct enterprises, should be
36 granted differentiated rights based on their "essentiality."

1 4. The commission shall be entitled to call to its assistance and
2 avail itself of the services of such employees of any State, county
3 or municipal department, board, bureau, commission or agency as
4 it may require and as may be available to it for said purpose, and
5 to employ such stenographic, clerical, technical and expert
6 assistance and incur such traveling and other miscellaneous
7 expenses as it may deem necessary, in order to perform its duties
8 and as may be within the limits of funds appropriated or otherwise
9 made available to it for said purposes.

1 5. The commission may meet and hold hearings at such place or
2 places as it shall designate during the sessions or recesses of the
3 Legislature and shall report its findings and recommendations to
4 the Governor and the Legislature, **"[as soon as may be]"**
5 **"within 180 days after its creation"**, accompanying the same with
6 any legislative bills which it may desire to recommend for adoption
7 by the Legislature.

1 6. There is hereby appropriated to the commission from the
2 General State Fund \$25,000.00 for the purposes and duties of the
3 commission pursuant to this act. The commission is authorized to
4 apply for and to receive any Federal funds or grants or any grants
5 from foundations or other sources that may be available for carry-
6 ing out the purposes of this act.

1 7. This act shall take effect immediately.

APPENDIX B

DRAFT OF LEGISLATION FOR EFFECTING STUDY COMMISSION'S RECOMMENDATIONS

(Subject to change pursuant to review by Legislative Counsel)

AN ACT to amend and supplement the "New Jersey Employer-Employee Relations Act," approved April 30, 1941 (P.L. 1941, c. 100), as said short title was amended by P.L. 1968, C. 303.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. Section 2 of P.L. 1941, c. 100 (C. 34:13A-2) is amended to read as follows:

2. It is hereby declared as the public policy of this State that the best interests of the people of the State are served by the prevention or prompt settlement of labor disputes, both in the private and public sectors; that strikes, lockouts, work stoppages and other forms of employer and employee strife, regardless where the merits of the controversy lie, are forces productive ultimately of economic and public waste; that the interests and rights of the consumers and the people of the State, while not direct parties thereto, should always be considered, respected and protected; and that the voluntary mediation of such public and private employer-employee disputes and procedures providing finality for the resolution of public employer-employee disputes under the guidance and supervision of a governmental agency will tend to promote permanent, public and private employer-employee peace and the health, welfare, comfort and safety of the people of the State. To carry out such policy, the necessity for the enactment of the provisions of this act is hereby declared as a matter of legislative determination.

EXPLANATION - Matter underlined is amendatory of the law and matter enclosed in bold-faced brackets [thus] is intended to be omitted in the law.

2. Section 3 of P.L. 1941, c. 100 (C. 34:13A-3) is amended to read as follows:

3. When used in this act:

(a) The term "board" shall mean New Jersey State Board of Mediation.

(b) The term "commission" shall mean New Jersey Public Employment Relations Commission.

(c) The term "employer" includes an employer and any person acting, directly or indirectly, on behalf of or in the interest of an employer with the employer's knowledge or ratification, but a labor organization, or any officer or agent thereof, shall be considered an employer only with respect to individuals employed by such organization. This term shall include "public employers" and shall mean the State of New Jersey, or the several counties and municipalities thereof, or any other political subdivision of the State, or a school district, or any special district, or any authority, commission, or board, or any branch or agency of the public service including bi-state agencies provided such coverage is permitted by the terms of the compacts establishing such bi-state agencies.

(d) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer unless this act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of or in connection with any current labor dispute or because of any unfair labor practice and who has not obtained any

other regular and substantially equivalent employment. This term, however, shall not include any individual taking the place of any employee whose work has ceased as aforesaid, nor shall it include any individual employed by his parent or spouse, or in the domestic service of any person in the home of the employer, or employed by any company owning or operating a railroad or railway express subject to the provisions of the Railway Labor Act. This term shall include any public employee, i.e., any person holding a position, by appointment or contract, or employment in the service of a public employer, except elected officials, members of boards and commissions, managerial executives and confidential employees.

(e) The term "representative" is not limited to individuals but shall include labor organizations, and individual representatives need not themselves be employed by, and the labor organization serving as a representative need not be limited in membership to the employees of, the employer whose employees are represented. This term shall include any organization, agency or person authorized or designated by a public employer, public employee, group of public employees, or public employee association to act on its behalf and represent it or them.

(f) "Managerial executives" of a public employer means persons who formulate management policies and practices, and persons who are charged with the responsibility of directing the effectuation of such management policies and practices,

except that in any school district this term shall include only the superintendent or other chief administrator, and the assistant superintendents of the district.

(g) "Confidential employees" of a public employer means employees whose functional responsibilities or knowledge in connection with the issues involved in the collective negotiations process would make their membership in any appropriate negotiating unit incompatible with their official duties. All employees of the commission shall be considered as confidential employees.

(h) "Supervisory employees" of a public employer means employees having the power to hire, evaluate, discipline, discharge, or to effectively recommend the same.

(i) The term "negotiate in good faith" in public employment means the obligation of the parties to meet at reasonable times and make a genuine effort to negotiate with respect to grievances and terms and conditions of employment, or to the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation shall not compel either party to agree to a proposal or require the making of a concession.

3. Section 5 of P.L. 1968, c. 303 (C. 34:13A-5.1) is amended to read as follows:

5. There is hereby established a Division of Public Employment Relations and a Division of Private Employment Dispute Settlement.

(a) The Division of Public Employment Relations shall be concerned exclusively with matters of public employment related to determining negotiating units, elections, certifications and settlement of public employee [representative] representation questions and public employer-employee disputes, [and] grievance procedures, and unfair practice and scope of negotiation determination. For the purpose of complying with the provisions of Article V, Section IV, paragraph 1 of the New Jersey Constitution, the Division of Public Employment Relations is hereby allocated within the Department of Labor and Industry, and located in the city of Trenton, but notwithstanding said allocation, the office shall be independent of any supervision or control by the department or by any board or officer thereof. Notwithstanding the provisions of P.L. 1944, c. 20 (C. 52:17A-4, 11, 12 and 13), the commission shall have the power to appoint and employ a general counsel and such other attorneys or counsel as it may require, for the purpose, among other things, of giving the commission and the personnel of the Division of Public Employment Relations legal advice on such matters as they may from time to time require, of attending to and controlling all litigation, controversies and legal matters in which they may be a party or in which their rights and interests may be involved, and of representing them in all proceedings or actions of any kind which may be brought for or against them in any court of this State, and with respect to all of the foregoing shall be independent of any supervision or control by the Attorney General, by the Department of Law and Public Safety, or by any division or officer thereof. This authority shall not be construed to empower any attorney of the commission to prosecute or assist in the prosecution of any unfair practice charge before the commission.

(b) The Division of Private Employment Dispute Settlement shall assist the New Jersey State Board of Mediation in the resolution of disputes in private employment. The New Jersey State Board of Mediation, its objectives and the powers and duties granted by this act and the act of which this act is amendatory and supplementary shall be concerned exclusively with matters of private employment and the office shall continue to be located in the city of Newark.

4. Section 6 of P.L. 1968, c. 303 (C. 34:13A-5.2) is amended to read as follows:

6. There is hereby established in the Division of Public Employment Relations a commission to be known as the New Jersey Public Employment Relations Commission. This commission, in addition to the powers and duties granted by this act, shall have in the public employment area the same powers and duties granted to the labor mediation board in sections 7 and 10 of P.L. 1941, c. 100, and in sections 2 and 3 of P.L. 1945, c. 32. This commission shall make policy and establish rules and regulations concerning employer-employee relations in public employment relating to dispute settlement, including procedures providing finality, grievance procedures and administration including enforcement of statutory provisions concerning representative elections and related matters and to implement fully all the provisions of this act. The commission shall consist of [seven] three full-time members to be appointed by the Governor, by and with the advice and consent of the Senate, with no more than two from the same political party. The Governor shall designate one of the members of the commission as chairman of the commission. [Of such

members, two shall be representative of public employers, two shall be representative of public employee organizations and three shall be representative of the public including the appointee who is designated as chairman.] Of the first appointees, one [two] shall be appointed for a term of 2 years, [two for a term of 3 years and three, including the chairman,] one for a term of 4 years and the chairman shall be appointed for a fixed term of 6 years corresponding to and concurrent with his appointment as a member of the commission. The chairman shall be its chief executive officer and administrator. The other members of the commission shall be eligible to appointment to fill a vacancy in the office of chairman of the commission. Members of the commission shall be eligible for reappointment. Their successors shall be appointed for terms of 6 [3] years each, and until their successors are appointed and qualified except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the member whose office has become vacant.

The [members] chairman of the commission [, other than the chairman,] shall receive an annual salary of \$2,500.00 more than the other members of the commission [be compensated at the rate of \$100.00 for each 6 hour day spent in attendance at meetings and consultations and shall be reimbursed for necessary expenses in connection with the discharge of their duties except that] who shall receive an annual salary equal to that of a trial judge of the State Superior Court [no commission member who receives a salary or other form of

compensation as a representative of any employer or employee group, organization or association, shall be compensated by the commission for any deliberations directly involving members of said employer or employee group, organization or association. Compensation for more, or less than, 6 hours per day, shall be prorated in proportion to the time involved.

The chairman of the commission shall be its chief executive officer and administrator, shall devote his full time to the performance of his duties as chairman of the Public Employment Relations Commission and shall receive such compensation as shall be provided by law. The term of the member of the commission who is designated as chairman on the date of enactment of this act shall expire on the effective date of this act].

5. Section 7 of P.L. 1968, c. 303 (C. 34:13A-5.3) is amended to read as follows:

7. (a) Except as hereinafter provided, public employees shall have, and shall be protected in the exercise of, the right, freely and without fear of penalty or reprisal, to form, join and assist any employee organization or to refrain from any such activity; provided, however, that this right shall not extend to elected officials, members of boards and commissions, managerial executives, or confidential employees except in a school district the term managerial executive shall mean the superintendent of schools or his equivalent, nor, except where established practice, prior agreement or special circumstances, dictate the contrary, shall any supervisor having the power to hire, discharge,

discipline, or to effectively recommend the same, have the right to be represented in collective negotiations by an employee organization that admits nonsupervisory personnel to membership, and the fact that any organization has such supervisory employees as members shall not deny the right of that organization to represent the appropriate unit in collective negotiations; and provided further, that, except where established practice, prior agreement, or special circumstances dictate the contrary, no policeman shall have the right to join an employee organization that admits employees other than policemen to membership. The negotiating unit shall be defined with due regard for the community of interest among the employees concerned, but the commission shall not intervene in matters of recognition and unit definition except in the event of a dispute.

Representatives designated or selected by public employees for the purposes of collective negotiation by the majority of the employees in a unit appropriate for such purposes or by the majority of the employees voting in an election conducted by the commission as authorized by this act shall be the exclusive representatives for collective negotiation concerning the terms and conditions of employment of the employees in such unit. Nothing herein shall be construed to prevent any official from meeting with an employee organization for the purpose of hearing the views and requests of its members in such unit so long

as (a) the majority representative is informed of the meeting; (b) any changes or modifications in terms and conditions of employment are made only through negotiation with the majority representative; and (c) a minority organization shall not present or process grievances. Nothing herein shall be construed to deny to any individual employee his rights under Civil Service laws or regulations. When no majority representative has been selected as the bargaining agent for the unit of which an individual employee is a part, he may present his own grievance either personally or through an appropriate representative or an organization of which he is a member and have such grievance adjusted. A majority representative of public employees in an appropriate unit shall be entitled to act for and to negotiate agreements covering all employees in the unit and shall be responsible for representing the interest of all such employees without discrimination and without regard to employee organization membership. A majority representative of employees and a public employer or his designated representative have the mutual obligation to negotiate in good faith. After the effective date of this act [Proposed] proposed new rules or modifications of existing rules [governing] changing working conditions covered by a collectively negotiated agreement shall be negotiated with the majority representative before they are established. [In addition, the majority representative and designated representatives of the public employer

shall meet at reasonable times and negotiate in good faith with respect to grievances and terms and conditions of employment. When an agreement is reached on the terms and conditions of employment, it shall be embodied in writing and signed by the authorized representatives of the public employer and the majority representative.] Public employers shall not be required to negotiate collectively any term or condition of employment concerning matters of intrinsic managerial policy or function or that contravenes any constitutional or statutory mandate.

(b) (1) Public employers shall negotiate written policies setting forth grievance procedures for the settlement of grievances arising out of the interpretation or application of the provisions of a negotiated agreement by means of which their employees or representatives of employees may appeal the interpretation, application or violation of [policies,] collective negotiation agreements, [and administrative decisions affecting them,] provided that such grievance procedures shall be included in any agreement entered into between the public employer and the representative organization. Such grievance procedures shall [may] provide for binding arbitration as a means for resolving disputes, except for those items or provisions in the agreement that the parties themselves, by mutual

agreement, specifically exclude from binding arbitration as a final step. Notwithstanding any procedure for the resolution of disputes, controversies or grievances established by any other statute, grievance procedures established by agreement between the public employer and the representative organization shall be utilized for any dispute covered by the terms of such agreement.

(2) The parties may agree on a procedure for the selection of an arbitrator or arbitrators, including agreement on an appropriate agency to provide them with lists of arbitrators, or if they are unable to agree on a procedure or agency, an arbitrator shall be selected from a list drawn from the commission panel of arbitrators.

(3) A grievant may utilize only one grievance procedure for the resolution of a particular issue.

(4) Any collective agreement entered into prior to the effective date of this subsection shall not be subject to the provisions of this subsection.

6. Section 1 of P.L. 1974, c. 123 (C. 34:13A-5.4) is amended to read as follows:

1. a. Public employers [Employers], their representatives or agents are prohibited from:

(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act.

(2) Dominating or interfering with the formation, existence or administration of any employee organization.

(3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or

discourage employees in the exercise of the rights guaranteed to them by this act.

(4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under this act.

(5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative.

(6) Refusing to reduce a negotiated agreement to writing and to sign such agreement.

(7) Violating any of the rules and regulations established by the commission.

b. Public employee [Employee] organizations, their representatives or agents are prohibited from:

(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act.

(2) Interfering with, restraining or coercing a public employer in the selection of his representative for the purposes of negotiations or the adjustment of grievances.

(3) Refusing to negotiate in good faith with a public employer, if they are the majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit.

(4) Refusing to reduce a negotiated agreement to writing and to sign such agreement.

(5) Violating any of the rules and regulations established

by the commission.

c. The commission shall have exclusive power as hereinafter provided to prevent anyone from engaging in any unfair practice listed in subsections a. and b. above. Whenever it is charged that anyone has engaged or is engaging in any such unfair practice, the commission, or any designated agent thereof, shall have authority to issue a notice of hearing, following the filing of a complaint by either party [and cause to be served upon such party a complaint] stating the specific unfair practice charged and [including a notice of hearing] containing the date and place of hearing before the commission or any designated agent thereof; provided that no complaint shall [issue] be filed based upon any alleged unfair practice occurring more than 6 months prior to the filing of the [charge] complaint unless the person aggrieved thereby was prevented from filing such [charge] complaint in which event the 6 months period shall be computed from the day he was no longer so prevented. In any such proceeding, the provisions of the Administrative Procedure Act, P.L. 1968, c. 410 (C. 52:14B-1 et seq.) shall be applicable. Evidence shall be taken at the hearing and filed with the commission. If, upon all the evidence taken, the commission shall determine that any party charged has engaged or is engaging in any such unfair practice, the commission shall state its findings of fact and conclusions of law and issue and cause to be served on such party an order requiring such party to cease and desist from such unfair practice, and to take such reasonable affirmative action as will effectuate the policies of this act. All cases in which a [complaint and] notice

of hearing on a [charge] complaint is actually issued by the commission, shall be prosecuted before the commission or its agent, or both, by the representative of the employee organization or party filing the [charge] complaint or his authorized representative.

d. The commission shall at all times have the exclusive power and duty, upon the request of any public employer or majority representative, to make a determination as to whether a matter in dispute is within the scope of collective negotiations and to specify whether or not a subject is a required or permissive subject of collective negotiation . The commission shall serve the parties with its findings of fact and conclusions of law. Any determination made by the commission pursuant to this subsection may be appealed to the Appellate Division of the Superior Court.

e. The commission shall adopt such rules as may be required to regulate the conduct of representation elections, and to regulate the time of commencement of negotiations and of institution of impasse procedures so that there will be full opportunity for negotiations and the resolution of impasses prior to required budget submission dates.

f. For the purposes of this section the Division of Public Employment Relations shall have the authority and power to hold hearings, subpoena witnesses, compel their attendance, administer oaths, take the testimony or deposition of any person under oath, and in connection therewith, to issue subpoenas duces tecum, and to require the production and examination of any governmental or other books or papers relating to any matter described in this section. Subpoenas

issued in proceedings under this section concerning scope of negotiation proceedings shall be enforceable in the Superior Court by commission application for compliance on notice.
Failure to obey a subpoena issued in unfair practice proceedings under this section shall be punishable by the Superior Court in the same manner as like failure is punishable in an action pending in the Superior Court, and the matter shall be brought before the court by the commission.

[f.] g. The commission shall have the power to apply to the Appellate Division of the Superior Court for an appropriate order enforcing any order of the commission issued under subsection c. or d. hereof, and its findings of fact, if based upon substantial evidence on the record as a whole, shall not, in such action, be set aside or modified; any order for remedial or affirmative action, if reasonably designed to effectuate the purposes of this act, shall be affirmed and enforced in such proceedings.

7. Section 6 of P.L. 1941, c. 100 (C. 34:13A-6) is amended to read as follows:

6. (a) Upon its own motion, in an existing, imminent or threatened labor dispute in private employment, the board, through the Division of Private Employment Dispute Settlement, may, and, upon the request of the parties or either party to the dispute, must take such steps as it may deem expedient to effect a voluntary amicable and expeditious adjustment and settlement of the differences and issues between employer and employees which have precipitated or culminated in or threaten to precipitate or culminate in such labor dispute.

(b) (1) Whenever negotiations between a public employer and an exclusive representative concerning the terms and conditions of employment shall reach an impasse, the commission, through the Division of Public Employment Relations shall, upon the request of either party, or upon its own motion, take such steps including the assignment of a mediator as it may deem expedient to effect a voluntary resolution of the impasse. The cost of mediation shall be borne by the commission. [In the event of a failure to resolve the impasse by mediation the Division of Public Employment Relations is empowered to recommend or invoke fact-finding with recommendation for settlement, the cost of which shall be borne by the commission.]

(2) In the event of a failure to resolve the impasse by mediation, the Division of Public Employment Relations, at the request of either party, shall invoke fact-finding with recommendation for settlement of all issues in dispute unless the parties reach a voluntary settlement prior to the issuance of the fact-finders report and recommended terms of settlement. Fact-finding shall be limited to those issues that are within the required scope of negotiations unless the parties to the fact-finding agree to fact-finding on permissive subjects of negotiation. The cost of fact-finding shall be borne by the commission. In the event of a continuing failure to resolve an impasse by means of the procedures set forth above, and notwithstanding the fact that such procedures have not been exhausted, the parties shall notify the commission 60 days prior to the required budget submission date of the public employer as to whether or not they have agreed upon a terminal procedure for resolving the issues in dispute. Any terminal procedure mutually agreed upon by the parties shall be reduced to writing, provide for finality in resolving the issues in dispute, and shall be

submitted to the commission for approval.

(3) Terminal procedures that are approvable include, but shall not be limited to the following:

(a) Conventional arbitration of all unsettled items.

(b) Arbitration under which the award by an arbitrator or panel of arbitrators is confined to a choice between (1) the last offer of the employer and (2) the last offer of the employees' representative, as a single package.

(c) Arbitration under which the award is confined to a choice between (1) the last offer of the employer and (2) the last offer of the employees' representative, on each issue in dispute, with the decision on an issue-by-issue basis.

(d) If there is a fact-finder's report with recommendations on the issues in dispute, the parties may agree to arbitration under which the award would be confined to a choice among three positions: (1) the last offer of the employer as a single package, (2) the last offer of the employees' representative as a single package, or (3) the fact-finder's recommendations as a single package.

(e) If there is a fact-finder's report with a recommendation on each of the issues in dispute, the parties may agree to arbitration under which the award would be confined to a choice on each issue from among three positions: (1) the last offer of the employer on the issue, (2) the employee representative's last offer on the issue, or (3) the fact-finder's recommendation on the issue.

(f) Arbitration under which the award on the economic issues in dispute is confined to a choice between (1) the

last offer of the employer on the economic issues as a single package and (2) the employee representative's last offer on the economic issues as a single package; and, on any noneconomic issues in dispute, the award is confined to a choice between (1) the last offer of the employer on each issue in dispute and (2) the employee representative's last offer on that issue.

(4) The following procedure shall be utilized if parties fail to agree on a terminal procedure for the settlement of an impasse dispute:

(a) In the event of a failure of the parties to agree upon an acceptable terminal procedure 50 days prior to the public employer's budget-submission date, no later than the aforesaid time the parties shall separately so notify the commission in writing, indicating all issues in dispute and the reasons for their inability to agree on the procedure. The substance of a written notification shall not provide the basis for any delay in effectuating the provisions of this subsection.

(b) Upon receipt of such notification from either party or on the commission's own motion, the procedure to provide finality for the resolution of issues in dispute shall be binding arbitration under which the award on the economic issues in dispute shall be confined to a choice between:

(1) the last offer of the employer on such issues as a single package and (2) the employee representative's last offer, on such issues, as a single package; and, on the noneconomic issues in dispute, the award shall be confined to a choice between: (1) the last offer of the employer on each issue in dispute and (2) the employee representative's last offer on such issue.

(5) The commission shall take measures to assure the selection of an arbitrator or arbitrators from its special panel of arbitrators. Appointment of an arbitrator to the commission's special panel shall be for a 3-year term, with reappointment contingent upon a screening process similar to that used for determining initial appointments.

(6) (a) Prior to the arbitration proceedings, the parties shall submit to the arbitrator or tripartite panel of arbitrators, pursuant to rules and procedures established by the commission, their final offers in two separate parts: (1) a single package containing all the economic issues in dispute and (2) the individual issues in dispute not included in the economic package, each set forth separately by issue.

(b) In the event of a dispute, the commission shall have the power to decide which issues are economic issues. Economic issues include those items which have a direct relation to employee income including wages, salaries, hours in relation to earnings, and other forms of compensation such as paid vacation, paid holidays, health and medical insurance, and other economic benefits to employees.

(c) Throughout formal arbitration proceedings the chosen arbitrator or panel of arbitrators may mediate or assist the parties in reaching a mutually agreeable settlement.

(d) Arbitration shall be limited to those subjects that are within the required scope of collective negotiations, except that the parties may agree to submit to arbitration one or more permissive subjects of negotiation.

(e) The decision of an arbitrator or panel of arbitrators shall include an opinion and an award, which shall be final and binding upon the parties and shall be irreversible, except where there is submitted to the court extrinsic evidence upon which the court may vacate, modify or correct such award pursuant to N.J.S. 2A:24-7 et seq. or for failure to apply the factors specified in paragraph 7 below.

(f) The parties shall bear the costs of arbitration subject to a fee schedule approved by the commission.

(7) The arbitrator or panel of arbitrators shall decide the dispute based on a reasonable determination of the issues, giving due weight to those factors listed below that are judged relevant for the resolution of the specific dispute:

(a) The interests and welfare of the public.

(b) Comparison of the wages, salaries, hours, and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours, and conditions of employment of other employees performing the same or similar services and with other employees generally:

(1) in public employment in the same or similar comparable jurisdictions.

(2) in comparable private employment.

(3) in public and private employment in general.

(c) The overall compensation presently received by the employees, inclusive of direct wage, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received.

(d) Stipulations of the parties.

(e) The lawful authority of the employer.

(f) The financial impact on the governing unit, its residents and taxpayers.

(g) The cost of living.

(h) The continuity and stability of employment including seniority and tenure rights and such other factors not confined to the foregoing which are ordinarily or traditionally considered in the determination of wages, hours, and conditions of employment through collective negotiations and collective bargaining between the parties in the public service and in private employment.

(8) A mediator, fact-finder, or arbitrator while functioning in a mediatory capacity shall not be required to disclose any files, records, reports, documents, or other papers classified as confidential received or prepared by him or testify with regard to mediation, conducted by him under this act on behalf of any party to any cause pending in any type of proceeding under this act. Nothing contained herein shall exempt such an individual from disclosing information relating to the commission of a crime.

(9) The provisions of this subsection concerning terminal procedures shall apply to all negotiations for new agreements, renewals of existing agreements, or reopener provisions of existing agreements that are or shall become effective during the first full fiscal year of the public employer after the effective date of this subsection.

(c) The board in private employment, through the Division of Private Employment Dispute Settlement, and the commission in public employment, through the Division of Public Employment

Relations, shall take the following steps to avoid or terminate labor disputes: (1) to arrange for, hold, adjourn or reconvene a conference or conferences between the disputants or one or more of their representatives or any of them; (2) to invite the disputants or their representatives or any of them to attend such conference and submit, either orally or in writing, the grievances of and differences between the disputants; (3) to discuss such grievances and differences with the disputants and their representatives; and (4) to assist in negotiating and drafting agreements for the adjustment in settlement of such grievances and differences and for the termination or avoidance, as the case may be, of the existing or threatened labor dispute.

(d) The commission, through the Division of Public Employment Relations, is hereby empowered to resolve questions concerning representation of public employees by conducting a secret ballot election or utilizing any other appropriate and suitable method designed to ascertain the free choice of the employees. The division shall decide in each instance which unit of employees is appropriate for collective negotiation, provided that, except where dictated by established practice, prior agreement, or special circumstances, no unit shall be appropriate which includes (1) both supervisors and non-supervisors, (2) both professional and nonprofessional employees unless a majority of such professional employees vote for inclusion in such unit or, (3) both craft and noncraft employees unless a majority of such craft employees vote for inclusion in such unit. All of the powers and duties conferred or imposed upon the division that are necessary for

the administration of this subdivision, and not inconsistent with it, are to that extent hereby made applicable. Should formal hearings be required, in the opinion of said division to determine the appropriate unit, it shall have the power to issue subpoenas as described below, and shall determine the rules and regulations for the conduct of such hearing or hearings.

(e) For the purposes of this section the Division of Public Employment Relations shall have the authority and power to hold hearings, subpoena witnesses, compel their attendance, administer oaths, take the testimony or deposition of any person under oath, and in connection therewith, to issue subpoenas duces tecum, and to require the production and examination of any governmental or other books or papers relating to any matter described above. Subpoenas issued in proceedings under this section shall be enforceable in the Superior Court by commission application for compliance on notice.

(f) In carrying out any of its work under this act, the board may designate one of its members, or an officer of the board to act in its behalf and may delegate to such designee one or more of its duties hereunder and, for such purposes, such designee shall have all the powers hereby conferred upon the board in connection with the discharge of the duty or duties so delegated. In carrying out any of its work under this act, the commission may designate one of its members or an officer of the commission to act on its behalf and may delegate to such designee one or more of its duties hereunder and, for such purpose, such designee shall have all of the

powers hereby conferred upon the commission in connection with the discharge of the duty or duties so delegated.

(g) The board and commission may also appoint and designate other persons or groups of persons to act for and on its behalf and may delegate to such persons or groups of persons any and all of the powers conferred upon it by this act so far as it is reasonably necessary to effectuate the purposes of this act. Such persons shall serve without compensation but shall be reimbursed for any necessary expenses.

(h) The personnel of the Division of Public Employment Relations shall include only individuals familiar with the field of public employee-management relations. The commission's determination that a person is familiar in this field shall not be reviewable by any other body.

8. Section 7 of P.L. 1941, c. 100 (C. 34:13A-7) is amended to read as follows:

7. Whenever a controversy shall arise between [an] a private employer and his employees which is not settled either in conference between representatives of the parties or through mediation in the manner provided by this act, such controversy may, by agreement of the parties, be submitted to arbitration, one person to be selected by the employer, one person to be selected by the employees, and a third selected by the representatives of the employer and employees, and in the event of any such appointment or selection not being made upon the request of the parties in the controversy, the department may select the third person to arbitrate the matter submitted; provided, however, that the failure or refusal of either party to submit a controversy to arbitration shall not

be construed as a violation of the policy or purpose of this act, or of any provision thereof, nor shall failure or refusal to arbitrate constitute a basis for any action at law or suit in equity.

9. Section 12 of P.L. 1968, c. 303 (C. 34:13A-8.3) is amended to read as follows:

12. The commission in conjunction with the Institute of Management and Labor Relations of Rutgers, The State University, shall: develop and maintain a program for the guidance of public employees and public employers in employee-management relations[, to] ; provide for the objective collection, analysis, and publication of data and application thereof; provide for the training of mediators, factfinders and arbitrators; provide technical advice to public employees and public employers on employee-management programs[, to]; assist in the development of programs for training employee and management personnel in the principles and procedures of consultation, negotiation and the settlement of disputes in the public service[.]; and provide for the training of employee and management officials in the discharge of their employee-management relations responsibilities in the public interest.

10. (New Section) (a) There is hereby established in the Division of Public Employment Relations a Council on Public Employment Relations, which shall consist of 8 members, appointed by the Governor, by and with the advice and consent of the Senate, 4 of whom shall be representative of public employers and 4 of whom shall be representative of public employee organizations. Of the first appointees, one representative of public employers and one representative of employ-

ee organizations shall be appointed for 1 year, 1 representative of said interests shall be appointed for 2 years each, and 2 representatives of said interests shall be appointed for 3 years each. Their successors shall be appointed for terms of 3 years each. Members of the council shall be eligible for reappointment.

(b) A majority of the membership of the council shall constitute a quorum for the transaction of council business.

(c) The council shall meet with the commission at least 4 times a year.

(d) The employer representatives shall choose a chairman and the representatives of employee organizations shall choose a chairman, who shall serve as co-chairmen of the council, alternating in chairing meetings of the council.

(e) Members of the council shall serve without compensation, but may be reimbursed by the State for necessary expenses incurred in the discharge of their duties.

11. (New Section) The council shall (a) help to promote the effective functioning of collective negotiations in public employment in the State; (b) assist the commission in its selection of panels for ad hoc mediation, fact-finding, and arbitration under the jurisdiction of the commission; (c) aid in the settlement of individual disputes; (d) review the administration of the "New Jersey Employer-Employee Relations Act," including the commission's rules and regulations, and advise the commission regarding desirable changes in the administration and enforcement of said act; and (e) recommend to the Governor and Legislature any amendments to said act that it deems advisable.

12. This act shall take effect immediately, except that the amendatory provisions of subsection 7 (b) of P.L. 1968, c. 313 (C. 34:13A-5.3), and the amendatory provisions of subsection 6 (b) of P.L. 1941, c. 110 (C. 34:13A-6), shall take effect 60 days after the enactment of this act.

STATEMENT

The purpose of this bill is to amend and supplement the "New Jersey Employer-Employee Relations Act" (P.L.1941,c.100; C. 34:13A-1 et seq.) so as to implement the recommendations of the New Jersey Public Employer-Employee Relations Study Commission, created pursuant to P.L.1974,c.124. The bill provides specific procedures to bring about the peaceful settlement of a persistent impasse in negotiations that occurs in any public employment covered by the "New Jersey Employer-Employee Relations Act," including state, county, municipal and school district employment. Public employers and employee organizations would be stimulated to adopt, by mutual agreement, one of six statutory procedures for resolving deadlocks that develop in negotiations should the parties fail to reach an agreement in direct negotiations. The bill requires submission of a continuing controversy to a form of binding arbitration, under which the arbitrator or panel of arbitrators would make an award by choosing between the final offers of the two parties on (a) the economic issues as a single combined package and (b) the noneconomic issues on an issue-by-issue basis. The parties would be given an appropriate period of time to take those impasse procedures into account before the negotiations of a new agreement would be subject to them.

The bill also requires that negotiated agreements in covered employment provide binding arbitration as a terminal step in a procedure for the settlement of grievances that concern the interpretation or application of the provisions of a collective agreement. The parties could, by mutual agreement, exclude individual items from such binding arbitration.

Statutory requirement for arbitration of unsettled grievances would not take effect before the parties had adequate time to discuss and to embody the necessary changes in a new, negotiated agreement.

Concerning the scope of negotiations, the bill provides: (a) that the Public Employment Relations Commission be given statutory authority to determine which are and which are not required subjects or permissive subjects for negotiation; and (b) that public employers not be required to negotiate concerning matters of intrinsic managerial policy or function.

The bill also provides that the Public Employment Relations Commission be changed from a tripartite membership (one member-chairman serving full-time and 6 members serving part-time) with 3-year terms, to a 3-member, all public Commission with 6-year terms, all three serving on a full-time basis. A bipartisan Council on Public Employment Relations would be established to meet with the Public Employment Relations Commission for certain purposes, including possible assistance in the settlement of individual disputes and in the screening of arbitrators for a Commission-established list, from which the parties and the Commission would select neutrals for binding arbitration.

Provision is also made in this bill for the systematic development of objective, comparative data for use by the parties, by arbitrators (especially in applying statutory standards under interest arbitration), for the training of

mediators, factfinders and arbitrators, and for analyses of the effects of the proposed changes in the law. The provisions regarding binding arbitration will necessitate some additional trained arbitrators.

Finally, seven technical amendments to the "New Jersey Employer-Employee Relations Act" are proposed that are primarily for purposes of clarification and efficient administration.

APPENDIX C

PROPOSAL FOR LABOR PART
OF THE SUPERIOR COURT

PROPOSAL FOR THE CREATION OF A LABOR PART
TO HANDLE ALL LABOR ADJUDICATIONS

Central to the proposal which is outlined below is recognition of the fact that the judiciary has historically been the guardian of private rights, both personal and property. Today, with the advent of collective bargaining in the public sector, all branches and levels of government are subject to novel procedures in dealing with their employees. In New Jersey, an assessment is now being made of the effectiveness of present procedures, and recommendations are being formulated where the need for improvement has been indicated. One such recommendation focuses upon the need to have the judiciary assume, on behalf of the public interest, the same functions in the area of public sector negotiations that it has exercised so diligently in behalf of private parties. At this point in the development of labor relations in New Jersey, it is essential that the next legislative steps be taken in the proper direction and this necessarily includes recognition of the dominant public interest considerations at stake.

It is proposed that a Court of Chancery within the New Jersey Superior Court be designated a Labor Part to handle the more substantial questions arising under the New Jersey Employer-Employee Relations Act as well as matters under all other State labor statutes. The adoption of such a proposal would insure maximum benefit without in any way interfering with the efficient administration of the statutes involved. The

Chancery Court would have the following jurisdiction:

1. All unfair practice cases determined by PERC to present justiciable issues (further comment on PERC's role will follow).

2. All determinations regarding scope of negotiations, i.e., whether a particular subject matter is required by law to be negotiated, whether it is illegal to negotiate such, or whether it is permissible to negotiate such even though it may not be required.

3. All determinations regarding the identification of a subject as either "economic" or "non-economic" where the parties disagree.

4. All other legal determinations under the Employer-Employee Relations Act.

5. The issuance of all temporary restraining orders, preliminary and permanent injunctions in public and private sector labor disputes.

6. The enforcement and vacation of arbitration awards.

7. All jurisdiction currently exercised by the Chancery Court in labor matters.

The proposal contemplates that while the Chancery Court would have exclusive jurisdiction in the matters above, it would to the extent its docket permitted continue to handle any other matter normally handled by a Chancery Court. On the other hand, if its labor docket temporarily burgeoned, the overflow could be handled by designating a sitting judge or a retired judge to assist in reducing the backlog. In short, the Labor Part would react to the supervising authority of the Chief Justice, thereby assuring maximum utilization and flexibility.

As a result of this proposal, the Public Employment Relations Commission would be able to focus its energies and resources on those matters which it has supervised since its inception, namely, the peaceful resolution of representation disputes and impasses in collective negotiations. With respect to the legal issues presented to the Labor Part regarding whether a subject matter is within or outside the scope of negotiations, PERC would be expected to participate in the briefing and argument on such points so that the Court would have the benefit of its observations and experience obtained as a third party neutral in resolving impasses. On the other hand, in unfair practice cases, only the charging party and the respondent would have standing as parties and PERC would not participate in such proceedings.

The benefits which flow from this proposal are obvious. We are dealing with substantial questions having enormous impact upon the public and most significant issues regarding the proper administration of the Act. These are matters where the public interest must remain paramount. By vesting jurisdiction in a Court of Chancery, the process is the immediate beneficiary of the traditions associated with the judiciary, namely, obvious and objective separation from the executive branch, impartiality of approach and decision, and independence to the greatest degree possible from the fact and appearance of political overtones and intervention. Other evident benefits are the expertise which derives from continuous exposure to similar problems under

the same statute, the dignity of a judicial proceeding, and the higher degree of acceptability of judicial determinations than is generally associated with those made by an administrative agency. Many of these benefits would simply not be available if the course to be followed were administrative adjudication with subsequent Appellate Division review. Where there is judicial review of agency action, great deference must be shown not only to the agency's factual determinations but more importantly to its articulation of what the public policy should be pursuant to a particular legislative grant. Because of the obvious impact which policy choices can have in the area of public sector bargaining, it is clearly the wiser course to entrust these decisions in the first instance to a Court rather than an agency. Also, judicial treatment in the first instance should tend to reduce the number of automatic appeals to an already overburdened Appellate Division. And of course, of no small import in this process would be the impartiality of the judicial member as already noted.

In order to free the Labor Part from handling the frivolous and purely tactical complaints, and also in order to obtain the benefit of PERC's conciliatory processes, PERC would be the initial recipient of any unfair practice charge or complaint filed pursuant to N.J.S.A. 34:13A-5.4(a) and (b). This proposal

contemplates that the charge would be processed in the following manner:

(1) PERC rules should require an unfair practice charge or complaint by an employee representative, employee, or by a public employer to be filed under oath with supporting affidavits. On filing, PERC staff should examine it (calling for further exparte proofs or affidavits, if necessary), and if it is frivolous on its face, legally or factually, the Commission should dismiss it.

(2) If it is not frivolous, the staff examiner should have it served upon respondent, fixing a time within which an answer should be filed with supporting affidavits.

(3) When the complaint and defense paper record is complete, again if the charge, in the judgment of PERC or its examiner, is then clearly frivolous legally or factually, it should be dismissed.

(4) If a consideration of then existing paper record shows a genuine factual or legal dispute as to whether an unfair practice has been committed, the Commission may in its discretion, if it feels that a likelihood exists that the dispute might be adjusted by a voluntary conference, request the parties to come in for such a conference.

(5) If such a factual or legal dispute appears, and the Commission concludes that a settlement conference would not be fruitful, or if such a conference has been unsuccessful, then the record shall be filed in the Labor Part, with the notation that the Commission having found that a reasonable factual or legal dispute exists between the parties as to whether an unfair practice was committed, the case is transmitted to the Labor Part for determination. This statement obviously is entirely neutral, except, of course, that it does represent a preliminary evaluation by the Commission that a bona fide factual/legal controversy exists between the parties which requires adjudication by the Part.

(6) The Commission shall either dismiss the complaint or transmit the record to the Labor Part within a time reasonable for such determination, as fixed by Commission rule.

(7) Any dismissal by the Commission of a complaint shall be subject to initial review by the Labor Part.

This proposal would not require complex legislation nor disruption of the judicial pattern. Also, it would not require substantial outlay of financial resources. On the other hand, it would relieve an already extremely overburdened administrative agency to tend to those matters which are more peculiarly suited to it. Most important, it will entrust the public's business to the system best devised to date to handle impartially these important issues in a deliberative fashion.

APPENDIX D

PROVISIONS OF STATE LAWS ON PUBLIC EMPLOYMENT RELATIONS

Chart A-1 Provisions of State Laws Concerning Compulsory Arbitration of Interest Disputes

State	Categories of Employee Covered	Who initiates Arbitration	Single Arbitrator or Tripartite Panel	Type of Arbitration ^{1/}		Parties Permitted choice of procedure	Can Mediation ^{2/} Occur
				Convent.	Final Offer		
Alaska	Class 1 ^{3/} Class 2	automatic ^{4/} automatic after strike injunction	n.a. ^{5/}	X		n.a.	n.a.
Conn.	all municipal ^{6/}	automatic	tripartite		issue by issue	no	yes
Ind.	a. police & fire ^{7/}	automatic	tripartite	X		yes	
	b. other public employees	voluntary	3 persons		package ^{8/}	yes	no
Iowa	a. all state employees	either party	1 or tripartite		issue by issue ^{9/}	yes	yes
	b. firemen	either party	tripartite ^{10/}		issue by issue	no	
Maine	municipal, state & univ. empl.	either party	tripartite	X		yes	yes
Mass.	police & firemen	automatic	tripartite		package	no	yes
Mich.	police & firemen	either party	tripartite	X	issue by issue ^{11/}	no	yes
Minn. ^{12/}	state empl.	both parties must agree	1 or tripartite		package	no	yes
Neb. ^{13/}	all inclusive	parties & state	all public	X		no	yes

Provisions of State Laws Concerning Compulsory Arbitration of Interest Disputes

State	Categories of employee covered	Who initiates Arbitration	Single Arbitrator or Tripartite Panel	Type of Arbitration		Parties Permitted choice of procedure	Can Medie Occur
				Convent.	Final Offer		
Nev.	local government	governor ^{14/}	1 person		n.a.	no	n.a.
N.Y.	police & firemen	either party	tripartite	X		yes	yes
Okla.	police &	automatic	tripartite	X		no	n.a.
Ore.	a. police & fire	either party	single or tripartite	X		no	n.a.
	b. all state empl.	either party ^{15/} or bd. injunc.	tripartite	X		no	no
R.I.	a. state	automatic	single	X		no	no
	b. mun.	automatic	parties may agree to any number	X		no	no
	c. police & fire	automatic	tripartite	X		no	n.a.
Pa.	court attendants, prison guards, police, fire	either party	tripartite	X		no	yes
S.D.	police & fire	either party	tripartite	X		no	n.a.
Wash.	uniformed services, comm. call faculty/other ^{16/}	automatic	tripartite	X		no	n.a.
Wis.	firemen	either party	single		package	no	r.a.

Notes to Chart A-1

1. In conventional arbitration the arbitrator(s) fashions his own award, modifying the positions of the parties as he wishes. Final offer refers to a procedure in which the arbitrator(s) must choose between the last offers of each party. Package means that the arbitrator must choose the position of one side in its entirety without modification. In issue-by-issue, the arbitrator chooses the position of one side or the other on each item in dispute.
2. Some laws provide that mediation may occur after arbitration hearings have commenced, the so-called "med-arb" approach. The arbitrator(s) under some statutes may remand the dispute back to the parties for further negotiation.
3. Alaska divides its employees into three classes:
Class 1: police, fire, guards, hospital employee;
Class 2: public utilities, snow removal, sanitation, teachers;
Class 3: employees not included in classes 1 and 2.
The details of the arbitration procedure are not found in the collective bargaining law. Class 1 is forbidden to strike and hence must go to arbitration. Class 2 may strike but must undergo arbitration on issuance of an injunction.
4. "Automatic" means that arbitration is automatically invoked after a certain number of days of impasse in negotiations.
5. n.a. means that the statute is silent on the subject.
6. Some laws provide that the parties may agree upon their own impasse procedure.
7. Except certified employees of school districts, university faculty, confidential employees, and municipal-county health and care institution employees.

8. If either party notifies the other that it desires that the fact-finder's report be binding, the report becomes binding (S.11).
9. The arbitrator may choose between three positions: the final offers of each party and the fact-finder's recommendations.
10. Appointed by district court.
11. Economic items are decided by the final offer, issue-by-issue method.
Non-economic items are decided by the arbitrator(s).
12. Minnesota's statute mentions final-offer arbitration, but does not mandate arbitration except by petition agreed to by the employer. Included are employees of the University of Minnesota, state and junior colleges, and school districts but employees of charitable hospitals are excluded.
13. Nebraska is unique in that it has a Court of Industrial Relations whose orders are binding on the parties. The court performs arbitration of impasses and decides other matters as well.
14. The parties, upon joint agreement, or the governor, at the request of either party, may make the fact-finder's report binding. In Indiana the parties may agree to make the fact-finder's recommendations binding.
15. Public employees, other than policement and firemen, have the right to strike. If a court enjoins the strike, the dispute is sutomatically referred to arbitration.
16. State university staff and support employees and port district employees.

Chart A-2

PROVISIONS OF STATE LAWS PERTAINING TO THE STRUCTURE
OF STATE PUBLIC EMPLOYER RELATIONS AGENCIES^{1/}

State	Title	No. of Members	All public or tripartite	Members Full-time or part-time	Term of Office	Bipartisan by party	Jurisdiction
Alaska	Labor Relations Agency	3	Public	Part-time	4 years	yes	Public and private Sectors
California (effective July 1, 1976)	Educational Employment Relations Board	3		Full-time	5 years		Teachers
Connecticut (effective Oct. 1, 1975)	State Board Labor Relations	3	Public	Part-time	6 years	no	Municipal employees
Florida	P.E.R.C.	5	Public	Chairman- full-time Members- part-time	4 years	no	Public sector
Hawaii	P.E.R.B.	3	Tripartite	Full-time	6 years	no	Public sector
Indiana (effective July 1, 1975)	Education Employment Relations Board	3	Public ^{2/}	Chairman- full-time Members- part-time	4 years	yes	Public sector
Iowa	P.E.R.B.	3	Public	Full-time	4 years	yes	Public sector

PROVISIONS OF STATE LAWS PERTAINING TO THE STRUCTURE
OF STATE PUBLIC EMPLOYER RELATIONS AGENCIES^{1/}

State	Title	No. of Members	All public or tripartite	Members Full-time or part-time	Term of Office	Bipartisan by party	Jurisdiction
Wisconsin	P.E.R.B.	5	Tripartite	Part-time	4 years	yes	Public sector
Illinois (effective 10/3, 1975)	Labor Relations Board	3 ^{3/}	Tripartite	Part-time	4 years	no	Public and private sectors
Massachusetts	State Labor Relations Commission	3	Public	Full-time	5 years	no	Public and private sectors
Michigan	P.E.R.C.	3	Public	Half-time	3 years	yes	Private and public sectors excluding state employees ^{6/}
Minnesota	P.E.R.B. ^{4/}	5	Tripartite		4 years	no	Public sector
Nebraska	Court of Industrial Relations	5	Public	Part-time	6 years	no	Public and private sectors.
Nevada (effective 7/18, 1975)	Local Government Employee-Mgt. Relations Board ^{5/}	3	Public	Part-time	4 years	yes	Local government

PROVISIONS OF STATE LAWS PERTAINING TO THE STRUCTURE
OF STATE PUBLIC EMPLOYER RELATIONS AGENCIES¹

State	Title	No. of Members	All public or tripartite	Members Full-time or part-time	Term of Office	Bipartisan by party	Jurisdiction
Vermont	Employment Labor Relations Board	3	Public	Part-time	6 years	yes	State employees
	Labor Relations Board	3	Law is silent	Part-time	6 years	yes	Private sector and municipal employees
Wisconsin	Employment Relations Commission	3	Public	Full-time	6 years	no	Private and public sectors

Notes to Chart A-2

1. This is not an exhaustive list of all state agencies in the United States.
2. Non-partisan status "does not apply to persons on the teaching staff of a university who are knowledgeable in public administration or labor law so long as they are not actively engaged other than as a member, with any labor or employee organization." (S. 96)
3. For each member the governor appoints two alternates.
4. Minnesota law has established a Bureau of Mediation Services whose director "shall only certify a matter to the board when either or both parties, except for essential employees, petition for binding arbitration stating that an impasse has been reached and the director has determined that further mediation efforts...would serve no purpose" S179.69(3). The director of Mediation Services handles recognition, unit determination, mediation; conducts elections; and determines the scope of arbitrability. P.E.R.B. decides the outcome of all elections.
5. Nevada law also establishes an advisory committee to its agency, which consists of two members representing labor and two representatives appointed by the governor. This committee screens potential board members and submits an approved list, from which the governor must choose nominees for board membership. The committee meets at least semiannually to review the procedures outlined in the law and make recommendations for legislative amendments.
6. M.E.R.C. has no jurisdiction over the state of Michigan and its employees. This is due to the State constitution which vests power over the State and its employees in the constitutionally created Civil Service Department and provides that the Legislature may not legislate on labor relations for state employees.

7. The Educational Employment Relations Act is in force except for section four which relates to the creation of the Educational Employment Relations Commission. This section only was vetoed on July 2, 1975 by the Governor.

Chart A-3 IMPASSE PROCEDURE: MEDIATION & FACTFINDING

	Med. 1st Step of Impasse Procedure	Who Initiates Impasse Procedures		Statute Provides For Step Beyond Fact-finding or Some Substitute	Fact-finding is Last Step	Notes
		PERC Initiates Med. on own	Parties Themselves File Impasse Notification			
a Public Employees	yes	X	X	X		
Teachers	yes		X	X		Each party chooses 2 persons to serve on a Mediation Board. These 4 choose a fifth. The Board submits findings & recommendations after hearings.
Public School Employees	yes		X	X		Either party may declare impasse. Parties may include in their agreement procedures for interest arbitration.
Municipal Employees	yes		X	X		Fact-finding is first step (S-8 state employees) if parties have not requested mediation within 50 days, board shall appoint mediator. Factfinder specifically empowered to mediate.
State Emp.	no		X		X	
Teachers	yes		X	X		
Public Employees	yes		X			No provision for fact-finding.
Teachers	yes		X		X	Tripartite mediation panel "shall be formed" if parties cannot agree on mediator
Public Employees	yes		X (sua sponte)		X	Agency appoints Special Master who performs advisory arbitration if parties fail to appt. mediator. Legislative hearing after fact-finding.

Note: Some statutes allow voluntary arbitration, some compulsory arbitration, as step after fact-finding.

IMPASSE PROCEDURE: MEDIATION & FACTFINDING

	Med. 1st Step of Impasse Procedure	Who Initiates Impasse Procedures *		Statute Provides For Step Beyond Fact-finding or Some Substitute	Fact-finding is Last Step	Notes
		PERC Initiates Med. on own	Parties Themselves File Impasse Notification			
Georgia Fire	yes	After 30 days negotiations			X	Mediation board (tripartite) used. Mediation Board conducts hearings & issues advisory recommendation.
Hawaii Public Emp.	yes	X		X		
Idaho Fire	no	After 30 days negotiations			X	Fact-finding is only step.
Teachers	yes		X		X	
Indiana State and Municipal	yes	X	X	X		
Police & Fire	yes	X		X		
Teachers	yes	X	X	X		
Iowa All Emp.	yes		X	X		Parties may agree on own impasse procedure, not necessarily utilizing mediation. Arbitration available to all employees.
Kansas Public	yes	X	X		X	Parties can include impasse procedure in agreement.
Kentucky Firemen	no		X		X	Fact-finding is only step.
Maine Municipal	yes	X	X	X		Standing panel of mediators.
State	yes	X	X	X		

*If both boxes are marked, the statute provides that either process may occur.

IMPASSE PROCEDURE MEDIATION & FACTFINDING

		Med. 1st Step of Impasse Procedure	Who Initiates Impasse Procedures *		Statute Provides For Step Beyond Fact-finding or Some Substitute	Fact-finding is Last Step	Notes
			PERC Initiates Med. on own	Parties Themselves File Impasse Notification			
Maine (cont.)	Univ. Emp.	Parties may waive & invoke factfind.		X	X		
Maryland	Public School	yes		X			Mediation is only step provided. Impasse Panel. Chairman mediates--and impasse panel factfinds.
	Municipal	yes		X		X	
Mass.	Public	yes		X	X		Arbitration is voluntary.
	Fire & Police	yes		X	X		Arbitration is compulsory.
Mich.	Municipal	yes		X		X	Board appoints mediators in every case. Fact-finding provision applicable to public sector found in the state private sector statute.
	Police & Fire	yes	not clear		X		
Minn.		yes		X	X		Mediation sessions must be public except when otherwise provided by Director of Mediation Bureau. Mediation may continue after parties have submitted final positions.
Montana	Public	yes	After "reasonable period" compulsory med.			X	
Nebraska	Public and Utilities	If parties request	not clear	X	X		The Court of Industrial Relations makes Mediators available to parties. No mention of mediation. Fact-finding not used. Dispute goes directly to arbitration.

*If both boxes are marked, the statute provides that either process may occur.

IMPASSE PROCEDURE: MEDIATION & FACTFINDING

		Med. 1st Step of Impasse Procedure	Who Initiates Impasse Procedures*		Statute Provides For Step Beyond Fact-finding or Some Substitute	Fact-finding is Last Step	Notes
			PERC Initiates Med. on own	Parties Themselves File Impasse Notification			
Nebraska (cont.)	Teachers	no					Compulsory arbitration is last step.
			If parties are unable to agree, the dispute shall be submitted to fact-finding.				
Nevada	Municipal-- includes teachers & state nurses	optional with parties		X		X	Fact-finding report may be made binding by governor or by agreement of the parties
N. H.	effective 12/21/75	yes		X		X	
N. J.		yes		X	X		Voluntary arbitration.
N. Y.		yes	X	X	X		Parties may agree on own impasse procedure. Arbitration panel may refer issues back to negotiating (police & fire).
N. Y. City		yes		X	X		Impasse panel mediates and if necessary, fact-find.
North Dakota	Teachers	yes		X		X	Parties may negotiate own procedure.
Oklahoma	Fire & Police	no		X	X	No fact-finding	Arbitration is only step.
	School	no	If agreement cannot be reached			X	Fact-finding is only step.
Oregon		yes	X	X	X		

*If both boxes are marked, the statute provides that either process may occur.

IMPASSE PROCEDURE: MEDIATION & FACTFINDING

		Med. 1st Step of Impasse Procedure	Who Initiates Im- passe Procedures*		Statute Provides For Step Beyond Fact-finding or Some Substitute	Fact- finding is Last Step	Notes
			PERC Ini- tiates Med. on own	Parties Themsel- ves File Impasse Notifi- cation			
Wash.	Municipal	yes		X	X		
Wisc.	State	yes	X	X		X	Factfinder can mediate.
	Municipal	yes	X	X		X	
	Police & Fire	yes	X	X	X		Parties can set own impasse procedure.
Wyoming	Fire	no	After 30 days ne- gotiating		X	No fact- finding	Compulsory arbitration.

*If both boxes are marked, the statute provides that either process may occur.

Appendix E

RECORD OF THE STUDY COMMISSION'S ACTIVITIES

Commission Meetings

The Commission itself held meetings on the following dates:

December 23, 1974; January 29, 1975; February 12, 1975; April 2, 1975; April 16, 1975; May 14, 1975; May 23, 1975; September 10, 1975; October 8, 1975; December 12, 1975; December 13, 1975; and January 15, 1975. Subcommittee meetings occurred on May 3, 1975; May 13, 1975; May 22, 1975; and August 18, 1975.

In some of its meetings, the Commission had presentations and informal discussions with the following persons:

Arvid Anderson, Chairman, Office of Collective Bargaining,
New York City

James P. Begin, Research Professor, Rutgers University

Steven Boynton, Counsel to the Assembly of Governmental Employees

Robert Chanin, Counsel to the National Education Association

Ernest Gross, Extension Specialist, Labor Relations, Rutgers University

Frederick H. Harbison, Professor of Economics and International
Affairs, Princeton University

Robert D. Helsby, Chairman, New York State Public Employment Relations Board

Frank Mason, Director of Employee Relations, State of New Jersey

Melvin Osterman, former Director of Employee Relations, State of New York

Jack Pearce, Executive Director, New Jersey State Board of Mediation

Robert Pisarski, Acting Director, Michigan Employment Relations
Commission

Harry P. Stark, Professor of Management, Rutgers University

Jeffrey B. Tener, Executive Director, Public Employment Relations
Commission

Allan Weisenfeld, Distinguished Visiting Professor, School of Business,
Seton Hall University

Sam Zagoria, Director, Labor-Management Relations Service
of the National League of Cities, United States Conference
of Mayors, and National Association of Counties

Chris Zervanos, Director of Labor Relations, Commonwealth of
Pennsylvania

Also, the chairman and executive director held informal discussions

with:

Jacob Finkelman, Chairman, Public Service Staff Relations Board
of Canada

Robert J. Howlett, Chairman, Michigan Employment Relations Commission

Morris Slavney, Chairman, Wisconsin Employment Relations Board

The Commission held public hearings in Trenton on March 5, 1975,

at which the following persons testified:

Lester Aron, Director of Labor Relations, New Jersey School
Boards Association

Jack Bertolino, Director of Field Services, New Jersey Education
Association

John J. Brown, Secretary-Treasurer, New Jersey State AFL/CIO

William P. Carroll, President, New Jersey Association of Police
Superior Officers, Incorporated

Randall C. Flager, (Reading statement of Edgar G. Sammon,
Executive Director, New Jersey State Employees Association)

Arthur J. Holland, Mayor, City of Trenton

Raymond Kostura, South Ward Civic Association, Trenton, New Jersey

Marcoantonio Lacatena, President, Council of New Jersey State College
Locals, American Federation of Teachers

Joseph Lavery (Submitting statement of William Druz, Chief Examiner
and Secretary, Department of Civil Service)

Frank Mason, Director of Employee Relations, State of New Jersey

Pat D. Nardolilli, Business Agent, Teamsters Local 286

Thomas O'Neil, Chairman, Labor Committee, State Firemen's
Mutual Benevolent Association

Don Philippi, Business Manager, Local 195, International
Federation of Professional and Technical Engineers, AFL/CIO

Michael A. Porcello, (Reading statement of Carole A. Graves,
President, Newark Teachers Union)

Gerard Restaino, President, Edison Township Education Association

George Sampson, President, Mercer Council 4, New Jersey Civil
Service Association and Legislative Agent, Civil Service
Association

Walter Shaw, Firefighters, Jersey City, New Jersey

Kathryn E. Stilwell, President, New Jersey Education Association

Jeffrey B. Tener, Executive Director, New Jersey Public Employment
Relations Commission

Philip P. Yacovino, President, New Jersey State Policemen's
Benevolent Association

Informal Discussions

Some of the Commission and staff met informally with the following:

Jonas Aarons, Stanley Aegis, Frances Bairstow, Jack Bartolino, Fred J. Burke,
Gerald L. Dorf, William Druz, Francis A. Forst, Joseph Fortunato, David Fox,
John J. Francis, Jacob Green, Lawrence I. Hammer, Robert M. Harnett, Jr.,
Fred L. Hipp, John Horn, Mark W. Hurwitz, Thomas Joyner, Lewis Kaden, Ralph
Lataille, Charles Marciante, John Merkel, Maurice Nelligan, Emil Oxfeld,
Sidney Reitman, Edward Ryan, Leon Schacter, Edward Schultz, Richard Silver,
Jonas Silver, Howard Simonoff, James L. Stern, Bruce Taylor, Donald Wasserman,
Patrick Westercamp, James Zaggali, Chris Zervanos, and Abraham Zwerdling.

Documents Submitted

The following persons submitted documents in connection with the public hearings on March 5 and April 30, 1975:

Lester Aron, New Jersey School Boards Association

Jack Bertolino, New Jersey Education Association

John J. Brown, New Jersey State AFL/CIO

William P. Carroll, New Jersey Association Police Superior Officers

Gerald Dorf, New Jersey League of Municipalities

William Druz, New Jersey Department of Civil Service

Carole Graves, Newark Teachers Union

Arthur J. Holland, Mayor, City of Trenton

Raymond Kostura, South Ward Civic Association of Trenton

Lester Kurtz, New Jersey Manufacturers Association

Marcoantonio Lacatena, New Jersey Council State College Locals

Frank Mason, New Jersey Office Employee Relations

Pat D. Nardolilli, Teamsters, Local 286

Thomas O'Neil, State Firemen's Mutual Benevolent Association

Gerald Restaino, Edison Township Education Association

Edgar G. Sammon, New Jersey State Employees Association

Walter Shaw, Firefighters, Jersey City

Kathryn E. Stilwell, New Jersey Education Association

Jeffrey B. Tener, New Jersey Public Employment Relations Commission

Philip Yacavino, New Jersey Policemen's Benevolent Association

James Zazzali, Labor Law Section, New Jersey Bar Association

The following persons submitted written statements, letters,
or other material dealing with the Commission's work:

Fred G. Burke, Commissioner of Education, State of New Jersey

Dennis Byer, President, Essex County Probation Association of New Jersey

Jack Chernick, Professor of Industrial Relations, Rutgers University

Thomas P. Cook, lawyer, Princeton, New Jersey

Gerald Dorf, Counsel, League of Municipalities

Ward Dunnican, President, Passaic County Probation Officers Association

Richard L. Fiander, Superintendent of Schools, Summit, New Jersey

Joseph Fortunato, lawyer

John J. Francis, Justice

Paul W. Hargrave, President, Probation Association of New Jersey

Richard J. Hughes, Chief Justice of Supreme Court

Ralph Lataille, Department of Education, State of New Jersey

Joseph Missonellie, President, Academy of Public Safety Sciences

Maurice Nelligan, lawyer

John J. Pearce, Jr. Executive Director, New Jersey State Board of Mediation

Rena Rogge, President, New Jersey State College Librarians Advisory
Committee

George Sampson, President, Mercer Council 4, New Jersey Civil Service
Association

Jeffrey B. Tener, Executive Director, New Jersey Public Employment
Relations Commission

Philip Yacavino, President, New Jersey State Policemen's Benevolent
Association

Information on Statutes of Other States

The following persons provided information on the public employment laws and practice of the state indicated after each name, for use in the preparation of the charts in the text and in Appendix C:

Evan C. Archer, Jr. (Vermont)

Janet Stewart Arnold (Nebraska)

Melvin Cleveland (Oregon)

James Cooper (Massachusetts)

Sally Davis (Nevada)

Parker Denaco (Maine)

Franklin K. DeWald (Indiana)

Sonia Faust (Hawaii)

Robert D. Helsvy (New York)

C. R. Hofling (Alaska)

Robert G. Howlett (Michigan)

Edward Kolker (Iowa)

Carl Lange (Florida)

John R. Loihl (Iowa)

Morris Slavney (Wisconsin)

Robert E. Trump, Jr. (Pennsylvania)

APPENDIX F

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GLOSSARY OF TERMS

arbitration: A procedure under which a neutral party or arbitrator (or panel or board of arbitrators, with a neutral chairman) hears both the employee and employer side in a dispute and issues an award, which is binding on the parties unless the arbitration is "advisory." "Compulsory" arbitration, in contrast to "voluntary" arbitration, involves a government requirement that a dispute or issue that the parties cannot settle has to be submitted to arbitration, with the arbitration award binding on both parties.

1. interest arbitration is the arbitration of a dispute of interest, which involves the negotiation of a new, collective agreement (contract) or revision of such an agreement.
2. grievance arbitration involves the arbitration of an issue that concerns the interpretation or application of one or more of the provisions of an existing collective agreement, affecting individual employees, who present the grievance or on whose behalf a labor organization presents the grievance.
3. conventional arbitration of interest disputes allows the arbitrator(s) flexibility to fashion an award according to the arbitrator's own judgment, constrained only by the provisions of the parties' stipulation to arbitrate or any provisions of legislation or government regulations.
4. final-offer arbitration forces the arbitrator(s) to choose between the exact contents in the employer's final offer and the union's final offer (demands); it can be a choice between each party's

last offers as a single package, or on each issue, with the arbitrator forced to choose between the employer's and the union's position on each issue in dispute under the arbitration.

collective negotiations: A generic term for the process by which a union and a management negotiate terms and conditions of employment to be incorporated in a written collective agreement. The New Jersey statute uses the term "collective negotiation" for the process that in labor relations legislation is usually termed "collective bargaining."

fact-finding: A process whereby an impartial third party or panel examines the facts and issues in a particular dispute and makes a report. The report generally contains findings of facts, usually coupled with recommendation(s) for settlement of the matters in dispute. Fact-finding is primarily used for disputes of interest (involving negotiation of the terms and conditions of a collective agreement).

grievance: A complaint, usually by an employee or a union representative (possibly by management) concerning an aspect of the employment relationship or an action by management that is job-related (e.g., disciplinary action against an employee).

grievance procedure: The series of procedural steps in a collective agreement for the orderly and effective handling of complaints made by employees (or the union on their behalf) or the employer, against each other; the bipartisan procedure provides a means for solving on-the-job difficulties and problems, especially those arising from the interpretation and application of a collective agreement. The final step in a grievance procedure may provide for binding arbitration of the grievance.

mediation: An advisory kind of intervention by a third party in an interest dispute, who serves both parties as a neutral friend, for the purpose of assisting the parties to find a solution to the issues in dispute on a voluntary basis. Mediation often involves suggesting to the parties various proposals or methods for the resolution of issues in dispute.

impasse: A deadlock in negotiations with one or more issues in dispute unresolved and the parties at a standstill in their negotiations.

interest dispute: A disagreement or controversy over the terms and conditions of a new collective agreement or the revision of an existing agreement.

permissive subject of negotiation: In contrast to a required subject of negotiation concerning which the parties are required by law to negotiate if one of them wishes to do so, a permissive subject is one which they can negotiate if they both voluntarily agree to do so.

scope of negotiations: The subject matter or issues that a management and union can, or do, bring into the sphere of collective negotiation.

tripartite panel: A board whose membership is composed of three elements: one or more members selected by management, an equal number of members selected by the union, and one or more neutral members, whose selection may be achieved by agreement of the partisan members or by other means.

unit of negotiations: The area of coverage of employees for the purpose of conducting collective negotiations.