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1989

PUBLIC HEARING

before

SENATE LABOR, INDUSTRY AND PROFESSIONS COMMITTEE

SENATE BILL 266

(Establishes certain mandatory subjects for collective bargaining under the "New Jersey Employer-Employee Relations Act.")

SENATE BILL 606

(Revises laws concerning collective negotiations for public employees.)

SENATE BILL 855

(Clarifies the law with respect to the kinds of matters which are proper subjects of negotiations in public sector employment.)

SENATE BILL 3567

(Expands the scope of negotiations for public school employees.)

May 22, 1989
State House Annex
Room 334
Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT:

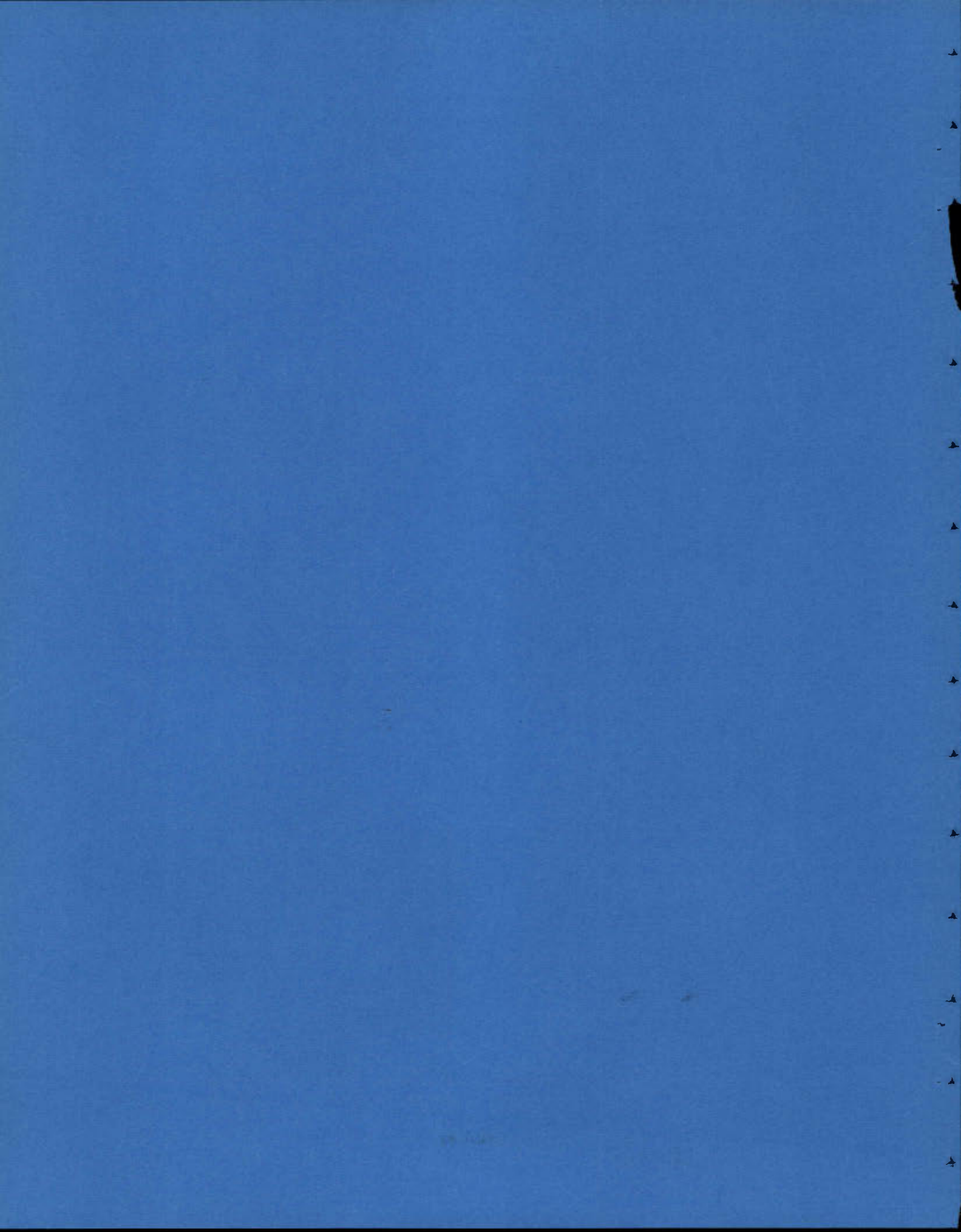
- Senator Raymond Lesniak, Chairman
- Senator Christopher J. Jackman, Vice Chairman
- Senator Edward T. O'Connor, Jr.
- Senator Gerald Cardinale
- Senator Donald T. DiFrancesco

ALSO PRESENT:

- Dale C. Davis
- Office of Legislative Services
- Aide, Senate Labor, Industry and Professions Committee

Hearing Recorded and Transcribed by
Office of Legislative Services
Public Information Office
Hearing Unit
State House Annex
CN 068
Trenton, New Jersey 08625

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New Jersey State Legislature

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Chairman
CHRISTOPHER J. JACKMAN
Vice-Chairman
EDWARD T. O'CONNOR, JR.
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DONALD T. DiFRANCESCO

**SENATE LABOR, INDUSTRY
AND PROFESSIONS COMMITTEE**
STATE HOUSE ANNEX, CN-068
TRENTON, NEW JERSEY 08625
TELEPHONE: (609) 984-0445

May 8, 1989

NOTICE OF PUBLIC HEARING

The Senate Labor, Industry and Professions Committee will hold a public hearing on Monday, May 8, 1989 at 1:00 P.M. in Room 334, State House Annex, on the following bills:

- | | |
|------------------|---|
| S-266
Dumont | Establishes certain mandatory subjects for collective bargaining under the "New Jersey Employer-Employee Relations Act." |
| S-606
Cowan | Revises laws concerning collective negotiations for public employees. |
| S-855
Jackman | Clarifies the law with respect to the kinds of matters which proper subjects of negotiations in public sector employment. |
| S-3567
Russo | Expands the scope of collective negotiations for public school employees. |

Anyone wishing to testify should contact Dale Davis, Committee Staff, at (609) 984-0445.

Please provide 12 copies of any written testimony to be submitted to the committee.

Please note that the public hearing starts at 1:00 P.M.



SENATE, No. 266

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1988 SESSION

By Senator DUMONT

1 **AN ACT** concerning collective negotiations and amending P.L.
2 1941, c. 100 and P.L. 1968, c. 303.

3

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

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

8 2. It is hereby declared as the public policy of this State that
9 the best interests of the people of the State are served by the
10 prevention or prompt settlement of labor disputes, both in the
11 private and public sectors; that strikes, lockouts, work stoppages
12 and other forms of employer and employee strife, regardless
13 where the merits of the controversy lie, are forces productive
14 ultimately of economic and public waste; that the interests and
15 rights of the consumers and the people of the State, while not
16 direct parties thereto, should always be considered, respected
17 and protected; that the constitutional mandate that public
18 employees be given the right to organize and present grievances
19 to their employers will be implemented and promoted by the
20 establishment of an expansive system of collective negotiations
21 concerning terms and condition of employment; and that the
22 voluntary mediation of such public and private employer
23 employee disputes under the guidance and supervision of a
24 governmental agency will tend to promote permanent, public
25 and private employer-employee peace and the health, welfare,
26 comfort and safety of the people of the State. To carry out
27 such policy, the necessity for the enactment of the provisions of
28 this act is hereby declared as a matter of legislative
29 determination.

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

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

Matter underlined thus is new matter.

1 7. Except as hereinafter provided, public employees shall
2 have, and shall be protected in the exercise of the right, freely
3 and without fear of penalty or reprisal, to form, join and assist
4 any employee organization or to refrain from any such activity;
5 provided, however, that this right shall not extend to elected
6 officials, members of boards and commissions, managerial
7 executives, or confidential employees, except in a school
8 district the term managerial executive shall mean the
9 superintendent of schools or his equivalent, nor, except where
10 established practice, prior agreement or special circumstances,
11 dictate the contrary, shall any supervisor having the power to
12 hire, discharge, discipline, or to effectively recommend the
13 same, have the right to be represented in collective negotiations
14 by an employee organization that admits nonsupervisory
15 personnel to membership, and the fact that any organization has
16 such supervisory employees as members shall not deny the right
17 of that organization to represent the appropriate unit in
18 collective negotiations; and provided further, that, except where
19 established practice, prior agreement, or special circumstances
20 dictate the contrary, no policeman shall have the right to join an
21 employee organization that admits employees other than
22 policemen to membership. The negotiating unit shall be defined
23 with due regard for the community of interest among the
24 employees concerned, but the commission shall not intervene in
25 matters of recognition and unit definition except in the event of
26 a dispute.

27 Representatives designated or selected by public employees
28 for the purposes of collective negotiation by the majority of the
29 employees in a unit appropriate for such purposes or by the
30 majority of the employees voting in an election conducted by
31 the commission as authorized by this act shall be the exclusive
32 representatives for collective negotiation concerning the terms
33 and conditions of employment of the employees in such unit.
34 Nothing herein shall be construed to prevent any official from
35 meeting with an employee organization for the purpose of
36 hearing the views and requests of its members in such unit so
37 long as (a) the majority representative is informed of the
38 meeting; (b) any changes or modifications in terms and
39 conditions of employment are made only through negotiation

1 with the majority representative; and (c) a minority organization
2 shall not present or process grievances. Nothing herein shall be
3 construed to deny to any individual employee his rights under
4 Civil Service laws or regulations. When no majority
5 representative has been selected as the bargaining agent for the
6 unit of which an individual employee is a part, he may present
7 his own grievance either personally or through an appropriate
8 representative or an organization of which he is a member and
9 have such grievance adjusted.

10 A majority representative of public employees in an
11 appropriate unit shall be entitled to act for and to negotiate
12 agreements covering all employees in the unit and shall be
13 responsible for representing the interest of all such employees
14 without discrimination and without regard to employee
15 organization membership. Proposed new rules or modifications
16 of existing rules governing working conditions shall be
17 negotiated with the majority representative before they are
18 established. In addition, the majority representative and
19 designated representatives of the public employer shall meet at
20 reasonable times and negotiate in good faith with respect to
21 grievances, disciplinary disputes, and other terms and conditions
22 of employment. [Nothing herein shall be construed as
23 permitting negotiation of the standards or criteria for employee
24 performance.] The following matters relating to terms and
25 conditions of employment are mandatory subjects of collective
negotiations for public employees:

27 a. Assignment of extracurricular and co-curricular activities
including but not limited to supervising homeroom, cafeteria,
29 coaching a sport; sponsoring a school club; supervising a school
publication; directing school dramatic productions, school
31 assembly programs, or a school band, orchestra or chorus; and
advising student councils;

33 b. Absenteeism or tardiness work rules and policies or both as
they pertain to employees;

35 c. Involuntary transfers of employees within school districts;

37 d. Employee disciplinary procedures, including areas of
compensation;

38 e. Subcontracting of unit-defined work;

39 f. Evaluation criteria as well as procedures and their
implementation and application.

1 By the addition of these mandatory subjects of bargaining, the
avoidance of much litigation that presently exists will occur.
3 and the result will be in the interest of peace and harmony and
ultimately of the public.

5

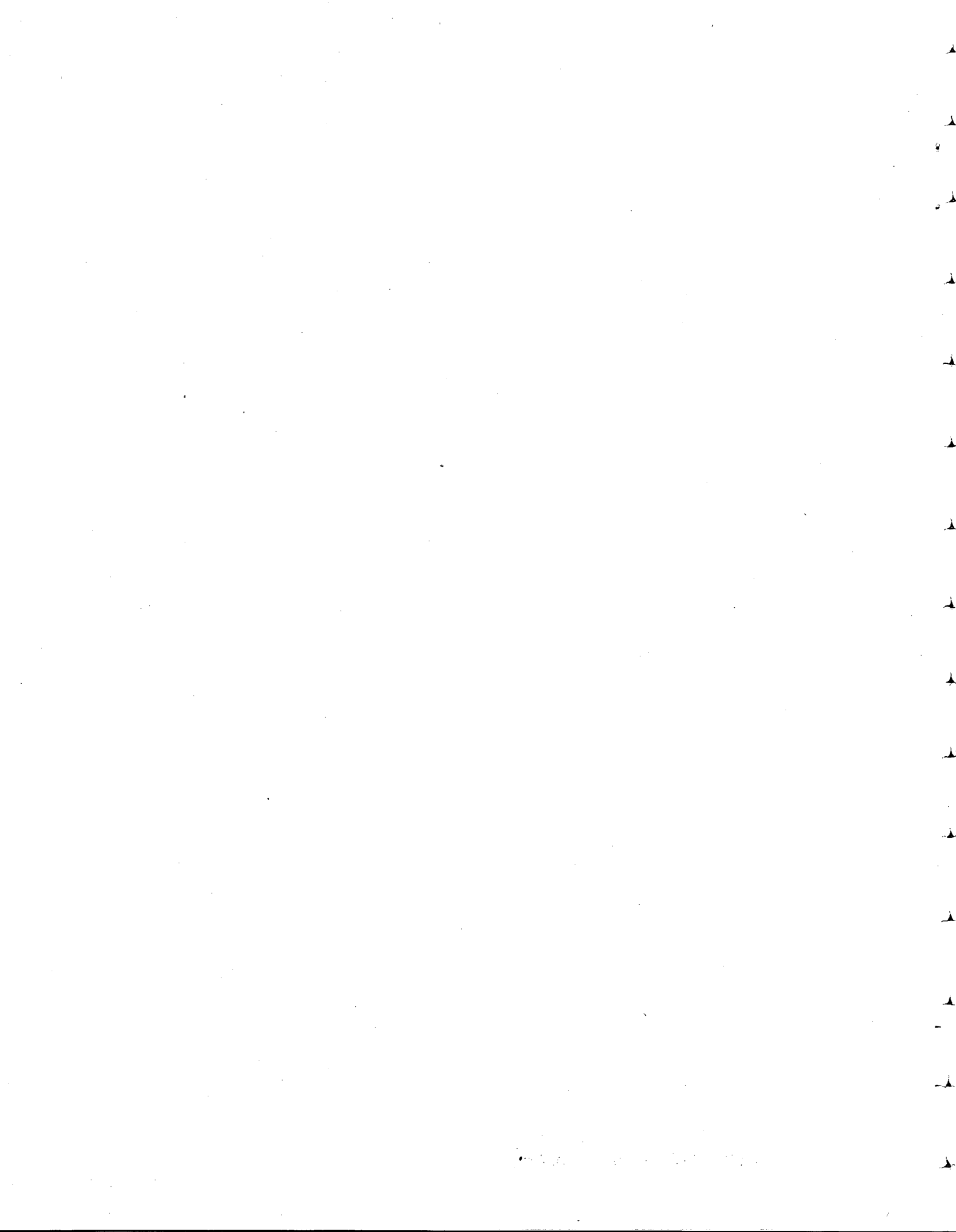
7

LABOR AND EMPLOYMENT

Public Employees

9

11 Establishes certain mandatory subjects for collective bargaining
under the "New Jersey Employer-Employee Relations Act."



SENATE, No. 606

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1988 SESSION

By Senator COWAN

1 AN ACT concerning collective negotiations, amending P.L.
2 1968, c. 303 and P.L. 1974, c. 123 and amending and
3 supplementing P.L. 1941, c. 100.

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

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

9 2. It is hereby declared as the public policy of this State that
10 the best interests of the people of the State are served by the
11 prevention or prompt settlement of labor disputes, both in the
12 private and public sectors; that strikes, lockouts, work
13 stoppages and other forms of employer and employee strife,
14 regardless where the merits of the controversy lie, are forces
15 productive ultimately of economic and public waste; that the
16 interests and rights of the consumers and the people of the
17 State, while not direct parties thereto, should always be
18 considered, respected and protected; that the constitutional
19 mandate that public employees be given the right to organize
20 and present grievances to their employer will be implemented
21 and promoted by the establishment of an expansive system of
22 collective negotiations between public employers and
23 appropriate units of employees concerning terms and conditions
24 of employment and other matters mutually agreed upon; that it
25 is therefore the policy of this State to encourage the practices
26 and procedures of collective negotiations and that although
27 collective negotiations may involve matters lying within the
28 managerial discretion of public employers, collective
29 negotiations constitute the most appropriate manner of
30 exercising that discretion concerning terms and conditions of
31 employment and other matters mutually agreed upon where no

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

Matter underlined thus is new matter.

1 statute specifically precludes such negotiations; that since
2 public employers are presumed to consider the public interest
3 when reaching agreements, where the public employer and the
4 representative of public employees agree upon permissive
5 subjects of collective negotiations, it is in the best interest of
6 sound labor relations in the public sector, and ultimately in the
7 public interest as well, not to interfere with these voluntary
8 agreements or, for that matter, any lawful agreement entered
9 into by the parties and that the Legislature recognizes that an
10 effective balancing of the interests of employees and employers,
11 and the public interest in the democratic process are and can be
12 best achieved by the provisions hereinafter set forth, including
13 negotiations on permissive subjects; and that the voluntary
14 mediation of such public and private employer-employee
15 disputes under the guidance and supervision of a governmental
16 agency will tend to promote permanent, public and private
17 employer-employee peace and the health, welfare, comfort and
18 safety of the people of the State. To carry out such policy, the
19 necessity for the enactment of the provisions of this act is
20 hereby declared as a matter of legislative determination.

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

23 3. When used in this act:

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

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

28 (c) The term "employer" includes an employer and any person
29 acting, directly or indirectly, on behalf of or in the interest of
30 an employer with the employer's knowledge or ratification, but
31 a labor organization, or any officer or agent thereof, shall be
32 considered an employer only with respect to individuals
33 employed by such organization. This term shall include "public
34 employers" and shall mean the State of New Jersey, or the
35 several counties and municipalities thereof, or any other
36 political subdivision of the State, or a school district, or any
37 special district, or any authority, commission, or board, or any
branch or agency, of the public service.

1 (d) The term "employee" shall include any employee, and shall
not be limited to the employees of a particular employer unless
3 this act explicitly states otherwise, and shall include any
individual whose work has ceased as a consequence of or in
5 connection with any current labor dispute or because of any
unfair labor practice and who has not obtained any other regular
7 and substantially equivalent employment. This term, however,
shall not include any individual taking the place of any employee
9 whose work has ceased as aforesaid, nor shall it include any
individual employed by his parent or spouse, or in the domestic
11 service of any person in the home of the employer, or employed
by any company owning or operating a railroad or railway
13 express subject to the provisions of the Railway Labor Act. This
term shall include any public employee, i.e., any person holding
15 a position, by appointment or contract, or employment in the
service of a public employer, except elected officials, members
17 of boards and commissions managerial executives and
confidential employees.

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

(f) "Managerial executives" of a public employer means
29 persons who formulate management policies and practices, and
persons who are charged with the responsibility of directing the
31 effectuation of such management policies and practices, except
that in any school district this term shall include only the
33 superintendent or other chief administrator, and the assistant
superintendent of the district.

35 (g) "Confidential employees" of a public employer means
employees whose regular, ordinary and continuing functional
37 responsibilities [or knowledge] in connection with the issues

1 involved in the collective negotiations process would make their
membership in any appropriate negotiating unit incompatible
3 with their official duties.

(h) Mandatory subjects for collective negotiations in public
5 employment are all matters concerning wages, hours, discipline
and other terms and conditions of employment, not specifically
7 prohibited by statute, including the impact of management
decisions which are not mandatorily negotiable on the wages,
9 hours, discipline and other terms and conditions of employment.

(i) Permissive subjects for collective negotiations in public
11 employment are all matters which are neither mandatory nor
illegal subjects for negotiations.

(j) Illegal subjects for negotiations in public employment are
13 those matters which are specifically prohibited by statutory
language. Administrative rules or regulations shall not prevent
15 collective negotiations required or permitted by this act nor
17 supersede the provisions of any negotiated agreement.

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

7. Except as hereinafter provided, public employees shall
21 have, and shall be protected in the exercise of, their right,
freely and without fear of penalty or reprisal, to form, join and
23 assist any employee organization or to refrain from any such
activity; provided, however, that this right shall not extend to
25 elected officials, members of boards and commissions,
managerial executives, or confidential employees, except in a
27 school district the term managerial executive shall mean the
superintendent of schools or his equivalent, nor, except where
29 established practice, prior agreement or special circumstances,
dictate the contrary, shall any supervisor having the power to
31 hire, discharge, discipline, or to effectively recommend the
same, have the right to be represented in collective negotiations
33 by an employee organization that admits nonsupervisory
personnel to membership, and the fact that any organization has
35 such supervisory employees as members shall not deny the right
of that organization to represent the appropriate unit in collective
37 negotiations; and provided further, that, except where
established practice, prior agreement, or special circumstances

1 dictate the contrary, no policeman shall have the right to join an
employee organization that admits employees other than
3 policemen to membership. The negotiating unit shall be defined
with due regard for the community of interest among the
5 employees concerned, but the commission shall not entervene in
matters of recognition and unit definition except in the event of
7 a dispute.

Representatives designated or selected by public employees
9 for the purposes of collective negotiation by the majority of the
employees in a unit appropriate for such purposes or by the
11 majority of the employees voting in an election conducted by
the commission as authorized by this act shall be exclusive
13 representatives for collective negotiation [concerning the terms
and conditions of employment of] for the employees in such
15 unit. Nothing herein shall be construed to prevent any official
from meeting with an employee organization for the purpose of
17 hearing the veivs and requests of its members in such unit so
long as (a) the majority representative is informed of the
19 meeting; (b) any changes or modifications in wages, hours,
discipline and other terms and conditions of employment and
21 other matters mutually agreed upon are made only through
negotiation with the majority representative; and (c) a minority
23 organization shall not present or process grievances. Nothing
herein shall be construed to deny to any individual employee his
25 rights under Civil Service laws or reguiations. When no majority
representative has been selected as the bargaining agent for the
27 unit of which an individual employee is a part, he may present
his own grievance either personally or through an appropriate
29 representative or an organization of which he is a member and
have such grievance adjusted.

31 A majority representative of public employees in an
appropriate unit shall be entitled to act for and to negotiate
33 agreements covering all employees in the unit and shall be
responsible for representing the interest of all such employees
35 without discrimination and without regard to employee
organization membership. Proposed new rules or modifications
37 of existing rules governing working conditions shall be
negotiated with the majority representative before they are
39 established. In addition, the majority representative and

1 designated representatives of the public employer shall meet at
reasonable times and negotiate in good faith with respect to
3 grievances, disciplinary disputes, and [other terms and
conditions of employment] those matters which are mandatory
5 subjects for collective negotiations and may negotiate and agree
7 upon those matters which are permissive subjects for collective
8 negotiations. [Nothing herein shall be construed as permitting
negotiation of the standards or criteria for employee
9 performance.]

When an agreement is reached on [the terms and conditions of
11 employment] those matters which are mandatory and permissive
12 subjects for collective negotiation, it shall be embodied in
13 writing and signed by the authorized representatives of the
public employer and the majority representative.

15 Public employers shall negotiate written policies setting forth
grievance and disciplinary review procedures by means of which
17 their employees or representatives of employees may appeal the
interpretation, application or violation of policies, agreements,
19 and administrative decision, including disciplinary
determinations, affecting them, provided that such grievance
21 and disciplinary review procedures shall be included in any
agreement entered into between the public employer and the
23 representative organization. Such grievance and disciplinary
review procedures may provide for binding arbitration as a
25 means for resolving disputes. [The procedures agreed to by the
parties may not replace or be inconsistent with any alternate
27 statutory appeal procedure nor may they provide for binding
arbitration of disputes involving the discipline of employees with
29 statutory protection under tenure or civil service laws.
Grievance] Notwithstanding any procedures for the resolution of
31 disputes, controversies or grievances established by any other
32 law, grievance and disciplinary review procedures established by
33 agreement between the public employer and the representative
34 organization shall be utilized for any dispute covered by the
35 terms of such agreement.

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

39 1. a. Public employers, their representatives or agents are
prohibited from:

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

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

5 (3) Discriminating in regard to hire or tenure of employment
or any term or condition of employment to encourage or
7 discourage employees in the exercise of the rights guaranteed to
them by this act.

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

(5) Refusing to negotiate in good faith with a majority
13 representative of employees in an appropriate unit concerning
[terms and conditions of employment of] those matters which
15 are mandatory subjects for negotiations concerning employees in
that unit, or refusing to process grievances presented by the
17 majority representative.

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

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

b. Employee organizations, their representatives or agents
23 are prohibited from:

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

(2) Interfering with, restraining or coercing a public employer
27 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,
29 if they are the majority representative of employees in an
appropriate unit concerning [terms of conditions of employment
31 of] those matters which are mandatory subjects for negotiations
33 concerning employees in that unit.

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

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

1 c. The commission shall have exclusive power as hereinafter
provided to prevent anyone from engaging in any unfair practice
3 listed in subsection a. and b. above. Whenever it is charged that
anyone has engaged or is engaging in any such unfair practice,
5 the commission, or any designated agent thereof, shall have the
authority to issue and cause to be served upon such party a
7 complaint stating the specific unfair practice charged and
including a notice of hearing containing the date and place of
9 hearing before the commission or any designated agent thereof;
provided that no complaint shall issue based upon any unfair
11 practice occurring more than six months prior to the filing of
the charge unless the person aggrieved thereby was prevented
13 from filing such charge in which event the six-month period
shall be computed from the day he was no longer so prevented.

15 In any such proceeding, the provisions of the "Administrative
Procedure Act," P.L. 1968, c. 410 (C. 52:14B-1 et seq.) shall be
17 applicable. Evidence shall be taken at the hearing and filed with
the commission. If, upon all the evidence taken, the commission
19 shall determine that any party charged has engaged or is
engaging in any such unfair practice, the commission shall state
21 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
23 and desist from such unfair practice, and to take such
reasonable affirmative action as will effectuate the policies of
25 this act. All cases in which a complaint and notice of hearing on
a charge is actually issued by the commission, shall be prosecuted
27 before the commission or its agent, or both, by the
representative of the employee organization or party filing the
29 charge or his authorized representative.

d. The commission shall at all times have the power and duty,
31 upon the request of any public employer or majority
representative, to make a determination as to whether a matter
33 in dispute is within the scope of mandatory or permissive
collective negotiations, and upon the further request of either
35 party shall determine whether the matter in dispute is arbitrable
under the contract. The commission shall serve the parties with
37 its findings of fact and conclusions of law. Any determination
made by the commission pursuant to this subsection may be
39 appealed to the Appellate Division of the Superior Court.

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

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

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

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

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

1 (e) The board in private employment, through the Division of
3 Private Employment Dispute Settlement, and the commission in
5 public employment, through the Division of Public Employment
7 Relations, shall take the following steps to avoid or terminate
9 labor disputes: (1) to arrange for, hold, adjourn or reconvene a
11 conference or conferences between the disputants or one or
13 more of their representatives or any of them; (2) to invite the
15 disputants or their representatives or any of them to attend such
17 conference and submit, either orally or in writing, the
19 grievances of and differences between the disputants; (3) to
21 discuss such grievances and differences with the disputants and
23 their representatives; and (4) to assist in negotiating and
25 drafting agreements for the adjustment in settlement of such
27 grievances and differences and for the termination or avoidance,
29 as the case may be, of the existing or threatened labor dispute.

(d) The commission, through the Division of Public
17 Employment Relations, is hereby empowered to resolve
19 questions concerning representation of public employees by
21 conducting secret ballot election or utilizing any other
23 appropriate and suitable method designed to ascertain the free
25 choice of the employees. The division shall decide in each
27 instance which unit of employees is appropriate for collective
29 negotiation, provided that, except where dictated by established
31 practice, prior agreement, or special circumstances, no unit
33 shall be appropriate which includes (1) both supervisors and
35 nonsupervisors, (2) both professional and nonprofessional
37 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.

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

9 (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
11 act in its behalf and may delegate to such designee one or more
of its duties hereunder and, for such purpose, such designee shall
13 have all the powers hereby conferred upon the board in
connection with the discharge of the duty or duties so
15 delegated. In carrying out any of its work under this act, the
commission may designate one of its members or an officer of
17 the commission to act on its behalf and may delegate to such
designee one or more of its duties hereunder and, for such
19 purpose, such designee shall have all of the powers hereby
conferred upon the commission in connection with the discharge
21 of the duty or duties so delegated.

(g) The board and commission may also appoint and designate
23 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
25 all of the powers conferred upon it by this act so far as it is
reasonably necessary to effectuate the purposes of this act.
27 Such persons shall serve without compensation but shall be
reimbursed for any necessary expenses.

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

6. (New section) Nothing contained in this amendatory and
35 supplementary act shall require:

a. Any party to negotiate concerning any, permissive
37 category of negotiations;

b. Any party to reach agreement upon any subject of
39 permissive negotiations;

1 c. Any arbitration of any permissive subject which has not
been reduced to a written agreement as part of negotiations.

3 7. This act shall take effect immediately.

5
7
STATEMENT

9 This bill, amending the "Public Employee Relations Act",
clarifies the law with respect to the kinds of matters which are
proper subjects of negotiations in public employee labor
11 contracts.

13 Under the bill, the mandatory category of public-sector
negotiations is expanded from matters concerning wages, hours
and other terms and conditions of employment to include
15 matters concerning discipline and the impact of nonnegotiable
decisions on employees' wages, hours, discipline and other terms
17 and conditions of employment.

19 The permissive category of public-sector negotiations is
reinstated. Before the New Jersey Supreme Court's Ridgefield
Park decision, PERC (Public Employment Relations Commission)
21 was of the opinion that negotiation and arbitration of permissive
subjects were acceptable; the court overruled this opinion and
23 held that a permissive category of public-sector negotiations did
not exist at that time under the statutes for these employees.
25 Permissive subjects are all matters which are neither mandatory
nor illegal subjects for negotiation and which are agreed upon by
27 all parties.

29 The illegal category of public-sector negotiations is defined
as those subjects "which are specifically prohibited by statutory
language," but negotiated agreements would supersede rules
31 and regulations promulgated by State agencies pursuant to these
statutes.

33 The definition of "confidential employee" in this bill is
changed from those public employees who have "functional
35 responsibilities or knowledge" in regard to negotiable issues that
would make their membership in a negotiating unit incompatible
37 with their official duties, to those whose "regular, ordinary and
continuing functional responsibilities" constitute such an
39 incompatibility. This provision would allow an employee
negotiation representative to represent some heretofore
41 unrepresented supervisory employees.

1 Under this bill, grievance and disciplinary review procedures
established by agreement of the parties in public-sector
3 negotiations must be used for any dispute covered by the
agreement and such agreement would supersede any grievance
5 and disciplinary review procedures established by law.

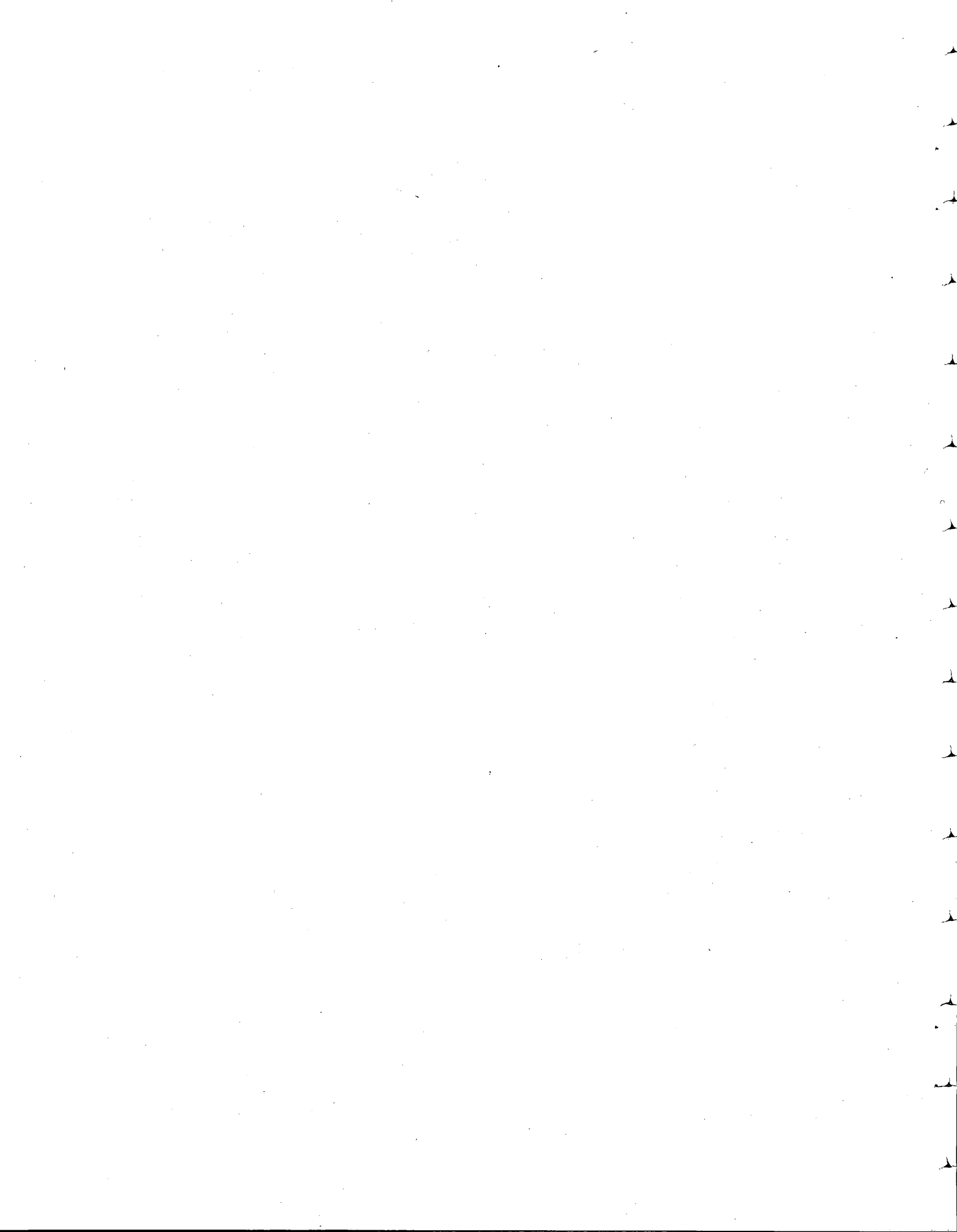
The bill also provides that PERC has the power and duty upon
7 request of one of the parties, to determine whether a subject is
within the scope of mandatory or permissive collective
9 negotiations, and, upon further request of either party, to
determine whether the subject in dispute is arbitrable under the
11 contract.

13

LABOR AND EMPLOYMENT
Public Employees and Personnel

15

17 Revises laws concerning collective negotiations for public
employees.



SENATE, No. 355

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1988 SESSION

By Senator JACKMAN

1 AN ACT concerning collective negotiations, amending P.L.
1968, c. 303 and P.L. 1974, c. 123 and amending and
3 supplementing P.L. 1941, c. 100.

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

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

9 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
11 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
13 where the merits of the controversy lie, are forces productive
ultimately of economic and public waste; that the interests and
15 rights of the consumers and the people of the State, while not
direct parties thereto, should always be considered, respected
17 and protected; that the constitutional mandate that public
employees be given the right to organize and present grievances
19 to their employers will be implemented and promoted by the
recognition of an expansive system of collective negotiations
21 concerning terms and conditions of employment where no
statute specifically precludes such negotiations and other
23 matters mutually agreed upon; that it is the policy of this State
to encourage the process of collective negotiations; that where
25 matters concern both the terms and conditions of employment
for public employees and the legitimate interest of public
27 employers, collective negotiations constitute the most
appropriate context for resolving such interests provided no
29 statute specifically precludes such negotiations; that where the
public employer and the representative of the public employees

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

Matter underlined thus is new matter.

1 agree upon mandatory subjects, it is in the best interest of sound
2 labor relations in the public sector, and ultimately in the public
3 interest as well, not to interfere with these voluntary
4 agreements or any lawful agreement entered into by the parties
5 and that the Legislature recognizes that an effective balancing
6 of the interest of employees and employers, and the public
7 interest in the democratic process are and can be best achieved
8 by the provisions hereinafter set forth, including negotiations on
9 permissive subjects; and that the voluntary mediation of such
10 public and private employer-employee disputes under the
11 guidance and supervision of a governmental agency will tend to
12 promote permanent, public and private employer-employee
13 peace and the health, welfare, comfort and safety of the people
14 of the State. To carry out such policy, the necessity for the
15 enactment of the provisions of this act is hereby declared as a
16 matter of legislative determination.

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

19 3. When used in this act:

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

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

24 (c) The term "employer" includes an employer and any person
25 acting, directly or indirectly, on behalf of or in the interest of
26 an employer with the employer's knowledge or ratification, but
27 a labor organization, or any officer or agent thereof, shall be
28 considered an employer only with respect to individuals
29 employed by such organization. This term shall include "public
30 employers" and shall mean the State of New Jersey, or the
31 several counties and municipalities thereof, or any other
32 political subdivision of the State, or a school district, or any
33 special district, or any authority, commission, or board, or any
34 branch or agency of the public service.

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

1 unfair labor practice and who has not obtained any other regular
2 and substantially equivalent employment. This term, however,
3 shall not include any individual taking the place of any employee
4 whose work has ceased as aforesaid, nor shall it include any
5 individual employed by his parent or spouse, or in the domestic
6 service of any person in the home of the employer, or employed
7 by any company owning or operating a railroad or railway
8 express subject to the provisions of the Railway Labor Act. This
9 term shall include any public employee, i.e., any person holding
10 a position, by appointment or contract, or employment in the
11 service of a public employer, except elected officials, members
12 of boards and commissions, managerial executives and
13 confidential employees.

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

23 (f) "Managerial executives" of a public employer means
24 persons who formulate managerial policies and practices, and
25 persons who are charged with the responsibility of directing the
26 effectuation of such management policies and practices, except
27 that in any school district this term shall include only, the
28 superintendent or other chief administrator, and the assistant
29 superintendent of the district.

30 (g) "Confidential employees" of a public employer means
31 employees whose regular, ordinary and continuing functional
32 responsibilities [or knowledge] in connection with the issues
33 involved in the collective negotiations process would make their
34 membership in any appropriate negotiations unit incompatible
35 with their official duties.

36 (h) Mandatory subjects for collective negotiations in public
37 employment shall include all matters concerning wages, hours,
38 grievance procedures, disciplinary dispute, and all other terms
39 and conditions of employment not specifically prohibited by

1 statute. Public employers shall also be required to negotiate the
2 impact of managerial policies which are, themselves, not
3 mandatorily negotiable, on wages, hours, grievance procedures,
4 disciplinary disputes and all other terms and conditions of
5 employment not specifically prohibited by statute.

6 (i) Permissive subjects for collective negotiations in public
7 employment shall include all matters which, are neither
8 mandatory subjects for negotiations nor illegal subjects for
9 negotiations.

10 (j) Illegal subjects for negotiations in public employment shall
11 include those matters which are specifically prohibited by
12 statute. Administrative rules or regulations shall not present
13 collective negotiations required or permitted by this act nor
14 supersede the provisions of any negotiated agreement.

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

17 7. Except as hereinafter provided, public employees shall
18 have, and shall be protected in the exercise of, the right, freely
19 and without fear of penalty or reprisal, to form, join and assist
20 any employee organization or to refrain from any such activity;
21 provided, however, that this right shall not extend to elected
22 officials, members of boards and commissions, managerial
23 executives, or confidential employees, except in a school
24 district the term managerial executive shall mean the
25 superintendent of schools or his equivalent, nor, except where
26 established practice, prior agreement or special circumstances[,]
27 dictate the contrary, shall any supervisor having the power to
28 hire, discharge, discipline, or to effectively recommend the
29 same, have the right to be represented in collective negotiations
30 by an employee organization that admits nonsupervisory
31 personnel to membership, and the fact that any organization has
32 such supervisory employees as members shall not deny the right
33 of that organization to represent the appropriate unit in
34 collective negotiations; and provided further, that, except where
35 established practice, prior agreement, or special circumstances
36 dictate the contrary, no policeman shall have the right to join an
37 employee organization that admits employees other than

1 policemen to membership. The negotiating unit shall be defined
2 with due regard for the community of interest among the
3 employees concerned, but the commission shall not intervene in
4 matters of recognition and unit definition except in the event of
5 a dispute.

6 Representatives designated or selected by public employees
7 for the purpose of collective negotiation by the majority of the
8 employees in a unit appropriate for such purposes or by the
9 majority of the employees voting in an election conducted by
10 the commission as authorized by this act shall be the exclusive
11 representatives for [collective negotiation concerning the terms
12 and conditions of employment of] the employees in such unit.
13 Nothing herein shall be construed to prevent any official from
14 meeting with an employee organization for the purpose of
15 hearing the views and requests of its members in such unit so
16 long as (a) the majority representative is informed of the
17 meeting; (b) any changes or modifications in [terms and
18 conditions of employment] mandatory subjects for collective
19 negotiations or permissive subjects mutually agreed upon by the
20 parties are made only through negotiation with the majority
21 representative; and (c) a minority organization shall not present
22 or process grievances. Nothing herein shall be construed to deny
23 any individual employee his rights under Civil Service laws or
24 regulations. When no majority representative has been selected
25 as the bargaining agent for the unit of which an individual
26 employee is a part, he may present his own grievance either
27 personally or through an appropriate representative or an
28 organization of which he is a member and have such grievance
29 adjusted.

30 A majority representative of public employees in an
31 appropriate unit shall be entitled to act for, and to negotiate
32 agreements covering all employees in the unit and shall be
33 responsible for representing the interest of all such employees
34 without discrimination and without regard to employee
35 organization or membership. Proposed new rules or
36 modifications of existing rules governing working conditions
37 shall be negotiated with the majority representative before they
38 are established. In addition, the majority representative and
39 designated representatives of the public employer shall meet at
reasonable times and negotiate in good faith with respect

1 to grievances[. disciplinary disputes. and other terms and
2 conditions of employment] and those matters defined as
3 mandatory subjects for collective negotiations and may
4 negotiate and agree upon those matters defined as permissive
5 subjects for collective negotiations. Nothing herein shall be
6 construed as permitting negotiation of the standards or criteria
7 for employee performance.

8 When an agreement is reached on [the terms and conditions of
9 employment] those matters defined as either mandatory or
10 permissive subjects for collective negotiations. it shall be
11 embodied in writing and signed by the authorized
12 representatives of the public employer and the majority
13 representative.

14 Public employers shall negotiate written policies setting forth
15 grievance and disciplinary review procedures by means of which
16 their employees or representatives of employees may appeal the
17 interpretation. application or violation of policies, agreements,
18 and administrative decisions, including disciplinary
19 determinations, affecting them, provided that such grievance
20 and disciplinary review procedures shall be included in any
21 agreement entered into between the public employer and the
22 representative organization. Such grievance and disciplinary
23 review procedures may provide for binding arbitration as a
24 means for resolving disputes. The procedures agreed to by the
25 parties may not replace [or be inconsistent with] any alternate
26 statutory appeal procedure regarding the certification of tenure
27 charges in education matters nor may they provide for binding,
28 arbitration of disputes [involving the discipline of employees
29 with statutory protection under tenure or] regarding the
30 termination of employees covered by the civil service laws.
31 [Grievance and disciplinary review procedures established by
32 agreement between the public employer and the representative
33 organization shall be utilized for any dispute covered by the
34 terms of such agreement.]

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

37 1. a. Public employers, their representatives or agents are
38 prohibited from:

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

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

3 (3) Discriminating in regard to hire or tenure of employment
or any term or condition of employment to encourage or
5 discourage employees in the exercise of the rights guaranteed to
them by this act.

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

11 (5) Refusing to negotiate in good faith with a majority
representative of employees in an appropriate unit concerning
[terms and conditions of employment of] those matters defined
13 as mandatory subjects for collective negotiations concerning
employees in that unit, or refusing to process grievances
15 presented by the majority representative.

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

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

21 b. Employee organizations, their representatives or agents
are prohibited from:

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

25 (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.

27 (3) Refusing to negotiate in good faith with a public employer,
if they are the majority representative of employees in an
29 appropriate unit concerning [terms and conditions of
employment of] those matters defined as mandatory subjects for
31 collective negotiations concerning employees in that unit.

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

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

37 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
39 that anyone has engaged or is engaging in any such unfair

1 practice, the commission, or any designated agent thereof, shall
2 have authority to issue and cause to be served upon such party a
3 complaint stating the specific unfair practice charged and
4 including a notice of hearing containing the date and place of
5 hearing before the commission or any designated agent thereof;
6 provided that no complaint shall issue based upon any unfair
7 practice occurring more than six months prior to the filing of
8 the charge unless the person aggrieved thereby was prevented
9 from filing such charge in which event the six months period
10 shall be computed from the day he was no longer so prevented.

11 In any such proceeding, the provisions of the "Administrative
12 Procedure Act," P.L. 1968, c. 410 (C. 52:14B-1 et seq.) shall be
13 applicable. Evidence shall be taken at the hearing and filed with
14 the commission. If, upon all the evidence taken, the commission
15 shall determine that any party charged has engaged or is
16 engaging in any such unfair practice, the commission shall state
17 its findings of fact and conclusions of law and issue and cause to
18 be served on such party an order requiring such party to cease
19 and desist from such unfair practice, and to take such
20 reasonable affirmative action as will effectuate the policies of
21 this act. All cases in which a complaint and notice of hearing on
22 a charge is actually issued by the commission, shall be
23 prosecuted before the commission or its agent, or both, by the
24 representative of the employee organization or party filing the
25 charge or his authorized representative.

26 d. The commission shall at all times have the power and duty,
27 upon the request of any public employer or majority
28 representative, to make a determination as to whether a matter
29 in dispute is within the scope of mandatory or permissive
30 collective negotiations. The commission shall serve the parties
31 with its findings of fact and conclusions of law. Any
32 determination made by the commission pursuant to this
33 subsection may be appealed to the Appellate Division of the
34 Superior Court.

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

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

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

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

21 (b) Whenever negotiations between a public employer and an
22 exclusive representative concerning [the terms and conditions of
23 employment] those matters defined as mandatory subjects for
24 collective negotiations shall reach an impasse, the commission,
25 through the Division of Public Employment Relations shall, upon
26 the request of either party, take such steps as it may deem
27 expedient to effect a voluntary resolution of the impasse. In the
28 event of a failure to resolve the impasse by mediation the
29 Division of Public Employment Relations is empowered to
30 recommend or invoke factfinding with recommendation for
31 settlement, the cost of which shall be borne by the commission.

32 (c) The board in private employment, through the Division of
33 Private Employment Dispute Settlement, and the commission in
34 public employment, through the Division of Public Employment
35 Relations, shall take the following steps to avoid or terminate
36 labor disputes: (1) to arrange for, hold, adjourn or reconvene a
37 conference or conferences between the disputants or one or
more of their representatives or any of them; (2) to invite the

1 disputants or their representatives or any of them to attend such
conference and submit, either orally or in writing, the
3 grievances of and differences between the disputants: (3) to
discuss such grievances and differences with the disputants and
5 their representatives; and (4) to assist in negotiating and
drafting agreements for the adjustment in settlement of such
7 grievances and differences and for the termination or avoidance,
as the case may be, of the existing or threatened labor dispute.

9 (d) The commission through the Division of Public
Employment Relations, is hereby empowered to resolve
11 questions concerning representation of public employees by
conducting a secret ballot election or utilizing any other
13 appropriate and suitable method designed to ascertain the free
choice of the employees. The division shall decide in each
15 instance which unit of employees is appropriate for collective
negotiation, provided that, except where dictated by established
17 practice, prior agreement, or special circumstances, no unit
shall be appropriate which includes (1) both supervisors and
19 nonsupervisors, (2) both professional and nonprofessional
employees unless a majority of such [professional] employees
21 vote for inclusion in such unit or, (3) both craft and noncraft
employees unless a majority of such [craft] employees vote for
23 inclusion in such unit. All of the powers and duties conferred or
imposed upon the division that are necessary for the
25 administration of this [subdivision] section, and not inconsistent
with it, are to that extent hereby made applicable. Should
27 formal hearings be required[,] in the opinion of said division to
determine the appropriate unit, it shall have the power to issue
29 [subpenas] subpoenas as described below, and shall determine the
rules and regulations for the conduct of such hearing or
31 hearings.

(e) For the purposes of this section the Division of Public
33 Employment Relations shall have the authority and power to
hold hearings, [subpena] subpoena witnesses, compel their
35 attendance, administer oaths, take the testimony or deposition
of any person under oath, and in connection therewith, to issue
37 [subpenas] subpoenas duces tecum, and to require the production

1 and examination of any governmental or other books or papers
relating to any matter described above.

3 (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
5 act in its behalf and may delegate to such designee one or more
of its duties hereunder and, for such purpose, such designee shall
7 have all the powers hereby conferred upon the board in
connection with the discharge of the duty or duties so
9 delegated. In carrying out any of its work under this act, the
commission may designate one of its members or an officer of
11 the commission to act on its behalf and may delegate to such
designee one or more of its duties hereunder and, for such
13 purpose, such designee shall have all of the powers hereby
conferred upon the commission in connection with the discharge
15 of the duty or duties so delegated.

17 (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
19 all of the powers conferred upon it by this act so far as it is
reasonably necessary to effectuate the purposes of this act.
21 Such persons shall serve without compensation but shall be
reimbursed for any necessary expenses.

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

29 6. (New section) Nothing contained in this 1988 amendatory
and supplementary act shall require:

31 a. Any party to negotiate concerning any permissive subject
for collective negotiations;

33 b. Any party to reach agreement upon any permissive subject
for collective negotiations; or

35 c. Any arbitration of any permissive subject which has not
been reduced to a written agreement as part of negotiations.

7. This act shall take effect immediately.

STATEMENT

1
3 This bill makes various changes in the current law concerning
collective negotiations in public employment. First, it
5 establishes, as state policy, a collective negotiations system
which permits public employees to negotiate on any issue that is
7 not specifically precluded by statute. Second, it allows public
employers and employees to negotiate issues on a "permissive"
9 basis, if the employer and employees agree that negotiations on
these issues are justifiable. Third, it includes as part of
11 mandatory subjects for negotiations all matters involving wages,
hours, grievance procedures, disciplinary disputes, and other
13 conditions of employment not specifically removed from
negotiation by statute. Finally, it limits illegal subjects for
15 negotiation in public employment to matters which are
specifically prohibited by statute.

17
19 LABOR AND EMPLOYMENT
Public Employees and Personnel

21 Clarifies the law with respect to the kinds of matters which are
23 proper subjects of negotiations in public sector employment.

SENATE, No. 3567

STATE OF NEW JERSEY

INTRODUCED MAY 8, 1989

By Senator RUSSO

1 AN ACT concerning collective bargaining and public school
2 employees and supplementing P.L.1941, c.100 (C.34:13A-1 et
3 seq.).

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

7 1. As used in this act:

8 "Commission" means the New Jersey Public Employment
9 Relations Commission.

10 "Commissioner" means the Commissioner of Education.

11 "Discipline" includes all forms of discipline, except tenure
12 charges filed pursuant to the provisions of subsubarticle 2 of
13 subarticle B of Article 2 of chapter 6 of Subtitle 3 of Title 18A of
14 the New Jersey Statutes (C.18A:6-10 et al.), or the withholding
15 of increments pursuant to N.J.S.18A:29-14.

16 "Employees" means employees of an employer as defined by
17 this act.

18 "Employer" means any local or regional school district,
19 educational services commission, jointure commission, county
20 special services school district, or board or commission under the
21 authority of the commissioner or the state board of education.

22 "Extracurricular activities" include those activities or
23 assignments not specified as part of the teaching and duty
24 assignments scheduled in the regular work day, work week, or
25 work year.

26 "Minor discipline" includes, but is not limited to, various forms
27 of reprimands, fines and suspensions, but does not include tenure
28 charges filed pursuant to the provisions of subsubarticle 2 of
29 subarticle B of Article 2 of chapter 6 of Subtitle 3 of Title 18A of
30 the New Jersey Statutes (C.18A:6-10 et al.), or the withholding
31 of increments pursuant to N.J.S.18A:29-14.

32 "Regular work day, work week, or work year" means that
33 period of time that all members of the bargaining unit are
34 required to be present and at work.

35 "Teaching staff member" means a member of the professional

1 staff of any employer holding office, position or employment of
2 such character that the qualifications, for the office, position or
3 employment, require him to hold a valid and effective standard,
4 provisional or emergency certificate, appropriate to that office,
5 position or employment, issued by the State Board of Examiners.
6 "Teaching staff member" includes a school nurse.

7 2. All aspects of assignment to and employment in
8 extracurricular activities shall be deemed mandatory subjects for
9 collective negotiations between an employer and majority
10 representative of the employees in a collective bargaining unit,
11 except that the establishment of qualifications for such positions
12 shall not constitute a mandatory subject for negotiations. If the
13 negotiated selection procedures fail to produce a qualified
14 candidate from within the district the employer may employ from
15 outside the district any qualified person who holds an appropriate
16 New Jersey teaching certificate.

17 3. a. Notwithstanding any other law to the contrary, and if
18 negotiated with the majority representative of the employees in
19 the appropriate collective bargaining unit, an employer shall have
20 the authority to impose minor discipline on employees.

21 b. The scope of such negotiations shall include a schedule
22 setting forth the acts and omissions for which minor discipline
23 may be imposed, and also the penalty to be imposed for any act
24 or omission warranting imposition of minor discipline.

25 c. Fines and suspensions for minor discipline shall not
26 constitute a reduction in compensation pursuant to the provisions
27 of N. J.S. 18A:6-10.

28 4. Transfers of employees by employers between work sites
29 shall not be mandatorily negotiable except that no employer shall
30 transfer an employee for disciplinary reasons.

31 5. Disputes involving the withholding of an employee's
32 increment by an employer for predominately disciplinary reasons
33 shall be subject to the grievance procedures established pursuant
34 to law and shall be subject to the provisions of section 8 of this
35 act.

36 6. a. If there is a dispute as to whether a transfer of an
37 employee between work sites or withholding of an increment of a
38 teaching staff member is disciplinary, the commission shall
39 determine whether the basis for the transfer or withholding is

1 predominately disciplinary.

3 b. If the commission determines that the basis for a transfer is
predominately disciplinary, the commission shall have the
5 authority to take reasonable action to effectuate the purposes of
this act.

7 c. If the commission determines that the basis for an
increment withholding is predominately disciplinary, the dispute
shall be resolved through the grievance procedures established
9 pursuant to law and shall be subject to the provisions of section 8
of this act.

11 d. If a dispute involving the reason for the withholding of a
teaching staff member's increment is submitted to the
13 commission pursuant to subsection a. of this section, and the
commission determines that the reason for the increment
15 withholding relates predominately to the evaluation of a teaching
staff member's teaching performance, the teaching staff
17 member may file a petition of appeal pursuant to N.J.S.18A:6-9
and N.J.S.18A:29-14, and the petition shall be deemed to be
19 timely if filed within 90 days of notice of the commission's
decision, or of the final judicial decision in any appeal from the
21 decision of the commission, whichever date is later.

23 7. Nothing in this act shall be deemed to restrict or limit any
right established or provided by section 7 of P.L.1968, c.303
(C.34:13A-5.3); this act shall be construed as providing additional
25 rights in addition to and supplementing the rights provided by
that section.

27 8. a. The grievance procedures that employers covered by this
act are required to negotiate pursuant to section 7 of P.L.1968,
29 c.303 (C.34:13A-5.3) shall be deemed to require binding
arbitration as the terminal step with respect to disputes
31 concerning imposition of discipline as that term is defined in this
act.

33 b. In any grievance procedure negotiated pursuant to this act,
the burden of proof shall be on the employer covered by this act
35 seeking to impose discipline as that term is defined in this act.

37 9. This act shall take effect immediately and nothing in this
act shall require the reopening of any negotiated agreement in
existence at the time of enactment.

1 STATEMENT

3 This bill expands the scope of negotiations for public school
employees in matters relating to extra curricular activities and
5 discipline, including increment withholding.

7 The bill provides public school employees with the right to
negotiate all aspects of extracurricular employment, except the
qualifications for the position. It reserves the right of the
9 employer to hire from outside the district if no qualified
candidate can be found under the negotiated procedures.

11 The bill provides for the establishment of a schedule of
reprimands, fines and suspensions for certain acts or omissions,
13 provided that such a schedule is first negotiated between the
employer and the employee's representative. Neither
15 reprimands, fines nor suspensions are required to be negotiated by
the parties. The form of such penalties is totally within the
17 control of the parties. In addition, the bill provides that all
discipline up to and including the withholding of increments for
19 disciplinary reasons may be appealed through the locally
negotiated grievance procedures which must provide for binding
21 arbitration as the final step in the procedure. The withholding of
a teaching staff member's increment based on the actual
23 teaching performance would still be appealable to the
Commissioner of Education.

25 The bill also forbids transfers of employees between sites for
disciplinary reasons. If there is a dispute as to whether the
27 reason for a transfer or increment withholding is predominately
disciplinary, the New Jersey Public Employment Relations
29 Commission will make the determination as it previously did in
Holland Township Board of Education and Holland Township
31 Education Association, PERC No. 87-43, 12 NJPER 17316.
affirmed N.J. Superior Ct., Appellate Division, October 23, 1987.

33 The rights granted in this bill are in addition to those rights
that public school employees already enjoy. This bill should not
35 be construed as detracting from the rights of those covered or as
detracting from the rights of other employees not covered by this
37 bill.

S3567

5

1

LABOR AND EMPLOYMENT

Teachers

3

Expands the scope of negotiations for public school employees.



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SENATOR RAYMOND LESNIAK (Chairman): The hearing will come to order. I apologize for the lateness of the meeting, but we had a special session of the Senate today. There was the swearing in of a new Senator as well as bills to be voted on, which delayed this hearing from starting. Obviously, because of that, we're not going to be able to reach all those who want to testify which means we will have to have another public hearing.

We will first call people testifying on Senator Russo's bill S-3567. Again, because of the limited time that we have today, we will not be able to call today any individual people from individual school districts who are within local point of view. We will call today associations; School Boards Association, Teachers Association, and the labor union representatives who represent larger groups than any local interest. We will have to wait for you at the next hearing.

So at this time-- (confers with Committee Aide) Am I correct in assuming that there are no Senate sponsors here to testify? (no response) At this time I will call Ms. Dolores Corona, Director of Government Relations, New Jersey Education Association.

D O L O R E S T. C O R O N A: Thank you, Mr. Chairman. Good afternoon Senator, and Mr. Chairman, and other members of the Committee. Mr. Chairman, I understood that you were going to take all of the bills. Our testimony is based on all of the bills leading up to S-3567. So if I may, I would like to pursue some of the testimony on the other bills and then wind up, as I say, with the testimony on 3567, if that is okay with you?

SENATOR LESNIAK: That's fine.

MS. CORONA: I am, as you know, Dolores Corona, Director of Government Relations for the New Jersey Education Association which represents over 130,000 active and retired school employees and county college staff. And if I may, with me is Anne Whitford, NJEA Associate Director of Research.

Mr. Chairman, let me thank you for bringing up for deliberation by your Committee, legislative proposals on expanding the scope of negotiations for public employees. The fact that you have posted the negotiations bills for public hearings renews our optimism that the Legislature may finally recognize the serious need to provide some balance at the bargaining table for our members and others.

Collective negotiations in New Jersey is based on a statute which has wording the same or similar to many other states. But the scope of negotiations is established by the Legislature in New Jersey and has been restricted by the courts in this State. New Jersey public school employees do not enjoy the same latitude in negotiations as their colleagues in Rochester, New York or Cincinnati, Ohio. New Jersey teachers cannot negotiate commitments from boards of education for teachers' text, for chalk, or even a dictionary, if I may. New Jersey teachers cannot negotiate a limit to the amount of time they may be required to be away from their own children on weekends or nights. New Jersey teachers, in some instances, may not even negotiate increased compensation for additional workloads.

New Jersey teachers have no real appeal against unjust discipline. None of these conditions was intended by the Legislature of this State, either back in 1968 or today, 20-plus years later. However, with decisions such as Ridgefield Park or Bernards Township, the courts of New Jersey indicated that they did not trust local boards of education and their employees to make appropriate decisions in these areas.

Surely the boards of education at the local decision making level have grown over the 20 years to recognize that a mandatory subject of bargaining is only something that either party -- and I emphasize either party -- may put on the table, but that neither party must put on the table. And we know for a fact that boards of education understand that the response, "No," is a good faith bargaining position.

Now we have before us a number of bills which seek to correct some of the problems brought about by narrow judicial decisions. Looking first at S-606 sponsored by Senator Tom Cowan, we see a bill which would restore the scope of negotiations by clarifying the public policy which supports the New Jersey Employer and Employee Relations Act. S-606 provides negotiations over impact, on terms and conditions. It allows disciplinary disputes of all kinds to proceed to arbitration, and it establishes a category of permissive negotiations. The bill also provides a definition of legal subjects for negotiations, clarifies preemption by statute on rules and regulations, and changes the definition of the term "confidential employee."

I must say that each of those changes is certainly welcomed by the NJEA. The public policy expression is important so that courts understand that the Legislature and Governor of this State find the concept of collective bargaining acceptable; that as a matter of public policy just as the State Board of Education has indicated in its decision in Abbott v. Burke; decision making at the local is to be granted deference.

There are times when the courts appear to treat collective negotiations in the public sector and the public employee representative groups, with antipathy. The labor movement in both the public and private sector is a part of the democratic processes of this country and this State, and Mr. Chairman and members, we are proud of that.

At the present time when a board reduces the number of staff, there is no right for remaining teachers or support staff to negotiate compensation for the increased work load. Under Senator Cowan's bill, this would be remedied. At the present time, withholding of a teacher's increment can be reviewed by the Commissioner only to ascertain whether or not a

board acted capriciously or arbitrarily; that is, acted on without reason. There is no review as to whether or not the board acted fairly or for a good reason.

We have many examples of that, and let me show you what unfair treatment has occurred at the local level, just by a couple of examples, Mr. Chairman. A teacher was forced to perform the extracurricular activity of building stage sets for about \$300 -- that was the compensation -- and because of a problem with the set construction, that teacher was disciplined with the withholding of a \$3000 increment.

In another case, two teachers were guilty of the same offense. They were guilty of taking a personal day after a holiday to accompany their husbands on a company paid trip to the Orient. Both lost their increments and their salary adjustments. Because they were at different places on the salary guide and did not receive the same dollar increase, one teacher lost the equivalent of 20 days pay while the other lost the equivalent of 15 days pay. Right now there can be no appeal of the fairness of that penalty. In both instances the loss of increment was for disciplinary reasons and not based on an evaluation of teaching performance.

Let me talk for a minute about S-855, sponsored by Chris Jackman. And we certainly thank Senator Chris Jackman for that. S-855 is somewhat similar, although it does not go as far in rectifying the court's interference with the statute. It also redefines "confidential employee" so that secretaries who open mail are not, for that reason alone, excluded from a negotiating unit. It provides, as does Senator Cowan's bill, a permissive category for negotiations which includes everything which is neither illegal nor mandatory.

The effect of such a change would mean that teachers could negotiate whether or not they were entitled to have a dictionary, a teachers' text, chalk, or even the best time for

conferences. It is important to note -- and I note this emphatically -- no group could insist upon negotiating any permissive subject to the point of impasse. The parties can only declare impasse on mandatory subjects of negotiations.

Another bill which is under consideration today, S-266 sponsored by Senator Wayne Dumont, does address some of the specific problems which school employees face. It deals with assignment to extracurricular activities, involuntary transfers, absenteeism and tardiness, discipline, evaluation criteria, and subcontracting. While S-266 addresses specific problems of school employees, it limits the scope of negotiations through the introduction of a laundry list. NJEA believes that a listing does not allow any of the parties latitude to solve problems which may not be within that laundry list.

On the other hand S-3567, sponsored by President John Russo, also addresses specific concerns, but that bill is packaged in such a way as not to limit the rights of public employees and to expand upon certain areas which are peculiar to the pre-K through 12 public education system. Although the bill does not cure all the problems, it is a start at addressing some very serious concerns within the public schools.

S-3567 does provide a mechanism by which we can address problems in the area of extracurricular activities. It expands the scope of negotiations to include the various aspects of the extracurricular area, except the setting of qualifications. We have members who are mandated to accompany students on weekend or overnight trips regardless of the employee's home situation or how many times he or she has already been required to perform the task.

We have had members lose increments because they could not leave a sick family member and go on a mandated expedition. We have members, who with no experience, have been ordered to coach a sport or supervise a yearbook. If they should fail in these endeavors, their increment is in jeopardy.

Additionally since local boards of education may hold all the cards relative to the selection of staff for extracurricular activities, any salary negotiations for compensation for these positions are very one-sided indeed.

On the other hand, while I have laid out some of those problems, we do have employees who have given many years to coaching or supervising an activity and who are terminated or not rehired because of nepotism, disciplinary transfer, and the like.

In addition to the extracurricular provision, S-3567 provides that disciplinary increment withholdings may be appealed to binding arbitration for all public school employees. Increments withheld because of evaluation of teaching performance, however, would still be appealable to the Commissioner of Education. If there is a dispute as to whether or not a withholding is disciplinary -- and that is key -- PERC will make the decision. PERC has already been making such decisions in cases of reprimands and has been upheld by the courts. We do not wish to change the status of the board's ability to reprimand, and we will seek an amendment to clarify that point within the legislation.

Additionally, let me say that the bill provides binding arbitration for all disciplinary grievances in the public schools. We believe, contrary to what school boards say, that this provision will insure an expeditious, relatively inexpensive, fair and unbiased resolution of disciplinary disputes.

Another form of discipline which the bill addresses is the use of involuntary transfers for disciplinary purposes. The bill makes such transfers illegal. NJEA believes that transferring employees for disciplinary reasons does not address and resolve underlying problems, but merely passes the problem onto another environment.

Administrators should be compelled, Mr. Chairman, to resolve problems, not just move them around. Moreover, the involuntary transfers should not be used as a threat or for punitive reasons.

The remaining addition to the area of discipline is that the board and employee representatives may -- and I underline may -- they may negotiate a schedule of acts and penalties. Specific provision is made for fines and suspensions to be legally negotiated. Currently boards may issue reprimands and we repeat that we will suggest an amendment that makes clear we do not intend to require boards to negotiate over that right.

Also, at the present time, the only penalty beyond a reprimand is an increment withholding. Although suspension under the education laws is part of the New Jersey Statutes 18A:25-6 and New Jersey Statutes 18A:17-2, these provisions deal with suspension in relation to tenure hearings. 18A does not provide for suspension as a penalty involved with minor discipline. For example, a board may not, now, decide to suspend a teacher for two days because that teacher has been late to work five times. But under S-3567 employers and employees could negotiate reasonable penalties for real situations.

Let me draw to a conclusion here, Mr. Chairman, and say this: With the exception of S-266 which causes us some concern, NJEA supports all the negotiation bills under discussion today. Since the Ridgefield Park decision in '78, we have put a great deal of effort into gaining a broad expansion of the scope of negotiations, but I think you recognize, to no avail.

Let me say, however, that even if NJEA were successful in persuading the Legislature to pass a broad scope of negotiations bill, our many discussions with the Governor reveal that he, while supporting the concept of scope expansion, desires a much more restrictive approach.

We took the opportunity three-and-a-half years ago to collaborate with Governor Kean in bringing about much needed and long awaited relief to our members at the bargaining table. For the past three-and-a-half years, as I have said, we've had many meetings with both the Governor and his staff; and in turn they, with the appropriate members of the Governor's cabinet and others. S-3567 is the result of those discussions; a bill which recognizes that boards of education should not be allowed to continue to discipline -- and the emphasis is on discipline -- their staffs arbitrarily and capriciously.

In the public interest -- and truly in the public interest -- S-3567 is a way for boards to have additional and reasonable means of discipline. A board which neglects good employer relations does a gross disservice to a community.

Mr. Chairman, I'd like to close by saying that the Governor is committed to signing S-3567 in its present form. Thank you very much for the opportunity to appear before you, and we'll take any questions.

SENATOR LESNIAK: With the amendment that you're talking about -- you referred to an amendment-- Kean would also sign the bill with that amendment?

MS. CORONA: Yes, he would.

SENATOR LESNIAK: Senator Jackman.

SENATOR JACKMAN: Yeah, I am lead to believe that the Governor has agreed with you, and I trust you because when you make a statement, I know it's authenticated. The other three bills he hasn't approved.

MS. CORONA: That's exactly right, Senator.

SENATOR JACKMAN: Okay, so we're wasting any time if we take up the other three bills. Is that what-- In essence, I don't want to be--

SENATOR LESNIAK: Senator, why don't I ask that question?

SENATOR JACKMAN: Well, what the hell, you gave me the floor to ask her the question, didn't you?

SENATOR LESNIAK: Because I think that question is more properly for the members of this Committee, not a representative from the NJEA.

SENATOR JACKMAN: Well, the reason I ask it is because she makes mention in her statement that the Governor has agreed to sign only that particular bill, and there's no reference made to the other three.

SENATOR LESNIAK: Yeah, but--

SENATOR JACKMAN: Okay, if you don't want me to ask it, I won't ask it, because it seems kind of odd to me-- Oh, go ahead, you take it back. You want to ask it now?

SENATOR LESNIAK: Has the Governor agreed to sign the other bills? (laughter; no response)

SENATOR JACKMAN: Well, the only reason that I say it -- and I hope you don't think I'm being facetious -- there are 23 people listed to talk here. And again, I'm not saying this in a derogatory sense, one half-hour has gone by, and justifiably so. If 23 other people are going to be given the same opportunity to speak for a half-hour, who's going to be here? Now, I'm not trying to, you know, make a mockery out of this thing, but you got to think 23, and a half-hour is-- Figure it out. It comes to 12 hours.

SENATOR LESNIAK: Well, we just wasted another five minutes. But Senator, I announced--

SENATOR JACKMAN: That's not a waste, that's a statement.

SENATOR LESNIAK: Senator, I announced at the beginning of this hearing that because of our time delay in starting today that we would have another hearing where everyone will have an opportunity to be heard.

SENATOR JACKMAN: Oh, okay.

SENATOR LESNIAK: And while-- Regardless of whether the Governor supports any or all of these bills, as Senator Cardinale knows, sometimes the Governor isn't right. Sometimes maybe we can convince him to sign something. Senator DiFrancesco?

SENATOR DiFRANCESCO: No.

SENATOR LESNIAK: Senator Cardinale?

SENATOR CARDINALE: I have a few specific questions, Dee, that I'd like to address to you. These come out of my experience as a board member, and it goes back a number of years. But we've had-- I've had experiences in specific areas, and I'd like to get some comment from you as to how you see this bill working in relation to those problems. For instance, we were engaged -- and for five years I served on the negotiating committee for the Demarest schools-- We had a problem, at one point, where teachers were unhappy with the negotiating process and the progress of the negotiating process, and where they declined to participate in any and all extracurricular activities whatsoever, including the yearbook. That was unilateral on their part, and it caused great upset within the school district. And this really happened.

Under the law as it exists today, I guess, they couldn't do it because you're seeking to have the right for them to do that. But don't you think that that's a pretty strenuous kind of action for them to take, because if a particular class, let's say, does not find itself with any extracurricular activities-- If a basketball team cannot have a coach because of an agreement that has been made among the teaching staff to use that as a means of putting pressure on--

You have had situations, I'm sure, in other places -- we didn't have this particular situation in Demarest -- where people are looking forward to athletic scholarships. But if the team does not play that year, those athletic scholarships are going by the boards. Now that's a tremendous amount of

personal pressure that can be brought to bear on a few families who then exert pressures on the board to do other things than it would do if it was simply representing the interests of the students and the teachers, too, because I think our board tried to represent the interests of the teachers as well as of the students and as well as of the taxpayers. How do you see this bill affecting that?

MS. CORONA: Senator, I believe this bill is irrelevant to the issue that you're talking about. You're right when you say that right now boards cannot negotiate extracurricular activities with a majority representative. This bill or the status quo as it is now is not going to change that kind of thing. What you're talking about is an aberration that happens where there is adversarial negotiations to an extent where there is a crisis. You're not going to change that. No bill is going to change that. If a majority representative feels grieved enough that they feel they have to put some kind of pressure or take some action, they're going to do that. So I believe your question, while it is a good question, is not relevant to the bills that you have in front of you today.

SENATOR CARDINALE: So you feel this bill would not affect that at all?

MS. CORONA: That's right.

SENATOR CARDINALE: That's interesting. I'll have to look into that answer. Let me go on to another point. We had a situation-- No employer would be allowed to transfer an employee for disciplinary reasons under this bill. This is a real situation that occurred.

Some people came before the Board in a closed session since it was dealing with personnel matters and told us about a specific teacher who was writing on the blackboard, "You should hate men," this is in a mixed class, "they're terrible. You should hate the kids in the parochial school across the street."

We decided as a Board that we would transfer that particular -- not do anything further -- but transfer that particular teacher to one of our lower schools from our middle school. We didn't have a high school in that district, so that teacher would be removed physically from the circumstances where she was in close proximity to the parochial school which was across the street.

And we did, in fact, effect that transfer and I think it was a healthy thing because I think that person, for some reason, as a result of that action, woke up. It was disciplinary transfer, pure and simple. But it was better I think, for all concerned, than withholding of an increment, than holding a tenure hearing; than anything else we might have done.

I particularly disagreed with the Board's lenient action at that point in time. I wanted to take one of the other actions that was open to us. But in retrospect and seeing how it worked out, I think that disciplinary transfer worked to the best interests of that teacher as well as the school system. Why do you want to prevent boards from doing that?

MS. CORONA: The case that you put before us, I think, is in question as to whether that is disciplinary or not. I would tend to say that that probably leans towards teaching performance rather than disciplinary, as we see it. The PERC will have to make that decision as to whether that's disciplinary or not.

But the kinds of things that we're talking about which do not impact on teaching performance within that classroom might be things like being tardy for school, taking a day off without a reason -- that kind of thing would be disciplinary -- or for Association activities, and certainly that exists, where people are transferred because of their adversarial Association activities. I'm not so sure your case is, truly, what we

consider disciplinary. Anne may want to react to that, too, based on some of the things she has seen with PERC.

A N N E W H I T F O R D: However -- thank you Senator -- even if we were to accept, for a moment, the case as disciplinary, the question is whether or not I assume you wanted to see the behavior changed? Our experience is that if you're truly interested in changing behavior, transfer does not normally do that anyway, so that whether it is evaluative or disciplinary isn't getting at the problem, perhaps, that you wanted to see worked on.

When we had looked at this, one of the things we were concerned about was that there be some real way of differentiating between the evaluation, which Ms. Corona has mentioned to you, and real disciplinary incidents. But you want a change in behavior, I think, no matter how you arrive at it.

SENATOR CARDINALE: That's exactly right.

MS. WHITFORD: And we're not saying-- And our position is that the site you work in doesn't change your behavior.

SENATOR CARDINALE: Well, it can, because the site, you see, in some instances lends itself to -- and just a change of scenery -- will lend itself to waking someone up. It's of a lesser order of magnitude than withholding an increment, for certain, and you have an option open to you that is an option that is uncontested. Withholding of an increment leads to an adversarial proceeding where you're going to represent-- Your group is going to represent that teacher, almost no matter what. And the board is going to have to hire an attorney. But what is open to a board today is something that they can do that gets everyone's notice and attention but at the same time is not drastic as to trigger all of these legal actions that are otherwise triggered.

MS. WHITFORD: Excuse me, Senator. That is part of the problem, too. Let's assume that it is absolutely disciplinary. The problem is that transfers are made on the basis of, for the good of the system. So, number one, nobody ever admits that they're disciplinary within the system. That's the first point. There is absolutely no appeal.

Within the administrative as well as in the labor field, there's normally an appeal process. And the transfers that occur for the so-called disciplinary reasons right now, there's no way to appeal them whatsoever under the current state of the law.

SENATOR CARDINALE: I understand that. I feel that's good.

SENATOR JACKMAN: Can I ask a question, Mr. Chairman?

SENATOR LESNIAK: Sure.

SENATOR JACKMAN: What would happen if a kid wrote a, "I hate the teacher?" Would you transfer him to another school?

SENATOR CARDINALE: You might. It depends on what the circumstances are, but you might.

SENATOR JACKMAN: Not if the father was big, you wouldn't.

SENATOR LESNIAK: Any other questions from the Committee? (no response) Thank you.

MS. CORONA: Thank you very much.

MS. WHITFORD: Thank you.

SENATOR LESNIAK: Jeanne Oswald, Director of the Office of Legislative Services of the Department of Education.

J E A N N E O S W A L D: Thank you, Mr. Chairman. I, too, prepared testimony on all of the bills as we were instructed so I will be quick but--

SENATOR LESNIAK: Excuse me. (referring to audience) I have a hard time hearing today. And the air conditioner is on, we'll have a harder time if people talk. Please, do not speak.

MS. OSWALD: Thank you.

SENATOR JACKMAN: Push that up closer to you so we can hear you. (referring to mike)

MS. OSWALD: Okay.

SENATOR JACKMAN: That's good.

MS. OSWALD: I'll speak first about three bills on today's agenda; those being S-266, S-606, and S-855. The Department of Education supports those who express the view that any employee affected by a decision should be able to participate in the process of decision making. Indeed, the more important the issue or policy, the greater the involvement of the employees who will have the responsibility of implementing that policy.

With this in mind, we feel strongly that school boards and administrators must involve teachers in issues where they have expertise or on issues of policy initiatives that affect their lives. Teachers must participate in such areas as textbook selection, curriculum issues, district-wide testing policies, disciplinary policies, evaluation systems for teachers, and staff development policy.

So the issue is not whether teachers should participate in those decisions which go to the very heart of the education program, but how? The Department does not believe that the public interest is best served by all questions being discussed at a bargaining table. We do not feel the negotiating table is the proper forum because the process of collective bargaining is not cooperative: It is essentially, and of necessity, an adversarial proceeding. It is in all cases, an interest proceeding, where one group seeks to obtain what it views as its interest, notwithstanding the effect that the acquisition may have on another group. Indeed the Supreme Court states, and I quote, "The interest of teachers do not always coincide with the interest of students on many important matters of educational policy. Teacher associations, like any employee organization, have as their

primary responsibility the advancement of the interests of their members. Arbitrators to whom the resolution of grievance under collective agreements is generally entrusted, are concerned primarily with contractual rights and remedies. Of the relevant actions at the local level, only the school boards have the primary responsibility of insuring that all children receive a thorough and efficient education. These boards are responsible to the local electorate as well as to the State and may not make difficult educational policy decisions in a forum from which the public is excluded."

Broadening the collective bargaining format to formally include all issues affecting diverse areas of educational policy and school operations will unnecessarily impair the ability of local boards of education to manage the schools in a manner that is responsive to the public at large and the public trust that's placed upon them.

Critical management decisions should not be decided in negotiating sessions behind closed doors and without citizen participation. The proper forum, we believe, for discussing education policy and programs for the public schools is not, therefore, at the public bargaining table.

The final bill being considered today with the amendments suggested by NJEA which would insure that the boards will retain the right to reprimand, stands apart from the other bills, and we believe that this bill warrants serious consideration by the Legislature; this being S-3564, Senator Russo's bill.

Improvements upon our existing collective negotiations law and the manner in which employee disciplinary matters are treated in public schools could strengthen the overall efforts of school boards and employees to work together to educate children.

First of all, negotiating a schedule of acts and omissions for which an employee may be disciplined should

result in a fair and equitable determination of what is expected of employees. Further, the establishment of the schedule and resultant penalties will insure consistent application of disciplinary measures among employees.

In that same vein, establishing the procedures under which employees may file a grievance of matters involving discipline is an acceptable provision. Requiring binding arbitration as the terminal step will insure resolution and serve to avoid elongated debates and discord.

Secondly, when a disagreement arises in determining whether an increment withholding is predominantly disciplinary or predominantly related to an employee's teaching performance, it is reasonable to have the Public Employment Relations Commission, an independent third party, make that determination. In those cases in which the increment withholding is related to the employee's teaching performance, the Commissioner will retain authority to hear the case. That is crucial to the Department -- to the Commissioner. However, it is appropriate that increment withholdings which are disciplinary in nature will be resolved like other disciplinary measures through established grievance procedures with binding arbitration as the terminal step.

Further, no employee should be transferred for disciplinary reasons. Assignment of employees to positions should be based on educational considerations, and staffing needs, and will remain a managerial prerogative under the proposed legislation.

The one area in which the Department has some concerns is the area of extracurricular activities. Making aspects of extracurricular assignments a mandatory subject for negotiations deserves consideration. Forcing individuals to take on extracurricular assignments in which they have no interest is clearly not desirable. And yet, Commissioners' decisions over the years have found, and the courts have

upheld, that doing so is necessary when no qualified staff voluntarily takes such positions. This is related somewhat to the concern that Senator Cardinale raised earlier.

Local boards of education are responsible for developing a broad range of pupil activities beyond the formal classroom instruction. As an essential part of the curriculum offered and the professional staff, of course, are necessary to lead such activities. Making the proposed aspects negotiable would be reasonable as long as there is no intrusion into educational policy.

We believe that clarifying language is necessary regarding this aspect of S-3567 to ensure that the actual extracurricular programs themselves, or the design of those programs, is not decided at the bargaining table. Drawing the line to separate educational policy may be difficult in that when there are no candidates who wish to take an extracurricular activity that is an integral extension of the curriculum, there must be some provision to insure that the program isn't jeopardized.

We hope this Committee will seriously consider and discuss this aspect of the bill before it is released. With that one exception, the Department of Education believes that S-3567 is an acceptable modification of existing collective bargaining law.

SENATOR LESNIAK: Questions? Question, Senator?

SENATOR DiFRANCESCO: Yeah, Jeanne, so that I understand your position clearly, you speak in support of Senator Russo's bill, provided it is amended to exclude the reference to assignment, to employment, and extracurricular activities. Am I missing your point?

MS. OSWALD: If I may, through the Chair, two things: provided first that the amendment referred to by NJEA would be in place, and that would be to insure that boards still have the right to reprimand teachers, which they've always had.

SENATOR DiFRANCESCO: A letter of reprimand is what we're--

MS. OSWALD: Yes, a letter of reprimand would be excluded in the way the bill is now written, and I don't think anyone ever intended to do that. So, I agree that that would have to be done.

Aside from that, we don't think that it's inappropriate to make aspects of extracurricular activities negotiable. We think it's reasonable. What we would like to see is something-- When you get down the road and there are no volunteers that are qualified from within the school district and they've gone outside the school district which the bill provides for, to try to seek somebody to do that-- Then, is there no band, is there no football team or could there be a unilateral assignment, which is now possible under existing law and which has been upheld in the courts?

SENATOR LESNIAK: What good would a band do if I had to instruct them, for instance? The 50 accordion players.

SENATOR DiFRANCESCO: Well, wait a minute, you're a pretty talented musician. Here's another example because, I mean, what good would a basketball team if you had-- (laughter)

MS. OSWALD: It certainly would have to be a qualified employee. That is one of the key-- That's in the bill already. Qualifications for the position are established by the board and that prerogative is not given up. It wouldn't be any good to have, I guess, Senator Lesniak do the basketball team, if you say so.

SENATOR DiFRANCESCO: No, actually he beat me one on one, one time. He pushed me around the court.

SENATOR LESNIAK: We played once, and I won once. Any other questions?

SENATOR O'CONNOR: Was that before your surgery? (laughter)

SENATOR LESNIAK: Before mine. Thank you very much.

SENATOR O'CONNOR: Can I just ask--

SENATOR LESNIAK: Oh, I'm sorry.

SENATOR O'CONNOR: Do you have proposed language? That proposed amendment?

MS. OSWALD: No, sir, I do not. If this wasn't a Committee meeting I thought it would be appropriate to just go through the hearing process but we would be glad to put together language that would work to that end.

SENATOR LESNIAK: It means they haven't figured out the language yet. (laughter)

MS. OSWALD: We have to figure it out.

SENATOR LESNIAK: Gerald Regan, President of the New Jersey School Boards Association.

J E R E M I A H F. R E G A N: I'm Jeremiah Regan. I'm President of the New Jersey School Boards Association. The 1980s have been marked by a commitment at all levels of government to improve and reform public education. New Jersey has taken pride in its leadership in this reform movement and has shared in the acknowledgment that the key to successful reform is increased accountability of teachers, administrators, and school board members.

If the Legislature seeks to remain committed to continued improvement in our public schools, this Legislature must continue to insist on greater accountability from all involved in the delivery of education. The bills being considered today do not help to provide and to assure increased accountability. In fact, these bills will cost the public more money and will decrease the quality of education.

These four bills seek to change the current process of decision making in our public schools. The present process guarantees employees the right to negotiate over the issues that primarily and directly affect them, such as wages and all compensation items. It works.

any of these bills being considered today educational policy decisions, place them on the table and subject them to the pressures, the heat, and the heat of intense bargaining sessions.

Currently educational policy issues are properly handled by elected, accountable public officials. Under S-3567 and S-855, however, the union would determine educational policy on items such as class size, employee assignments, and every aspect of the district's educational offerings.

Think of the consequences. For example, teachers might not be able to be assigned where they are needed and most productive. Under S-3567 if union negotiators refused to agree to the number of hours necessary to coach a sport, or supervise a club, the union could effectively veto any activity desired and supported by the students, by the board, or by the community.

The major component of accountability is the ability of the employer to ensure quality employee performance. This involves a setting of expectations for employees to ensure quality performance, the conducting of evaluations with employer follow-up to assure that employees receive assistance to become more effective, and the taking of whatever action is necessary to assure that employees meet established standards and are as productive as possible.

In New Jersey schools, where tenure law provides teachers and other school employees with unprecedented lifetime job security, the local board's ability to monitor staff performance is completely dependent upon the evaluation of staff performance conduct.

Our current system of performance review is a meaningful process of teacher evaluation established by the administrative code which includes staff involvement and requirements of a minimum number of evaluations. This procedure which is nonnegotiable ensures tenured teachers will

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be evaluated on meaningful criteria which includes indicators of pupil progress. S-606 and S-266 and S-855 existing accountability.

The right to evaluate staff and the evaluation would become totally negotiable students, parents, and taxpayers would no longer assurance that all public school teachers accountable for their classroom performance. The assurance that indicators of pupil progress would for evaluation. All of this would become negot that hurt the school system? Would it damage ad You bet it would.

Senators, the primary role of the union is the interests and the jobs of its members, not to protect the taxpayers and not to protect the interests of the students. Just look at our recent past when assignments were negotiable. Before the Ridgefield Park decision, unions insisted on assignments based on seniority to benefit their members rather than the objective qualification that would benefit the kids in the local educational system.

In states where class size is negotiable, the union standard is not what would produce the optimal learning environment. The standard becomes what is best for the union membership. These negotiated results produce across-the-board registration of class size to provide a form of job or increased compensation based upon each individual student above the negotiated maximum number of students. This costs the taxpayers additional dollars.

S-3567, applicable only to school employees, would go one step further in reducing staff accountability. This bill would require boards to obtain from the union the basic right to discipline employees and to spell out each conceivable act and admission to act that warrants disciplinary action. This bill would effectively prevent boards from initiating minor

discipline, such as letters of reprimand, suspension with pay, or suspension without pay for teachers under indictment.

In addition, the penalties for such disciplinary actions would be needed to be authorized by the union. In every other employment situation in both the public and private sectors, the authority to set standards of appropriate conduct and to initiate discipline is clearly recognized to be a management function. Under this bill, the unions would largely determine the employer's right to discipline. Does that make sense? One has to wonder why school employees have to be singled out to receive this additional power?

It is incredible after all the legislative and public demands for better education, boards will be forced to agree with the union on discipline that in most cases will be ineffective or nonproductive -- for the most ineffective and nonproductive teachers.

Under S-3567 every dispute involving minor discipline will be submitted to binding arbitration because the language of this bill requires that every contract provide arbitration. Now isn't it strange that a bill that seeks to expand the scope of negotiation actually removes from the bargaining table the issue of binding arbitration and turns a negotiable issues into a mandate? Whose interest does this serve?

The same is true for disciplinary transfers under the bill. The legislation does not authorize negotiations on this legitimate type of transfer which can improve the productivity of employees. It prohibits negotiations on such necessary transfers.

Senators, we submit, contracts negotiated under 3567 and other bills before you today will not protect the kids, or the schools, or the majority of strong effective teachers. They are designed to protect the weakest and most marginal employees.

Well, you may say, let the boards be firm. Let boards insist on stringent criteria and their continued ability to set policy. In response, boards will be firm, but there will be a price to pay. The more topics that can be put on the table, the greater the price the boards must pay to get the topic off the table.

Requiring negotiations over rights that currently belong to boards will mean that boards will need to pay more to retain their current degree of authority over policy, assignments, class size, transfers, and the like.

Contract settlements under any of these bills will be more expensive. Those boards that cannot afford the price will be forced to either give up their legitimate authority in these issues or experience a strike. Also providing the money to buy these rights will require cutbacks in other areas; in curriculum and in much needed maintenance on school buildings, causing increased taxes.

Permitting negotiation over policy issues and staff accountability will increase the cost of education. But most importantly, it means that the public will be preempted from providing input and from retaining control over decisions which clearly impact the effectiveness of efficiency operations. It means that accountability will no longer be a right that belongs to the public. Instead it will become a commodity that must be bought. If you can't afford it, you're out of luck. What will this do to the State's obligation to provide a thorough and efficient system of public education for all children in New Jersey?

Our school employees enjoy tenure and extremely good benefits. Employees can negotiate over additional benefits, compensation, and a host of other conditions of employment. The New Jersey Education Association sample agreement contains 35 major articles as well as more than 450 numbered clauses

that the union says -- but the union says that the scope must be further enlarged to permit negotiations over more issues. If you must expand the scope of negotiations over more issues-- If you must expand the scope of negotiations, then amend the law to improve all statutorily guaranteed benefits such as tenure and let those issues go on the bargaining table. But do not place educational policy issues and accountability on the table. If you do, you are short-changing the kids, public schools, and the people of New Jersey. Thank you.

SENATOR LESNIAK: I have a question about your testimony, if I may. On page 4, the last paragraph, you say that, "It is incredible after all the legislative and public demands for better education, boards will be forced to agree with the union on disciplining those ineffective, nonproductive teachers." I'm not quite sure where in the legislation that it says that. Can you tell me?

MR. REGAN: Discipline is rarely required by those who are effective in producing. It is generally those who are borderline -- who get involved in discipline hearings.

SENATOR LESNIAK: I'm sorry. Where does the bill say that the board will have to agree with the union on disciplining a specific teacher?

MR. REGAN: It puts discipline as an item to be negotiated. Once it's on the table you either negotiate it or you pay to get it off the table.

SENATOR LESNIAK: The statement says, "Boards will be forced to agree with the union on disciplining the most ineffective and nonproductive teachers." Does the bill authorize-- In other words, you have a teacher that you want to discipline because they're ineffective and nonproductive. You then have to sit down with the union and agree with them on disciplining that particular teacher? Is that what the bill does?

MR. REGAN: Let me ask you. Item 3a, paragraph 3a page two of the bill, "Notwithstanding any other law to the contrary, and if negotiated with the majority representative of the employees in the appropriate collective bargaining unit, an employer will have the authority to respond to impose minor discipline on all employees." Letters of reprimand and these kinds of things are minor disciplines under definition. If they're on the table, we have to agree with them or pay to get them off.

SENATOR LESNIAK: In general, but you're not talking about specifically a particular disciplinary function. In other words, am I misreading your paragraph?

MR. REGAN: As I understand--

SENATOR LESNIAK: The paragraph says that you would have to agree with the union on disciplining the most ineffective and nonproductive teachers. You're talking in general; you're not talking about specific--

MR. REGAN: That's right. I'm sorry. I misunderstood.

SENATOR LESNIAK: Okay. Questions? Senator Cardinale?

SENATOR CARDINALE: You talk about efficiency in the schools. Now this is a subject that comes up from time to time. And it occurs to me that if we're spending \$8000 a year per pupil in our average school district. I don't know if average school districts exist but -- if we have an average kid class size of around 20 to 22, where is that going? Is that going into the classroom or is that going somewhere else? Isn't that what is really at the root of this problem?

Because it seems to me that if you calculate that out, you're talking about between \$160,000 and \$176,000 for a class of 20 to 22 kids. And I don't think that the teachers are getting the lion's share of that money, and I think that that creates some of the conflict. Now I bring that into this discussion because you spoke about efficiency. And even when I was on a school board, I could never figure out that

relationship very well. Perhaps as the President of the School Boards you can tell me how you see that part of the problem? Is there some other problem lurking in the background that has lead to our centering on this as an issue?

MR. REGAN: In the first place I don't-- This bill clearly does not -- at least in my opinion -- does not address -- has nothing to do with efficiency within the schools. If anything, in fact, it increases that which is inefficient now.

SENATOR LESNIAK: You're talking about the Russo bill?

MR. REGAN: The Russo bill. Or any of these bills, really.

SENATOR JACKMAN: Can you talk on my bill afterwards so I can understand what you mean about my bill?

MR. REGAN: Efficiency isn't addressed here. It's not addressed. I don't think it's the subject of the bill or the objective--

SENATOR JACKMAN: Can you spell it out?

MR. REGAN: --of the bill.

SENATOR CARDINALE: Well, I think your objection--

MR. REGAN: Well, I'm sorry.

SENATOR CARDINALE: --you just stated.

SENATOR JACKMAN: I'm sorry. Go ahead.

SENATOR CARDINALE: You just stated your objection that this bill makes it-- Through the Chair, Mr. Chairman. This bill makes the school systems even less efficient than they are today?

MR. REGAN: Well, let me get the first point. I don't know what the \$8000 per student includes. I've heard the number, and I think it's been bandied around, but I'm not too sure-- I certainly don't know, myself. I have no knowledge, myself, what's thrown into that \$8000 number. It sounds to me-- It's an extremely healthy number. So I don't know, you know, does that define efficiency or inefficiency? I really don't know.

SENATOR CARDINALE: If it were 7000 would it help those--

MR. REGAN: If I have to negotiate all of this list, clearly, if I have to sit down and generate the entire disciplinary procedure and everything that could possibly constitute a disciplinary action within a district, it's plainly going to take time.

Once, having done that, I've got to now negotiate a penalty to go with each one of these. Having done that, it's clearly in the interest of the employee to always go to arbitration. No matter what-- If the decision comes down and does not come down in favor of the employee, then they must go to arbitration and appeal.

They lose nothing by that process. In fact, all of these bills, but particularly Russo's bill, encourages that process. And that means you carry an attorney with you through every step of the process. You have an attorney that helps you negotiate. You have an attorney that makes you go through it, and that's going to cost you more money.

SENATOR LESNIAK: Can I ask you--

MR. REGAN: Your 8000 isn't going to come down, it's going to come up.

SENATOR LESNIAK: Let me ask you a question. Do you have any experience in the private sector?

MR. REGAN: Private sector negotiations?

SENATOR LESNIAK: Yes.

MR. REGAN: No. Only school negotiations.

SENATOR LESNIAK: Well, in the private sector they negotiate items such as this all the time. And my experience in the private sector is that unions don't take disciplinary actions to appeal all of the time. As a matter of fact, more often than not, they do not. In many instances they agree with it. So I don't know what your basis is in terms of accepting

your statement that all of these matters will be appealed? What is your basis of stating that? What is your experience in making that statement?

MR. REGAN: I've been on the school board for 21 years. Fifteen years ago we put a binding arbitration clause in our grievance procedure. Since that time every grievance has gone to arbitration, irrespective of how trivial. And many times the board will decide in favor of the teacher because we don't want to go to arbitration; just because we don't want to pay the cost of going to arbitration. The offense may not have been that important relative to the number of dollars and the time taken to resolve the issue. It pays to go to arbitration.

It has been testified to, I think, by the Commissioner of Education a few years ago and by many other people, private sector negotiations and public sector negotiations, and private sector decisions and public sector decisions are two different ball games. And you can't play baseball and football on the same field if you try to mix them.

SENATOR LESNIAK: I think in many respects you can. Any other questions?

SENATOR CARDINALE: I'd just like to comment on your question, sir. And just you know-- In my own experience, I think he's right in his last answer. We had a situation on our school board where we had our school psychologist picked up in a drug raid, and it was very upsetting to some members of the board. And we did come to the conclusion to do nothing about it because of the legal implications of attempting to do something about it.

Now I don't know -- and I'm trying to figure out from this testimony -- whether it would be better to have a negotiated policy on discipline, or whether it is better to leave that in the hands of the school board. Should we strengthen their hand in doing things such as the kinds of cases that I just mentioned, because I considered that a particularly heinous case?

The vote went to eight to one against me. I wanted to discipline. But the board who had elected me president -- they were my friends -- chose not to engage in the legal expenses and complexities once those were explained to them.

SENATOR LESNIAK: So then what you're saying is that is maybe if you had a negotiated policy, there would be less legal action rather than--

SENATOR CARDINALE: I'm saying that I can conceive of that if it's done in the right way.

SENATOR LESNIAK: Any other questions?

SENATOR JACKMAN: No, I asked--

SENATOR LESNIAK: Senator Jackman.

SENATOR JACKMAN: Can you-- Making reference to my bill, what's your objections?

MR. REGAN: The three bills 266, 606, and 855 in gross terms all contain the same problems for us. You expand the span of negotiations--

SENATOR JACKMAN: No. Mine is not scope of negotiations, not per se; not the same as Russo's bill. My bill is not the same as Russo's.

MR. REGAN: I think your bill, if I understand it right, addresses class size, employee assignment--

SENATOR JACKMAN: Mine is public employees. I don't take in only school employees. That's all public employees, not school employees.

MR. REGAN: Not school employees?

SENATOR JACKMAN: No.

MR. REGAN: We're excluded.

SENATOR JACKMAN: Excluded, under this--

MR. REGAN: You sure?

SENATOR JACKMAN: I cover everybody. I cover you all.

MR. REGAN: Yeah.

SENATOR JACKMAN: Now, 'sn't that better? (laughter)
This way at least you're not being discriminated against.

MR. REGAN: I have a big crowd in hot water, I guess.

SENATOR LESNIAK: Thank you, Mr. Regan. Vincent Trivelli from the Communication Workers of America. Now we'll talk about your bill, Senator.

V I N C E N T T R I V E L L I: Thank you very much, Mr. Chairman. I just want to say briefly-- I brought our attorney here to talk about the broader bills. But I just want to say briefly, the CWA represents, in New Jersey, 70,000 people in both the public and private sector. We also represent hundreds of thousands of people throughout the United States.

We are currently in negotiations with the State of New Jersey with 40,000-- We represent 40,000 people. And we have a similar unit that we represent in New York, NYNEX which is 40,000 people. And those two negotiations are very different.

They're very different because the courts of this State have limited the types of things that public employees for the State or for local government can discuss, and the types of things that the people who work -- who are negotiating with NYNEX can discuss. And we don't believe that there should be any difference.

We also want to say that we believe that if the Senate is going to take up the question of scope of bargaining, that it should take up Senator Jackman's or Senator Cowan's bill which are broad based bills and affect all public employees. We do not believe that limited steps are what is needed here. All we're saying is that in public employment the issues that are on the table in private employment should be on the table in public employment. And I'd like to turn it over to our attorney, Steve Weissman to talk a little bit about--

S T E V E N P. W E I S S M A N, E S Q.: I don't have any specifically prepared remarks, but I think a few comments are in order. As Vince has suggested, we're here to talk about the broader bills. I do a lot of steward training and one of the things that I do when I talk to our stewards and our activists

is I say to them, "Do you know why in the State of New Jersey we can't negotiate over transfers, subcontracting, layoff decisions, and other critical decisions which affect your lives?"

And I give them three choices: Choice number one is that there's a statute which prohibits those negotiations; choice number two is that employers refuse to negotiate over those matters; and choice number three is that if we could negotiate, the very foundations of representative democracy in New Jersey would be destroyed. I tell you, quite frankly, that nobody ever guesses the right answer.

Now what is this scope controversy over? What's the big deal about scope of negotiations? You know the unions come here and the employers here -- or the unions come here and they say to you, "Well we need the authority to go to the table to negotiate this kind of stuff." And the employers say, -- and we just heard it from the School Boards -- "Please don't give the unions that power because then we're going to be forced to enter into agreements."

Well, you know what scope is really over -- and I say this in the starkest of terms: Scope of negotiations is about whether elected officials, just like you gentlemen, and whether public officials who are appointed by folks like yourself, are going to have the right to sit down at a negotiations table with the unions and: a) have input, b) discuss critical issues, and c) decide for yourselves whether you want to reach agreement or whether you want to simply say, "No." And I guarantee that there's not a public official in the State of New Jersey and I don't think there's anybody here sitting around this table who would suggest that they don't know how to say. "No."

What the courts of this State have said -- and NJEA said it very well-- What they are saying about public elected officials in the State is, "We don't trust you. We don't trust

that you know how to sit down at a table and negotiate with a union. We don't trust that you are going to adequately protect the public interest." The reason that we have such a limited scope of negotiations here, quite frankly, is because we have courts in this State, particularly the Supreme Court of this State, which in their own arrogant way has said, "We don't think legislators and we don't think elected public officials really will carry out their functions and the mandate that they are given by the public.

SENATOR LESNIAK: You agree with Senator Cardinale, then; Senator Cardinale's philosophy?

SENATOR DiFRANCESCO: You guys are on the same wave length.

MR. WEISSMAN: In truth, if you take a look at the decisions, there no reason--

SENATOR JACKMAN: You and Cardinale you got -- picked up a vote, you said.

MR. WEISSMAN: In all seriousness--

SENATOR LESNIAK: I'm very serious. Let me ask you this question. Now you mentioned subcontracting, layoffs, and transfers. In other bargaining units in other states that public employees you represent, are those negotiable items?

MR. WEISSMAN: It depends what state you're looking at. But by and large the scope of negotiations and those items are almost always included. Employers and unions can reach agreement.

SENATOR LESNIAK: I think it would be helpful to this Committee if you could give us examples.

MR. WEISSMAN: California.

SENATOR LESNIAK: No, no, no -- documented examples in writing in terms of some comparisons. I think that would be very helpful.

MR. WEISSMAN: That's fine. You know, you have to understand something. In 1968, the law was passed--

SENATOR LESNIAK: We're trying to.

MR. WEISSMAN: --allowing for public sector bargaining in this State. From 1968 through 1973 there was an expanded scope of negotiations in this State. Teachers' unions, employee unions throughout the State negotiated with school boards, and city councils, and county governments, and State government alike, on a whole broader array of subjects. In 1973 the Supreme Court said, "We're not going to permit that. We don't think that's what the Legislature intended." Why? "We don't think that's what the Legislature intended because there's this clause in the statute in '68 which said that negotiations -- this statute doesn't annul or modify any other statute."

There was an immediate legislative response to that. The New Jersey Legislature in response to that decision passed another an amendment to that statute. It said that the only thing that we really meant was that pension statutes would not be annulled or modified, and we're prepared to allow for an expanded scope of negotiations. And for the next four years there was an expanded scope of negotiations in this State.

Then in 1978 the New Jersey Supreme Court handed down the Ridgefield Park decision. That meant that for nine out of the first ten years, New Jersey had expanded scope of negotiations. The agency charged with administering the statute agreed that that was the scope of negotiations. And then in 1978 the New Jersey Supreme Court came down and said, and I quote, "Democracy in New Jersey, the very foundation would be engendered if decisions on significant matters of governmental policy were left in the process of collective negotiations."

That's what the Supreme said. And what they were saying, "As far as we are concerned" -- and I think that there's only -- that's the only interpretation you can take -- "is that we don't trust public officials in this State. We

don't trust legislators and we don't trust government officials and we're going to act as a Legislature and we are going to tell the legislators what we say they meant."

SENATOR CARDINALE: Mr. Chairman. Mr. Chairman, through you, may I?

SENATOR LESNIAK: Yes.

SENATOR CARDINALE: I've been accused of agreeing with you, and in a sense, perhaps I do. But I think there is a larger sense. See, I think what you're leaving out is that the Supreme Court recognized certain practical realities that when you get into a negotiating process, the union has professionals who are dealing with school board members. And the school board members are negotiating one by one, and they can be whipsawed. The professionals have an overall plan, and they go from district to district with the same plan. That's a reality of the situation.

There are pressures which can be brought to bear on these elected volunteers -- and that's who they are, they're elected volunteers. They're there til all hours of the night. They're not getting five cents worth of pay for doing it. There are pressures of many types which can be brought upon them that cannot be brought upon the person who is doing the negotiation for the union.

So it's not exactly the even deck when you get to that negotiating table that used to be. Because I was on a school board before the PERC laws were passed. I was on in the transition and I was on afterwards. And before the-- What you described is a school board just saying, "No." That was a condition that did exist prior to the PERC laws. But when the PERC laws came into effect, when a school board said, "No," PERC ruled as a practical matter in almost every case that the item that the school board said, "No," on, was an item that should be negotiated.

And you're correct in saying that we had expanded negotiations which the court in its wisdom -- in its interpretations of its statutes, said is not permissible under our statutes. They said that PERC was wrong to have done that, and they reversed that decision. Now it may be -- and I don't want to prejudice -- it may be that some adjustment is required; and we're talking about that here today. But I think we should start from a base of the realistic facts of where is the base line before we determine that we are going to adjust it.

MR. WEISSMAN: Look, you know, it's absolutely impossible for me to believe that elected officials in this State, particularly in this day and age, are not fully able to go to a negotiating table and say, "No." I've seen the State of New Jersey have no problem doing it. I've seen the County of Hunterdon have no problem doing it. I've seen the Middlesex County Board of Social Services have no problem doing it. And my wife, who is a teacher in West Windsor/Plainsboro and who was the president of that association, knows that that board had no problem saying, "No," when they didn't want to agree to something. There's no way that public officials in this State don't function as adequate guardians of the public interest so that when a teachers' union or CWA or Local No. 195 of the International Federation of Professional and Technical Workers or when AFSCME goes to a table, they don't know how to negotiate -- negotiate hard and not give in where they don't want to give in.

You know something, you take a look at police and fire in this State, they have those expanded rights of negotiations. Now don't they? And everybody else-- And they have the right of interest arbitration. No other employee group has the right of interest arbitration and there's no legal right to strike in New Jersey. How do you explain that? How do you explain that kind of dichotomy?

There is absolutely no reason in the world that public employers and public officials in this State don't have the wherewithall to negotiate, and negotiate in a way which safeguards the public interest. And I can't think-- You know, you just take a look, for example, of what that case was about -- Ridgefield Park.

The School Boards Association came up here and told you that before Ridgefield Park, there used to be clauses which said that you had to transfer people based on seniority. In Ridgefield Park that wasn't even the case. Because all the Ridgefield Park law said is that if you were a teacher, you could request a voluntary transfer, and if the superintendent and the board agreed with you, and it was in the interest of the school district, they'd transfer you. And in terms of involuntary transfers, it was a notice provision, and that's what they struck down in Ridgefield Park and said it was some infringement upon management prerogative.

The bottom line here is scope of negotiations has been created, and has developed into a controversy which it doesn't merit, is all unions -- and I'll tell you -- and I hear this constantly from employer representatives that have the least bit of enlightenment-- All unions and many employer representatives want to do is to be able to sit down at a table and be able to negotiate on a whole range of items and where possible, reach an agreement. And public employers are more than able to say, "No," and decide what is and isn't in the public interest.

The bottom line is that if public employers don't make that decision correctly, they'll get voted out of office, and there will be new public officials, elected officials who unions will then have to deal with.

SENATOR LESNIAK: Senator Jackman?

SENATOR JACKMAN: For your edification, I don't think you were around at that time because in 1968 I was part of PERC, number one. Number two, in 1978 I was the Speaker and

had to fight with what you're talking about now. When I was Speaker, I fought the Supreme Court when a lot of guys sat on their hands. So I've been down here 22 years. and I know what you're talking about. And I get a little annoyed sometimes when people come in here-- The courts tell us what we meant. And that's the unfortunate part of it. And I'm not being-- I know you're a lawyer so there's no disrespect. (referring to Senator DiFrancesco)

SENATOR LESNIAK: You're agreeing with Senator Cardinale, that's all.

SENATOR DiFRANCESCO: I don't know I am. I'm sitting here all day. I don't know I'm a lawyer.

SENATOR JACKMAN: That's-- So I--

SENATOR LESNIAK: Thank you, Senator Jackman.

SENATOR JACKMAN: Yeah. Okay.

SENATOR LESNIAK: These Committee meetings will be continued on June 19 at 9:30 a.m.

SENATOR JACKMAN: Nineteenth?

SENATOR LESNIAK: Fifteenth.

SENATOR JACKMAN: Wait a minute? On the 15th. Fifteenth.

SENATOR LESNIAK: I'm sorry. Wait, wait 15th. What did I say?

SENATOR JACKMAN: Fifteenth. He said the 19th.

SENATOR LESNIAK: Time out, one meeting. June 19th.

SENATOR JACKMAN: Nineteenth? What the hell about coming in on the 15th?

MR. DAVIS (Committee Aide) We're going to have a Committee meeting on the 15th.

SENATOR JACKMAN: We're going to have a Committee meeting on the 15th?

SENATOR LESNIAK: Yeah, two. And the 19th.

(HEARING CONCLUDED)

APPENDIX:





AFSCME

American Federation of State, County, and Municipal Employees

Administrative Council 1, New Jersey
3635 Quakerbridge Road, Suite 1
Trenton, New Jersey 08619
Telephone: 609-587-5000

May 22, 1989

Robert Angelo
Executive Director

AFSCME SUPPORTS S-855

More than 20 years have passed since the State of New Jersey declared that it is in the public interest for public employees and public employers to negotiate in good faith over the terms and conditions of public employment. During the intervening years since the Public Employment Relations Act was passed, a complex and sometimes technical system of labor relations has developed. This system has been shaped and re-shaped by amendments to the PERC law, PERC decisions and most significantly, judicial interpretations.

A critical ingredient in any collective bargaining process is the establishment of a common ground upon which employers and employee organizations can meet as equals to negotiate in good faith. Unfortunately, New Jersey court decisions over the last decade, starting with the infamous Ridgefield Park case, have served to undermine this basic tenet of equality which makes collective negotiations an effective means for resolving disputes. By severely limiting the "scope of negotiations" New Jersey courts have provided employers with a clear and distinct advantage at the bargaining table. This erosion of equality has dramatically limited the ability of the collective bargaining process to fulfill its mandate to "prevent labor disputes, strikes, lockouts, work stoppages and other forms of employer and employee strife".

S-855 proposes to expand the current limited "scope of negotiations". This bill represents a first step in restoring the public sector negotiating process to the productive system it was intended to be. AFSCME negotiates hundreds of public sector contracts each year, on behalf of its 40,000 public employee members in New Jersey, and our union is painfully aware of the deficiencies in the law which tip the balance of power clearly to the management side. Passage of S-855 will go a long way towards reducing strikes and work stoppages because it will increase the number of topics which can be negotiated out at a bargaining table rather than fought out in the streets.

The Public Employment Relations Act was sound public policy in 1968 and S-855, which will restore the original intent of the PERC Act, is sound public policy in 1989.

NEW HANOVER BOARD OF EDUCATION
P. O. BOX 276, FORT DIX STREET
WRIGHTSTOWN, NJ 08562

May 19, 1989

TO: Mr. Dale Davis
Senate Labor Committee
Industry and Professions Committee

From: New Hanover Township
Board of Education
P.O. Box 276
Wrightstown, N.J. 08562
(609) 723-2139

Subject: S-3567 and as yet unnumbered companion legislation
anticipated to be introduced by the assembly.

Whereas it is anticipated that the Senate Labor
Committee will hold public hearings on the aforementioned
S-3567, together with related S-606 (Cowan), S-855 (Jackman),
and S-266 (Dumont) and,

Whereas the State Assembly Labor Committee will also
consider similar if not identical legislative proposals,

Now therefore, the New Hanover Township Board Of
Education in Burlington County, hereby unanimously indicates
its collective concern and opposition to any/all such
legislation having as its ultimate effect the diminution of
each and every school board fundamental right to establish
and administer school policies.

Board members through out the state give unselfishly of their time and efforts to insure thorough and efficient education for those in their charge, simultaneously attempting to provide monetary effectiveness to the taxpayers, already overburdened, and in the face of large funding reductions.

Subject legislation, if passed, can be expected to precipitate numerous unwarranted "adverse actions", with attendant expensive litigation.

Cognizance is taken that fortunately the majority of teachers are professional, dedicated, effective and productive. However means must continue to exist whereby a board may properly discipline those who are not equally professional and effective.

To negotiate teacher discipline is tantamount to "setting the fox to watch the hen house", or negotiating a laundry list of potential infractions with very small children in an attempt to establish punishments in advance, a ludicrous and most inappropriate solution.

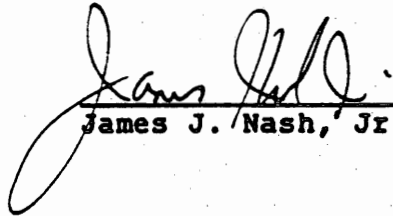
Proposed expansion of negotiable items will effectively blackmail school boards into trading off crucial responsibilities for labor peace or monetary savings a truly reprehensible action.

Recognition should be taken of the fact that the Constitution of the United States, exists for the good of all the people, not just special interest groups ie, N.J.E.A., which in this instance will be the sole beneficiary of the proposed legislation to the concurrent detriment to Students, Parents and Taxpayers through out the State of New Jersey.

Due process already exists to permit effective negotiations, therefore, if it isn't broke, why fix it?

In summary, the New Hanover Township Board of Education pleads with and trusts that the respective committees and the entire legislative body will exercise prudent judgment and act for the benefit of the entire public which they were elected to represent, to the exclusion of any person or groups of persons whose self-serving motivations are not in the public interest.

Respectfully,


James J. Nash, Jr.

cf:

N.J.S.B.A.
Governmental Relations Department

