P U B L I C H E A R I N G

before

ASSEMBLY LABOR COMMITTEE

on

A-585

"Proposes various amendments to the Employer-Employee Relations Act"

Held:
December 14, 1982
Rutgers Labor Education Center
Rutgers University
New Brunswick, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Assemblyman Joseph D. Patero (Chairman)
Assemblyman Jorge A. Rod
Assemblyman Thomas A. Cowan, Jr.

ALSO:

Laurine Purola, Team Supervisor
Office of Legislative Services
Aide, Assembly Labor Committee

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I N D E X

INDEX (continued)

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JB:1-43

ASSEMBLYMAN JOSEPH D. PATERO (Chairman): I would like to call the public hearing to order. I am Assemblyman Joseph Patero, the Chairman of the Labor Committee. To my right is Assemblyman Jorge Rod. Assemblyman Cowan should be here any minute, but instead of waiting, we will proceed with the testimony.

On behalf of the members of the Assembly Labor Committee, I welcome you to the Committee's hearing on Assembly Bill 585, which is sponsored by Assemblyman Cowan, who is a member of this Committee.

We are conducting this hearing today in order that everyone will have the opportunity to present their views on this most important legislation dealing with the scope of negotiations in the public sector bargaining. This is a complex issue and deserves the fullest discussion and careful consideration by the Legislature.

When your name is called, please give copies of your statement to the staff. We ask that you give a five- or ten-minute synopsis of your written statement. Your complete written statement will be part of the Committee record. We will hold the record open for a period of two weeks following the hearing in order that you may submit additional material. This material should be submitted to the staff. If anyone is present who wishes to speak today and has not previously made arrangements to do so, please give your name to the staff or let us know here.

We have a schedule which we will follow, and I just want to let you know that we will not be voting to release Assembly Bill 585 from Committee today. We will wait until we get the testimony in regard to this bill, because in talking to other people, there are some discussions about amendments to this bill.

The first person to testify today will be Mr. Ted Reid from the New Jersey School Boards Association. Ted, will you introduce your guests?

T E D R E I D: Thank you, Mr. Chairman. Here with me today is Gary Whalen, who is our Director of Labor Relations, and Mr. J. Chris Connor, who is our Vice President for Legislation of the Association, and he will be presenting the testimony on our behalf. We have already submitted copies to the staff, and copies to anyone in the audience who is interested are available on the front table.

J. C H R I S C O N N O R: Good morning. As Ted said, I am Chris Connor, Vice President of the New Jersey School Boards Association, and I am here today on behalf of 611 boards of education to urge you to oppose A-585.

This bill has two major goals: the expansion of the mandatory scope of negotiations in the public sector collective bargaining, and the creation of a category of permissive topics for negotiations.

Each of these changes in the scope of negotiations should be opposed. Let me explain why. There are three items which A-585 would specifically add to the scope of mandatory regulations: discipline, State agency regulations, and the impact of management decisions upon employees' working conditions.

Discipline is made a required topic for negotiations. This Assembly addressed this very matter just five months ago when it had passed A-706, which was approved by the Senate, and signed into law by the Governor. A-706 reflected the recommendations of the Governor that discipline should only be negotiable and arbitrable for employees who have no statutory procedures for resolving disciplinary disputes. Nothing has changed since A-706 became law that affects the logic of this

position.

If there is a need to modify the statutes that provide tenure protection to most school employees, or that give the Commissioner of Education the authority to review disciplinary disputes involving all school employees, then let these statutes be subject to the review of the Assembly. There is no reason to rekindle the flames of controversy over a topic that was subject to long and careful consideration by the Legislature and the Governor just five months ago. Let A-706, as enacted by this Legislature and signed by the Governor, be the final word on the negotiability of discipline. We will be happy to assist this Assembly in any way possible when it is ready to begin review of the present statutes governing tenure and discipline of public school employees.

Secondly, State agency regulations under A-585 become subject to the negotiations process. This Legislature should not grant to the local negotiations process the authority to erase the regulations of State agencies. These regulations are issued by State agencies to effectuate the will of the Legislature and the Governor. They exist to create a uniformity across the hundreds of local government units that they cover, so that New Jersey's citizens have the same rights and benefits from State government no matter where they reside in the State. Local negotiators should not be free to contravene at their will the directives of State government agencies. Yet this is the intent of A-585. The ability to nullify State agency regulations through negotiations will lead to a crazy quilt pattern of differences in services, standards and procedures, from community to community across the State, while the intent of the agencies' regulations, on behalf of the Legislature and the Governor, is uniformity for the good of the public.

"Impact bargaining" would be resurrected by this bill. The origin of this part of A-585 was a series of decisions beginning in 1979, which ruled that where a management decision was the crux of the matter in dispute, that decision and the impact of that decision on employees' terms and conditions of employment were not negotiable or arbitrable. Since these decisions, however, there has been another Supreme Court decision, "Local 195 versus the State of New Jersey," which the Public Employment Relations Commission (PERC), now relies upon to the virtual exclusion of the Woodstown-Pilesgrove and the other "impact" cases. Under Local 195, PERC applies a "balancing test" to determine the negotiability of a matter in dispute. If the dominant interest in the matter is an educational policy decision, it is nonnegotiable. If the dominant interest is workload, compensation, or any other term and condition of employment, it is negotiable, despite its connection to a managerial prerogative.

Thus, by its application of Local 195, PERC has created a scope of negotiations that is indistinguishable from the pre-Woodstown-Pilesgrove scheme, except for the absence of the term "impact bargaining." PERC has repaired any damage to the theory of impact bargaining that was inflicted by Woodstown-Pilesgrove. Frankly, we are not happy with this result, but we do believe it is a defendable interpretation and application of the Supreme Court's Local 195 case. There are many reasons why we oppose A-585 and why certain unions support it. Please do not let specious arguments about the death of impact bargaining sway your deliberations on the bill as a whole, since the impact issue has been already settled by

the Local 195 case and the Public Employment Relations Commission.

For all these reasons, we ask that you oppose A-585's efforts to expand the scope of mandatory negotiations.

The second major goal of A-585 is the creation of a permissive category of negotiations. This bill seeks to reverse the Supreme Court's 1978 decision in the Ridgefield Park Education Association, which held that there was no such thing as a permissive category of negotiable topics in Chapter 123, Law of 1974, commonly known as the PERC Law.

There are three grounds on which we oppose A-585 in its attempt to legislate permissive negotiations. The public policy arguments against it are overwhelming, the definition of permissive topics in A-585 is unconstitutionally broad, and finally, there is no need for any expansion of the present scope of negotiations.

I would like to discuss each of these individually. The permissive negotiations are bad public policy. When declaring that a bargaining law did not create permissive topics of negotiations, the Supreme Court spoke with passion about why such negotiations are repugnant to the democratic system of government.

The Court noted that our system of democratic government demands that managerial and educational policy matters remain in the hands of public officials, because only these officials are accountable to the public at large. The Court recognized that teacher unions, by definition, are primarily concerned with the interests of their members, and properly so. It also recognized that, in local school districts, it is the school board which is responsible to the public for providing a thorough and efficient education to the children. That responsibility should not be subject to the closed-door adversary process of collective bargaining.

Our opposition to A-585 is not anti-labor or anti-collective bargaining. The New Jersey School Boards Association favors collective negotiations over terms and conditions of employment. We insist, however, that the employee rights to negotiate must be limited.

If a permissive category of negotiations is legalized, the following will occur in some districts. Because the public resists tax increases and government budgets are "capped," a school board may be unable to meet union demands for increased compensation, and the boards may be forced, in order to get a labor agreement, to make compromises on educational policy. This, by the way, is an even more likely development, given the fiscal crises school districts face this year, and may well face in years to come.

If a school board concedes to a union demand on an educational matter, it is bound to that agreement. Once negotiated, such agreements cannot be changed without the union's consent for the duration of the contract. Practically speaking, these clauses will only be removed by "buying them out;" that is, giving away some new benefit in order to change a government policy. For example, a school board could be forced to grant higher salaries and more holidays in order to get union permission to update the curriculum and increase class sizes.

A list of matters that would be considered permissive topics for negotiations is attached to our written statement, but let me use a few examples to show the practical problems of legalizing permissive topics for negotiations.

Class size would be a permissive topic. If a school board agrees to

a maximum class size of 20 students per class, and has 21 or 22 or 23 fourth grade students, it must, under a contract, create another fourth grade. The board, because of this clause, must hire an additional teacher to accomodate one, two or three extra children. The average public schoolteacher's salary in New Jersey last year was $20,000. That is a lot of money to spend to educate a single extra child, or two or three extra children.

In addition, in some districts, especially those in the south, it may be physically impossible to increase the number of classrooms without building another school. Manning provisions, which are contractual guarantees of a certain number of employees to do a certain job, would be permissive topics if A-585 were to pass. Such clauses prohibit the school board from eliminating certain positions even though the need for them disappears. For example, a board that agreed to create teacher-aide positions, when there was an unusually high number of students per class, would be unable to eliminate those positions, even though the number of students had declined by half.

Remember the old steam engine trains? The railroad employee unions negotiated a guarantee that every train would have a fireman to feed coal into the steam engine. When trains switched to diesel, the fireman clause remained in those contracts; diesel trains with no coal to burn and no engine firebox to burn it in were still required to hire and carry a fireman to "stoke the coal."

In the private sector, this is called "featherbedding." It is extremely wasteful and inefficient. It is not in the public interest to sanction such inefficiency in government operations.

Another example -- criteria for assignment would be permissive topics of bargaining. If a school board agrees that it will assign employees according to their seniority and personal preference, it will lose the flexibility to assign the best teachers to the children who need them the most. It will also be subject to binding grievance arbitration over where employees are actually assigned. Labor arbitrators will be substituting their judgment for that of the elected school boards and the superintendents as to how to use their professional staff to create the best possible educational system.

The inclusion of such clauses in labor contracts gives an arbitrator the power to review and reverse school board management decisions on who should be hired, where employees should be assigned, who has the authority to set student grades, and other matters that should be the sole responsibility of school officials.

For further illustration of the practical difficulty with permissive topics, we've attached to our written statement the sample agreement suggested to all local unions by the New Jersey Education Association. Many clauses in the sample agreement concern educational policy. These clauses are now nonnegotiable. Under A-585, all these clauses would be legally negotiable, binding on a school board once negotiated, and reviewable by a labor arbitrator whose decision would be final.

Please note, the question is not whether some of these clauses might reflect sound educational policy. The question is, who should make these decisions, and in what forum? The answer is clear. Such decisions, since they define the kind and quality of education children will receive, should be made by public representatives, with a maximum of citizen involvement, and not in a private

negotiations room.

Next, the "permissive" definition in A-585 is unconstitutionally broad. There presently exists a permissive category of negotiable items for police officers and fire fighters in New Jersey. This has recently been reviewed by the New Jersey Supreme Court, in the Paterson Police PBA case. The Court struck down an interpretation of permissive topics that is identical to the definition contained in A-585.

The Court's action was based upon both a statutory and a constitutional basis. The Court stated: "in the public sector, certain matters predominantly involving the exercise of management prerogative have been entrusted to the exclusive discretion of the government, and accordingly, the public employer may not even voluntarily include them in the negotiated agreement."

It further said, "if it places substantial limitations on government's policy-making powers, the item must always remain within managerial prerogatives and cannot be bargained away. However, if these governmental powers remain essentially unfettered by agreement on that item, then it is permissively negotiable."

The Court stated that with such a narrow definition of permissive topics, the concept of permissive negotiations is not unconstitutional. The Court went on to rule that a contract clause that forced a municipality to fill promotional vacancies within 60 days was not permissively negotiable.

The strong language of the Paterson decision and its constitutional basis indicate that the breadth of the permissive category in A-585 will never survive the Supreme Court's scrutiny. A-585 makes everything permissive that is not mandatory or statutorily precluded. Passage of A-585 will only stimulate another round of costly litigation and false expectations. These should be avoided when the unconstitutionality aspect of this bill seems so clear.

Finally, there is no need to expand the scope of negotiations. When the Ridgefield Park decision was rendered, certain union advocates and neutral labor relations experts predicted that employee morale would decline, that negotiations would become more difficult, and that the incidence of illegal job actions would increase. There is no evidence that any of this has occurred.

There were only seven teacher stikes last year, and there have only been five so far this year. That is the lowest incidence of strikes in the past eight years. These strikes, please note, were not due to the removal of contract clauses made illegal by Ridgefield Park; they were based on simple disagreements over compensation, work hours, and other required topics of negotiations.

There is no evidence of an increase in the difficulty of negotiations. Recognize, too, that there is an enormous number of items that remain required topics for negotiations. Wages, hours, fringe benefits and working conditions are still being negotiated in every school district in New Jersey.

Finally, there is no lack of professional staff input into the educational policy decisions that school boards and administrators are responsible to make. Teaching staff are directly involved in curriculum development, textbook selection, student testing, and other matters of educational policy, and in a far better forum than the negotiations room. They are also involved in consultation with school boards and administrators on the criteria by which they will be

evaluated, in accordance with the State Board of Education regulations.

Given the quality of the present negotiations climate in the State, and the fact that school boards actively involve professional staff in educational policy-making, any claim that Ridgefield Park has done "fatal damage" to the employer-employee relations is untrue. All Ridgefield Park did was properly define which topics should be subject to the closed-door, give-and-take of the bargaining process, and which should be handled through a process of consultation with staff, students and the public, with the ultimate authority residing with those who are accountable -- the elected and appointed public officials.

In summary, A-585 does not serve the public interest. It will have disruptive effects on government administration at both the State and local levels. It runs counter to the democratic process of government. It faces major constitutional hurdles and will stimulate years of costly court battles and confusion and uncertainty in labor relations. We, therefore, urge you to vote against A-585.

I thank you very much, and I would be happy to answer any questions.

ASSEMBLYMAN PATERO: Thank you, Mr. Connor, for your testimony. I would like to state for the record that Assemblyman Tom Cowan came in during the middle of your testimony. I have no questions. Assemblyman Cowan or Assemblyman Rod, do you have any questions?

ASSEMBLYMAN ROD: Yes, on page 10, you have that the class size would be a permissive topic. Under what part of this bill would that fall? Would it be, by any chance, all the time?

MR. CONNOR: I'll defer to Gary Whalen on this specific portion of the bill. In general, if you allow a permissive category, class size is clearly one that has normally been included. Gary, you probably have a better answer.

G A R Y W H A L E N: Assemblyman Rod, before the Ridgefield Park decision was rendered in 1978, the Public Employment Relations Commission had already defined class size as a permissive topic. So, this bill will just recreate that category of permissive topics, and we assume that everything that used to be permissive, will become permissive again.

On page 3, line 63 of the bill, it says, "permissive subjects for negotiations are all matters that are not mandatory or illegal." Class size would fall within that very broad category of everything else.

ASSEMBLYMAN PATERO: Are there any other questions?

ASSEMBLYMAN ROD: No.

ASSEMBLYMAN PATERO: Okay, again, thank you very much, Mr. Connor. The next speaker we have is Dr. Connerton, who is the Executive Director of the New Jersey Education Association.

Will you introduce who you have with you?

D R. J A M E S P. C O N N E R T O N: I am Jim Connerton, the Executive Director of the New Jersey Education Association. On my right is Cassel Ruhlman, our attorney, and Bob Polakowski, one of our lobbyists.

ASSEMBLYMAN PATERO: Before you proceed, Dr. Connerton, did you give us copies of your statement?

DR. CONNERTON: We did do that.

ASSEMBLYMAN PATERO: Okay, thank you.

DR. CONNERTON: I am here because our 117,000 members have a direct interest in Assembly Bill 585.

Public employees want to be able to work efficiently, contentedly, and effectively. Basic to this goal is the right to bargain the terms and conditions of their employment. When the Legislature enacted the New Jersey Public Employment Relations Act in 1968, you naturally gave us this right, because that is what collective negotiations are all about.

However, the New Jersey State Supreme Court has since ruled otherwise. Because a majority of the justices believed the law to be vague, public employees can bargain only on the few matters that directly affect their financial welfare -- just bread-and-butter items. On the many other terms and conditions that affect morale, job security, efficiency, and productivity, management may now do just as it pleases.

Because of the Court's ruling, public employees in New Jersey have fewer bargaining rights than any American in private employment and fewer than any public employee in most other states. The scope of matters on which their representative organization can negotiate binding agreements is narrower here than almost anyplace else where bargaining rights exist.

Elsewhere, bargaining follows a more sensible pattern. When employees identify a problem, they are free to seek correction. If the employer agrees, the two sides work out policy language, sign an agreement, and then they live up to the new guidelines. Disagreements are resolvable through the grievance procedure. In public employment, however, this does not now happen in New Jersey.

As bargaining is conducted elsewhere, the two parties are free to bargain or not to bargain, as they see fit. The two parties are free to reach agreement or not reach agreement, as they see fit. The core of this widely-accepted model is permissive negotiations -- the freedom for both parties to bargain on matters of mutual concern.

This is the model developed by the respected Federal agency, the National Labor Relations Board. This model exists throughout private employment. This is the model for public employees almost everywhere in the country. Unfortunately, it does not exist now in New Jersey.

Negotiating matters of mutual concern -- that is what employer and employee did here in the 1960's before there was a bargaining bill. It is what employer and employee did after 1968, when the PERA was first enacted. It is what employer and employee did from 1974, when the PERA was amended, until the State Supreme Court's Ridgefield Park decision in 1978. And, as the School Board folks have testified, A-585 would merely restore this sensible arrangement.

NJEA has taken an intense interest in bargaining legislation whenever it has been considered. When the Legislature first enacted the Public Bargaining Act in 1968, legislators told us their intent was to create a complete and fair system of bargaining for public employees. They did so by their choice of language to describe matters on which public employees could legally bargain -- that is, on the scope of negotiation. The legislation did not use limiting words such as "salary and fringe benefits" to restrict negotiating scope; you didn't say "working conditions and welfare." The phrase that the Legislature used, and we assume, consciously used, was expansive. It was "the terms and conditions of employment."

This wording is important because precedents and decisions by the NLRB in other sectors have shaped this phrase to mean expansive bargaining. The NLRB definition of this term includes permissive bargaining.

The Legislature reiterated its intent to establish an expansive scope of negotiations by again using the phrase "terms and conditions of employment" in the 1974 amendments contained in Senate Bill 1087. And, again, legislators told us their intent was to create the three-tiered NLRB model for public employees in New Jersey. This model includes:

Mandatory matters -- bread-and-butter issues which the employer must negotiate.

Illegal matters -- those on which bargaining is forbidden by statute.

And then, permissive or voluntary measures, and they are any other matter of mutual concern which employees may raise in bargaining, and management may negotiate if it so desires.

When the bill was signed, everyone thought permissive negotiations were now the law of the State. This includes organizations representing public management. Those of you who were here in 1974 may recall their complaint that the bill would make "everything negotiable except pensions."

However, the State Supreme Court did not get the message. Beginning with the Ridgefield Park decision in 1978, the Court has made a series of rulings that run contrary to what legislators told us was their intent in enacting the PERA. The Court said that NLRB's precedents are "of little value" in scope determinations for public employment. Worse, the Court said that,"as matters now stand, permissive bargaining is illegal in New Jersey."

Despite legislative intent, the Court insists that negotiations can legally occur only on matters "that intimately and directly affect the work and welfare of public employees and on which negotiated agreements would not significantly interfere with the exercise of inherent management prerogatives." Even if a school board wanted to negotiate, for example, mutually agreeable criteria for the evaluation of its teachers, the courts would not recognize or enforce the agreement.

The Ridgefield Park decision came as a shock and a surprise. PERC and the lower courts all had upheld permissive negotiations, and I say this with some emphasis, the system was working smoothly and well. The decision in Ridgefield Park runs counter to the thinking of legislatures and courts almost everywhere else in the nation. Surprise was even reflected in the separate opinion filed by Justice Milton B. Conford. His dissent made these points:

First, in S-1087, the Legislature established permissive negotiations or, as Conford put it, "manifested its recognition of a class of permissive, as well as mandatory items, for labor negotiations."

Secondly, after enacting S-1087, the 1974 Legislature cemented its endorsement of permissive negotiations by the creation of a study commission whose specific duties would include deciding whether to make a list of mandatory, illegal, and permissive subjects. Conford commented: "The phrasing of this question indicates that the Legislature took it for granted that, in actual practice, scope of negotiations was already divided into three categories, including a 'voluntary' or permissive one."

And then, the third point he made was, the Legislature later adopted a statute specifying a permissive category of bargaining for police and firemen. He wrote, "In view of the fact that well prior to the adoption of the 1977 Police and Firemen's Statute, PERC has begun to implement by decision and recognition, the concept of permissive as distinguished from mandatory or required categories of negotiation; the use of those categories in the 1977 Act is additional cogent indication of legislative approval of the concept."

We think Justice Conford's reasoning is sound.

We must remember that the New Jersey State Supreme Court had restricted scope of negotiations once before, in the Dunellen decision of 1973. That was one reason S-1087 was introduced in 1974. Indeed, in his 1978 Ridgefield Park dissent, Justice Conford was the only justice to credit the intent of the Legislature. The 1974 amendments contained in S-1087, he wrote, were "aimed at the restrictive holding in the Dunellen case as to the scope of valid employment negotiations."

The loss of permissive bargaining has hurt school employees, but we are not the only victims. All public employees have suffered a significant loss. Public employee unions are not allowed to negotiate on a wide array of matters important to their members.

In public education, associations representing school employees no longer can bargain reasonable solutions on such matters as discipline, layoffs, class size, transfer, extra-work assignments, the work calendar, denial of increment, reprimands, equipment and supplies, and many other issues which directly affect job security, performance, promotion, and service.

The decision has wiped out hundreds and hundreds of contract provisions which were freely agreed to by public employers, many of which were in existence for a decade or longer. Even though agreements on permissive matters are printed in existing contracts, the employer no longer has to live up to them. The employer can renege, refuse to submit the matter to grievance, or disregard an arbitrator's decision. In such cases, the employee's only recourse was to ask the court to uphold the sanctity of the contract, but, on permissive matters, our courts will no longer do so.

The court's ban is so broad that it precludes negotiations to protect public employees against vindictive practices by the employer. Management's power to harass has been greatly strengthened, and the administrator, willing to misuse his supervisory powers, has been given a free hand. Of course, most administrators try to be fair -- but not all do. Since the court ennobled "management prerogatives" in 1978, complaints from employees have steadily increased. Because of a decision:

Public employees unprotected by tenure or Civil Service can be fired on whim. Any fair-dismissal clause in existence in previously negotiated contracts is now worthless.

Job evaluations can be unfair or untrue. The employee now has no binding appeal procedure to challenge a biased evaluation, even though it could eventually cost him his job.

Public employees can be transferred at management's will. The representative organization no longer can bargain any safeguards against what frequently is punitive reassignment.

For public school employees, pay raises can be withheld for any reason whatever or no reason at all. Management no longer can be made to show that withholding an increment is justified.

Unfortunately, in the hands of a vengeful board or an inept administrator, "management prerogatives" can translate into injustice for employees and, inevitably, poor worker morale. In schools, this probably means less effective education for the students. That surely is not in the public interest, and it is not good management.

The courts emphasize "management prerogatives" over employee rights, even though that can and does mean bad management. The Legislature must be concerned with legitimate management prerogatives, and A-585 addresses them, but you must also consider fairness and equity for the employee.

In private employment, unions regularly negotiate guarantees against any management abuse; the NLRB requires good-faith negotiations in matters of such obvious interest to the employee. Moreover, public employees in most other states can secure negotiated protections against management abuse. Only in New Jersey do the courts think that "management prerogatives" are more important than fair play.

The court's reasoning is theoretical. The justices would have us believe that, in public employment, the civic good is always uppermost in management's considerations. As all too often happens, however, theory does not pan out in real life.

The court does not hold that permissive negotiations are unconstitutional. The justices merely claim that the Legislature has not been specific enough in its language to justify expansive negotiations.

A-585 is the vehicle for the Legislature to assert its intent once more. The bill contains specific language to restore the right to negotiate on the terms and conditions of employment. It would clearly establish the category of permissive negotiations, letting public employees seek to negotiate those many matters that make a system work or not work.

I urge you to take special note of the word "permit." This bill would not force any employer to do anything different from what it is doing now, but it would allow the employer to negotiate when management recognizes the merit of a proposal, the existence of a problem, or a need for change.

A-585 makes clear that the employer retains the right to say "No." Here is the actual wording from the bill:

"Nothing contained in this amendatory and supplementary act shall require:

"A. Any party to negotiate concerning any permissive category of negotiations;

"B. Shall not require any party to reach agreement upon any subject of permissive negotiations;

"C. Shall not require any arbitration of any permissive subject which has not been reduced to a written agreement as part of negotiations."

In its holdings since 1978, the State Supreme Court also has ruled that public employees may not negotiate the "impact" of decisions made under management's prerogatives. Management can tell firemen what uniform to wear, for

example, even if the material used in the uniform is flammable. Management may dictate workload, even if a layoff increases the share to be done by the remaining employees; A-585 would change that.

The court even says that public employees cannot bargain anything contrary to a rule established by any agency in the State bureaucracy. Now we understand that when the Legislature enacts a statute, that law takes precedence over our bargaining rights. After all, legislators are elected people. But bureaucrats are not elected. Appointees should not be able to use their regulatory powers to limit or override our rights. The State Supreme Court goes so far as to state that this bureaucracy can enact a regulation that retroactively cancels existing agreements on previously unregulated matters. A-585 would correct that by giving locally negotiated contract agreements -- that is, local school board policies enacted by elected officials -- precedence over regulations enacted by the State bureaucracy.

Let me make clear that there is no cost involved in this bill. The State will not have to pay one penny more, nor is there necessarily any cost to the political subdivisions. If, under permissive negotiations, a matter is introduced that would require added costs, the employer is under no obligation to negotiate. The employer simply has to say "No."

Organizations representing public management have said A-585 is too broad in the bargaining rights it would give to public employees. This simply is not so. A-585 would merely restore rights that existed for many years without causing problems or infringing on the public interest. The folks testifying for the School Boards Association made that point themselves at the conclusion of their testimony. It would merely restore what existed before.

Management spokespersons have also claimed that enactment of A-585 would make contract agreements more difficult to reach. Our long and broad bargaining experience tells us that the reverse is true. When bargaining is limited to bread and butter, the representative organization must bring large helpings back to the membership to be sure of contract ratification. Under expansive bargaining, however, we saw many contracts reached and ratified because they contained "sweeteners" that didn't give the employees anything of monetary value, but made them feel better about their jobs. These sweeteners increased employee morale, boosted job satisfaction, or freed the employee to work more productively. They made the contract palatable even in years when increases in salary and fringe benefits were not large.

Those with more genuine reservations about A-585 suggest we should (1) specifically list matters which would be mandatory, permissive, and illegal subjects of negotiation in this bill-- that is, the laundry-list approach-- or (2) scrap this comprehensive approach and, instead, put all of the pieces of needed reform into separate, narrowly-targeted bills strung out over a period of years.

We reject both approaches. We have found it impossible to get agreement on any list. This approach generates controversy; it actually creates confrontation and confusion. We believe that any given "laundry list" would be much more difficult to get enacted.

Our objection to the piecemeal approach is that it could take years. It is already almost five years since Ridgefield Park came down on our people. It is not right

to ask public employees to wait longer for a full response to the court's encroachment on legislative intent.

Moreover, we tried last summer to get a piece of the package enacted. The Legislature cooperated by passing A-1373, but the Governor vetoed it, saying the matter should await comprehensive review. So much for the piecemeal approach! If reform is worth enacting, in our judgment, it should be done in its entirety and at once.

I must alert you to a minor snag that exists at this time, but which is being corrected. Not too long ago, the Legislature enacted, and the Governor signed, A-706, amending a section of the PERA that has little beneficial effect on school employees, and, in fact, has the potential of doing harm to most of them. Because A-585 was written before the enactment of A-706, A-585 contains the prior wording of the law. Our attorneys are now clearing this up, and a corrected copy of the bill will be available very shortly.

I would like to conclude by summarizing. First, in 1968 and 1974, the Legislature intended to give public employees the right to negotiate on the terms and conditions of employment, including permissive bargaining.

In overturning your enactments, the New Jersey State Supreme Court has overstepped the bounds of the separation of powers.

In one way or another, all public employees are asking for relief from the restrictions of the current, Court-imposed limitations on scope of negotiations.

The bill has no cost; it would restore the status quo that existed in New Jersey for years and is standard practice almost everywhere else, and it would not require the public employer to surrender any prerogative of management.

If A-585 passes, bargaining in the public sector again would be governed by the same NLRB principles and precedents that caused no problems or detriment to the public interest in the past here or in the present elsewhere.

We urge you to clear A-585 for floor vote quickly so that public employees in New Jersey can enjoy the same bargaining rights available to almost every other worker in America. We thank you for affording us this chance to testify.

ASSEMBLYMAN PATERO: Dr. Connerton, are you or the public employees asking for anything more than what you had before the Ridgefield Park decision?

DR. CONNERTON: We are not, and the testimony which immediately preceded our testimony corroborated that. The attorney for the School Boards Association said, in explaining in response to Assemblyman Rod's question -- said that they want to go back to what they had before. That is true; that is exactly what we are talking about.

ASSEMBLYMAN PATERO: I have another question. Therefore, you are not asking, in this bill, for the right to strike.

DR. CONNERTON: No, in no way at all.

ASSEMBLYMAN PATERO: What is the procedure now for some of these problems which you brought up --"job evaluations can be unfair; the employee now has no binding appeal procedure to challenge a biased evaluation, even though it could eventually cost him his job." Is there a procedure which is followed now?

DR. CONNERTON: There is no procedure. We had bargain procedures in some of our contracts, but they are unenforceable at this time. The line that is spun out by the -- I almost have to believe their tongues are in their cheeks when they say this -- but, a School Boards Association -- there is a procedure; you can go to court. On every minor issue of that sort, they are contending that the proper recourse is to go to court, and we submit to you that that is absurd on its face in terms of time and energy.

If you talk about costs to both government and representatives of employees, it becomes even more absurd.

ASSEMBLYMAN PATERO: Finally, with the schools closing -- the amount of schools that are closing now, if a teacher is transferred, is there another procedure? Is there a seniority right on how they are being transferred? Do you have the right to negotiate this now, or does a school board or the superintendent just decide?

DR. CONNERTON: That is completely arbitrary at this point in time.

ASSEMBLYMAN PATERO: Assemblyman Cowan, do you have any questions?

ASSEMBLYMAN COWAN: I would just like to follow up on Assemblyman Patero's question. Are you saying, doctor, that supposedly in the municipality within a school district, that one school closes, and there are people there who have twenty years, twenty-five years, or even ten years, going down the scale regressively, in their expertise, that these people could be laid off in comparison to others?

DR. CONNERTON: No, I am not saying that. What I am saying is, that the position in which they would be placed -- they have protections with respect to seniority for employment, but not the location of that employment. What we are concerned with here is, not so much the situation that you are describing, but from what we have seen happen to some of our leaders. They get routinely reassigned every year. They get put into a new school; they are asked to teach a different subject for which they are certified. And, they just keep bouncing them around to try to chill them off.

One of our school districts routinely just moves the association leaders around like checkers on a board to try to chill them. It doesn't have the effect they are seeking; it merely pulls our people tighter together, and you have confrontation over and over again in those districts.

If you could sit down at the table and deal with that, you could eliminate that kind of confrontation.

ASSEMBLYMAN COWAN: Also, you indicated in some of your statements there that the redress, supposedly after this arbitrary procedure, taken by any school board, is to tell the individuals to go to court. That is their only redress.

DR. CONNERTON: That is right, and that is a game, because they have unlimited taxpayer money to play with. In instance after instance, they have essentially said to us, "You are right, but you can't win. We'll bleed you." We think that is unconscionable.

ASSEMBLYMAN COWAN: When making a comparison prior to 1968 as far as costs are concerned, have there been more court procedures since the passage of this PERC law and the Ridgefield Park decision?

DR. CONNERTON: Our expenditures for legal protection of our members' rights has gone up like that since 1968.

ASSEMBLYMAN COWAN: Do you have any figures to substantiate what you are saying in that regard, because now I am looking at it --

DR. CONNERTON: Yes, I do not have them here --

ASSEMBLYMAN COWAN: If your costs have escalated in that effect, and also the taxpayers' costs have escalated --

DR. CONNERTON: That is not just a one-sided issue. We have no documentation of costs to employer, but we have our budget for legal services to our people, and it has gone up just like that.

ASSEMBLYMAN COWAN: I would like to have some of that presented to me. Of course, I haven't asked for this before, but I think it is a very important factor in what we are dealing with here.

Also, in regard to the comparison that you make in the first page of your statement, dealing with public employees in most other states -- the existing legislation that they bargain under -- do they have a structure similar to New Jersey? That is, a PERC, where they do have a commission that works on a state level?

DR. CONNERTON: Yes.

ASSEMBLYMAN COWAN: Similar to ours.

DR. CONNERTON: Yes.

ASSEMBLYMAN COWAN: And they do have permissive bargaining in it?

DR. CONNERTON: Yes.

ASSEMBLYMAN COWAN: Could we have some comparison of output, please, as to the states where it exists, and if you get some information along the lines as to -- that the costs there, and again, I am saying costs because I know in regards today, that it is a very important issue. But, those costs also relate to the morale, the employee factor that does exist within the children whom we are trying to educate.

DR. CONNERTON: We'll get it for you.

ASSEMBLYMAN PATERO: Are there any other questions? Assemblyman Rod?

ASSEMBLYMAN ROD: On page 5, you address the layoffs, class size, equipment and supplies. The school budgets are subject to public approval. Let's take it back. Suppose you do agree; suppose you have that right, and you agree to a class size, layoffs, and equipment and supplies. As you well know, the budgets are subject to public approval. If the public disapproves the budget, it goes to the governing body, and the governing body approved or the public voted on it, how would you address this issue? If you have an agreement on equipment and supplies, class size and layoffs, if funding is not there, how will you address the issue? If you have an agreement that you --

DR. CONNERTON: You could address the issue in a number of ways, and what we are suggesting is, that instead of trying to create some -- and they used the word "uniform" here today again, and it just boggles my mind that they are still in this mind-set that they are going to have a statewide plan. Everything is going to be working uniformly, and everybody is going to be following the same set of rules that a handful of people in Trenton make. What we are talking about here is, at the local level, where things really happen, and

children get educated, and people work, you sit down with the employer, and you jointly address your problems, and you work out a solution right there. In the language that you write in your contract, you would address the question of "What do you do if?" And, you bargain a procedure for dealing with establishing class size.

My judgment is that you are not going to get a whole lot of clauses that stipulate what they are talking about -- that there shall never be a class under 20. What you are going to get is procedures for working out just what we are talking about. "Here is what we will do if --" And then you sit down, and each time you have a problem, you work it out right there.

In terms of supplies and equipment, from the employees' point of view -- for you, as a manager, to tell me, "Here are the children; you have no control over how many of them there are, and you have no control over the kind of equipment you have to deal with, but you are held accountable for seeing to it that they achieve this level on this State test." That is just absurd, but that is exactly what we face right now, and we have no way -- no way at all -- to deal with that.

What I am suggesting to you is, that if we will return to a practice of letting reasonable people sit down and meet and work these things out locally, we are not going to have some of the confrontations we have now. From a management's point of view, you'll be putting over on the employee representative some of the responsibility for defending what it is you have agreed to in your own local situation. Instead of a school board coming down and saying, "Here is the way it is going to be," and the employee saying, "No way," you'll have a procedure for working these things out.

ASSEMBLYMAN ROD: Okay, let's take one item -- class size, okay?

DR. CONNERTON: Okay.

ASSEMBLYMAN ROD: You negotiate, you come to an agreement on class size. Okay?

DR. CONNERTON: Right.

ASSEMBLYMAN ROD: The school board submits a budget according to your agreement. Suppose the budget is turned down by the people? It goes to the committee or the governing body; then the governing body reviews the budget, and it goes to the Commissioner. Suppose he reduces the budget drastically? What kind of a bind is the school board going to be in as far as not being able to come up with the right amount of teachers to comply with your contract?

DR. CONNERTON: They would be in a bind in that case, without question, and, again, it would depend on the language that you had bargained. But, this is a world of pressures and counter-pressures, and if you really believe in good education and free public education as the cornerstone of our society -- we just do happen to believe that -- we believe that we have got to try to create some precedent. When you are in there fighting for public monies at the local level, as to whether the potholes get filled or the children get educated this year, if you are going to come down to that kind of a hard choice, we are going to be in there scrambling to see that the children get educated. If we can do it, we'll stand with our brothers and sisters and say, "Fill the potholes, and educate the children, and we'll all go out together and fight to get the taxes raised to do

that." If you don't have those pressures in the system, everybody gets an easy out here and there, and before you know it, we face what we face now on the State level.

ASSEMBLYMAN ROD: As I explained to you, if that happened, what recourse would the school board have if the funding is drastically cut by the Commissioner? Now the school board is at the mercy of the Commissioner and the governing body. I'm all for education, believe me. I've stuck my neck out many times in my local community.

DR. CONNERTON: We understand that; we know who our friends are.

ASSEMBLYMAN ROD: What kind of a bind is the school board going to have as far as not being able to fulfill your contract? They intentionally submitted a budget, fulfilling the contract. Now the thing comes back with less money, where instead of having a class size of 21, they are going to have to increase it because they foresee a layoff because of lack of funding. How will you solve a problem like that?

DR. CONNERTON: If you are talking about layoffs brought about by lack of funds, we have no recourse to deal with that, other than to comply. But, if you are talking about attempts to cause a local district to live up to a bargained agreement, even though that does bring great pressure -- in other words, you get them in the middle here. They are between the council, which is leaning on them, and we are leaning on them from the other end -- without any question at all.

We want the ability to lean from the other end instead of having it just a one-sided operation, and let that work itself out in the political process.

ASSEMBLYMAN ROD: They are two different entities -- the council and the school board.

DR. CONNERTON: Sure they are. I understand.

ASSEMBLYMAN ROD: They can't control each other.

DR. CONNERTON: I understand.

ASSEMBLYMAN ROD: If that comes back to the school board, then the school board will be violating the contract.

DR. CONNERTON: And we would sue to prevent them from doing that. That is true, and that will generate pressures in that community and bring the folks out. Our judgment is, in a long pull, what is right is right and it will get done. But, you have got pressures working there.

ASSEMBLYMAN PATERO: But, Dr. Connerton, also the fact that if a school budget is defeated, and it goes in front of the governing body -- the mayor and the council, and if they cut $100,000 out, the school board still can appeal, and it then goes in front of the Commissioner of Education. As long as the contract states such, and such, and such, the Commissioner has to uphold that decision.

DR. CONNERTON: That has been our experience.

ASSEMBLYMAN PATERO: Right, because the mayor and the council could just take a figure of a half a million dollars from the school budget.

ASSEMBLYMAN ROD: Not necessarily. I see areas where the Commissioner made some cuts --

ASSEMBLYMAN PATERO: I agree, but --

ASSEMBLYMAN ROD: Then what it did was, the school board was forced to have a layoff. I have seen that happen many times.

ASSEMBLYMAN PATERO: Well, I have never seen where a layoff came in. Usually the governing body would have to put line items on where they are making the cuts. You might be right, but I am not aware of that.

ASSEMBLYMAN ROD: It could create a problem.

DR. CONNERTON: It creates a different kind of a problem, let me put it that way. It would give you a pressure which does not exist now, if you could bargain that in your contract.

ASSEMBLYMAN ROD: Okay. Discipline does not apply to funding, but you have quite a few areas in here where there are layoffs, class size, extra-work assignments, because if you do have a layoff, and you increase the class size from 21 to 25, that would be considered an extra-work assignment. Am I correct?

DR. CONNERTON: No.

ASSEMBLYMAN ROD: No?

DR. CONNERTON: What we are talking about are additional functions that somebody decides it would be really nice to do, and so they say, "That is yours." You have no recourse; you do it. Get out the school yearbook, get out a student newspaper, whatever -- if they decide they are going to lay some folks off, and you are coaching a sport, and they want you to do the yearbook, you do it. There is no control at all over work assignments.

ASSEMBLYMAN ROD: You see, I have to take the school board's side. If they fulfill your contract in good faith, they put all the monies necessary in that budget, and that budget comes back from the Commissioner with less money, now the school board is going to be in a bind.

DR. CONNERTON: Sure they are.

ASSEMBLYMAN ROD: And they are going to be held responsible, and now they are going to be in violation of the contract.

DR. CONNERTON: And, we're in a bind, too, because everybody who works there is represented by us. Then, that is when you sit down and figure -- what can you accept? There could be situations where we would say, "All right, we understand what you are up against. Let's agree that, in our situation, instead of laying people off, we are going to do thus and so." Or, "we would be willing to accept this, and this, and this, if this happens." But, instead of it being imposed by one party, you are working it out mutually. Our judgment is, that over time, you get a better-managed system, you get more mutual respect for the people who work there, you get more community involvement in what is going on there, and generally, that, in our judgment, is good public policy. It is harder to do, it is more work for people to do -- it makes you get in there and do it, instead of just handing down the decisions like that. But, that is what makes society decent.

ASSEMBLYMAN PATERO: If I may, again, if the governing body makes a cut in the school board budget, they have to line item just where the cuts are going to be. If you have a contract with the school board where you say the class size is going to 20, and the governing body, in their line item for cuts comes out and says you have to eliminate three teachers, which will then give

the size of say, 24 children in the classroom, can the Commissioner of Education go over the contract? In other words, can he agree that three teachers have to be eliminated, even though the contract states that there are to be 20 children in a classroom?

DR. CONNERTON: You can now. We would argue that he could not, if we can bargain that kind of a class size provision in a local contract under what we are seeking.

ASSEMBLYMAN PATERO: But, I am correct in saying that the governing body has to line item where the cuts are going to be done.

DR. CONNERTON: Right.

ASSEMBLYMAN ROD: The Commissioner can come in and make additional cuts if he so decides. He has the power to do that right now. Am I correct in that?

DR. CONNERTON: Ultimately.

ASSEMBLYMAN ROD: He can come in and do that; he can make additional cuts if he so decides.

DR. CONNERTON: Yes, but he would be obligated to live up to the contract that the school board has entered into, which, as I believe, is Assemblyman Patero's point. He would be obligated to live up to that contract, and not violate that contract. If he disobeyed that, I suppose we would have recourse to go to the courts.

ASSEMBLYMAN ROD: I have been put in the situation where I have been fighting on behalf of the school board against the Commissioner, because sometimes he made recommendations that I did not agree with.

On page 6, pay raises for public school employees -- you do negotiate pay raises now. Okay? You address the issue that pay raises could be held back for any reason whatsoever. Is this happening on a regular basis right now?

DR. CONNERTON: Yes, more and more.

ASSEMBLYMAN ROD: For example?

DR. CONNERTON: We have an increasing number of cases where increments are withheld. The way we bargain a contract, we bargain a salary schedule which provides for increments. There is no magic in it. The State School Boards Association has told its people, "It is a fair game now. If you want to start leaning on people, this is the time to do it. One way you can do it is just by withholding increments. There isn't anything they can do about it." They have fed that line to the school boards, and more and more, we have principals and superintendents of schools, adopting it as a practice in their systems, and what we construe as punitive actions -- attempting to force people into line by withholding an increment. It can be absolutely arbitrary, capricious, no reason for it at all, and there isn't a thing you can do about it.

ASSEMBLYMAN ROD: So, you have that happening a lot now.

DR. CONNERTON: Yes, we do. And I tried to address it in the courts without success, because it is none of your business. As a management prerogative --

ASSEMBLYMAN ROD: You negotiate pay raises. How do you address this -- as a contract violation? Is that how you --

R O B E R T P O L A K O W S K I: We can't.

DR. CONNERTON: We have no recourse now.

MR. POLAKOWSKI: We can't. It has already been determined that it is not a proper subject for negotiations. That is what this bill is all about as far as we are concerned.

ASSEMBLYMAN COWAN: Just one point -- my understanding with the questioning that has been going on here, and perhaps we can bring it into a better focal clarification is that, what you are talking about -- this intermingling, working on a lower level -- that in the local school districts, if people are bargaining in good faith, they will not meet up with these problems that have been mentioned here today.

DR. CONNERTON: That is right.

ASSEMBLYMAN COWAN: The purpose is that there will be no reason to cut from the Commissioner, or perhaps, no reason to cut from the council or the city commission, because you have bargained in good faith, and the employer -- the school board has bargained in good faith, in order to keep the system functioning along the lines that you are aware of what the taxpayer can bear.

DR. CONNERTON: That is right. And, you would actually, in that sense, strengthen the hand of the local school board, because it could go to the Commissioner and say, "You can't cut me because we bargained this. It is in our contract; it has got to be enforced."

ASSEMBLYMAN PATERO: I just want to make clear that, when we were referring to pages so and so, that we were referring to the statement that was presented to us from Dr. Connerton, rather than Assembly Bill 585.

If there are no other questions, thank you very much for your testimony.

DR. CONNERTON: Thank you very much.

ASSEMBLYMAN PATERO: The next speaker we have in front of us is Ray Peterson from New Jersey AFT. Mr. Peterson?

R A Y P E T E R S O N: Mr. Chairman, I have with me today Mark Neimeiser, who is with the American Federation of State, County and Municipal Employees, and Peter Smith, who is the Vice President of the State AFL-CIO, and also Chairman of the Public Employees Committee.

Since it is becoming abundantly clear that this is a bill that would affect all public employees, including the 32,000 members of the State employees, I would like to share the time with them. My testimony will be brief, and I would like to give Mr. Smith some of my time.

ASSEMBLYMAN PATERO: We have no problems with that, Mr. Peterson.

P E T E R S M I T H: Mark, I'll defer to you for a few moments.

M A R K M. N E I M E I S E R: Also with us Mr. Chairman and Committee members is Don Phillippi, a business agent for Local 195 of the International Federation of Professional Technical Engineers.

I think you will find it somewhat relaxing to know that I will not be giving you a written statement here today, nor will Mr. Smith or Mr. Phillippi. The reason for that is a very simple one. We think that this Committee, the Labor Committee, has made a mistake in holding this hearing today. What you have done is allowed two parties, the New Jersey Education Association and the New Jersey School Boards Association, to continue their fight, their vendetta with each other, their frustrations with each other here in the public, and in effect, set the tone.

Out of frustration, the New Jersey School Boards Association here today has, in effect, represented that it represents all management in the State of New Jersey. I would like the Committee to know that there are some more enlightened managers in the State of New Jersey who are quite capable of speaking for themselves.

The NJEA would have you believe that out of their frustration, that they came and spoke about fire fighter's clothing and about the needs of State employees, and once again, I would point out that that was their frustration, I suspect, that caused them to say that. They do not speak for fire fighters, Mr. Smith advises me, nor do they speak for State employees.

The purpose, I think, that we come before you really though is to try to convince you that there is a need for legislation. In coming here today, I was reminded that Rutgers happens to be right now in the midst of negotiations for a contract for next year, and yet, is being told that President Bloustein of this University wants to roll back salaries for low-paid workers here in the blue-collar service and in the clerical office and laboratory and technical services here at Rutgers. He wants to roll back salaries by 7%, so surely there is a need. But, what we also need is a proper forum. We need a way to get the parties into a room -- the various practitioners. And, I might note coincidentally, that in your list of speakers here today, here we are at Rutgers Labor Education Center, also the home of the Institute of Management and Labor Relations here at the State University, and yet, there isn't one neutral -- not one neutral -- listed to speak before you today. It is not because they didn't know about it. It is simply because they perceive that this bill has already drawn the battle lines, and as neutrals, they figure they are best waiting, not giving their good counsel, but rather, waiting on the sideline.

And, there are several here. Bill Weinberg sits in the back. He sat on the first commission to study the Public Employee Relations Commission law, as it were, and yet, he is not scheduled to speak. He told me this morning that he was not going to speak.

So, what we have is, here we are at this wonderful place, and yet, the people who frequent here, most neutrals and participants are not among the ones who will testify. Rather, they are combatants who come before you today, with the exception of the Public Employee Council.

We hope to convince you that there is a need for the legislation. There is a need to get the parties together. There is a need for management, labor and neutrals to give the benefit of all of their experiences and develop a bill that is workable and doable, and doable in the sense that you, as legislators, can accept it, release it from Committee, and can get the support of your colleagues on the floor of the Assembly, and ultimately get it over to the Senate, and signed into law by the Governor. That is why we come before you today.

Pete has been on the phone this morning -- Pete Smith has been on the phone this morning with the Governor's Office, and has an important announcement, I suspect. Maybe the Governor hears things also, as well as the Labor Committee, and Pete will make that announcement, and then we will get back into some --

MR. SMITH: Mr. Chairman and members of the Committee, first I would like to say that for the reasons that Mark has given, the AFL-CIO Executive Board last week unanimously came out in opposition to A-585.

Secondly, I was just talking with the Governor's Office, and either late today or tomorrow, the Governor is expected to appoint a Governor's Labor Advisory Committee. Its first project will be to deal with the things we are talking about, and that will done, again, either late today or first thing in the morning. Thank you.

Mark, do you want to continue?

ASSEMBLYMAN PATERO: Before we proceed, the only thing we want you to know is that this was the only bill we had in front of us, and that is why the hearing --

MR. SMITH: This has become --

ASSEMBLYMAN PATERO: May I finish? This is the only bill that we had in front of us, and we tried working on a piecemeal basis, but it just seemed that it didn't work, and that is the reason we are tackling this bill right now. That is the reason for the public hearing, because we want to have input from other organizations such as yours.

Being a mayor, and Assemblyman Rod was a mayor also, whenever we wanted to stall things off, we always formed committees. The Governor has been forming a committee to study the employment factor, and we still haven't heard any report, but he keeps saying we are going to save a lot of money.

It disturbs me now that he knew what this problem was. He ran in the campaign last year; he knew this problem existed. He was in the Assembly, and he knew this problem existed. I really don't know -- maybe because of the hearing we are having today, that is the reason he is forming this task force, as you said -- the committee to study this problem. His top priority is this matter we are discussing now. We really don't know who he is going to put on this committee. Is he going to put just lay people? Is he going to have representatives from the unions, etc?

So, we are still going to proceed with this bill. That is why we had hoped you would give testimony on what is wrong with this bill. We are holding up the bill for another two weeks, so if you want to have any more input on this -- The Labor Committee is willing to sit down with you, if you see that there is anything wrong, and we feel that there is an urgency that something be done before it goes into another session. So, that is the only reason we are having this public hearing today.

I went back to Mark Neimeiser. If he wants to turn it back to you --

MR. NEIMEISER: Just a quick comment, Mr. Chairman. It was not Mr. Smith's desire, Pete's desire, in this particular matter, or Ray's or Don's or mine to say that the Governor's solution, or his forming of a committee to study, was the ultimate solution, but rather one which we think helps address a problem. The need is not for public declaration at this point. The need is for people to come together and to begin to look at what is doable, what people can live with, and what will further the collective bargaining system. We have to get people out of that public forum.

You can't get the School Boards Association and the NJEA and others

to agree at a public forum. There must be some concensus reached behind the scenes.

I think your suggestion that the Committee, the Labor Committee itself, is willing to sit down and talk to various people about where the bill ought to go, or what ought to be done -- I think it is a good one. I would have rather seen that prior to this public hearing. But, maybe, once again, the public hearing creates that environment, and the Public Employee Council stands ready to do that, as do our individual organizations.

I might point out, in terms of the tone of the bill -- let me just deal for a couple of minutes on some of the things that we see with the bill. The tone of the bill, we think, is wrong at this point. In the preamble, it throws down the gauntlet to the Supreme Court, with the various cites to the education act, and so on. You are talking about a court -- you are throwing down the gauntlet to a court that has shown no reluctance to pick that gauntlet up and return the favor. To that extent, we think the tone is wrong from the outset.

It is not unusual for statements such as appear in this preamble to this bill to not be a part of legislation, but rather, to be statements attached to explain the intent, and so on. We understand the need to try and focus in and make it perfectly clear what the Legislature intends, but we think that those general statements, which really do not do anything in terms of setting forth what law will be, or what, in fact, is intended to be provided for, other than to set some tone. We think that tone is wrong, given the realities of a State Supreme Court, which has done a number of other things.

We also think that there are some technical flaws with this bill. A-706, in its impact, obviously is one. The problem, though, goes a bit further. You heard, in terms of the NJEA's testimony, that A-706, in its impact, that its lawyers were working on and doing and so on. Far be it for me to try to prevent lawyers of the Education Association from collecting their fees, but I would suggest to you that the Committee has able staff, that there are other parties who may also have language, and that the bill is not the NJEA bill. It is not the School Boards' bill, but rather, it is a bill which, hopefully, addresses permissive categories. Which brings me to what I see to be a major failure in the bill.

You talked about not wanting to go piecemeal, and I agree with you that, at this point, I don't think that piecemeal will work. But, this bill -- 97% of it -- deals solely with the area of scope of negotiations. It does not deal with the question of strikes, and perhaps it should, and perhaps, with some meetings and with some people, some practicioners getting together and talking about what is going on out there, and what will work and what won't work, maybe there can be some addressing to the question of strikes or arbitration or whatever. More importantly, perhaps it takes legislation such as has been proposed by former Speaker Jackman, which would provide for a fair hearing prior to the issuance of injunctions, when there is a dispute going on between an employer and a group.

There is also the area of agency shop, which I am unclear as to whether or not there is a need for any reform. At least, that is one that the

practitioners ought to be talking about.

At this point, I am going to turn to Ray and Don. I have some additional situations which I would outline for you in the bill, which I think are problematical in terms of either throwing down the gauntlet that I outlined before or, in terms of not providing the kinds of mechanisms that I think are workable.

Let me defer to Ray and Don, so they won't think that I hogged their time.

ASSEMBLYMAN PATERO: First of all, I want to say that I feel that the best bill going is Assemblyman Jackman's bill, the right to a fair hearing. I think the media did a job on defeating that bill when they called it the right to strike, which was never the intention of the bill. Also, the Committee here, and I, as Chairman, feel that we have an obligation to the public, State employees, and even to the city and municipal employees with all these pink slips going out. I think that they just kept handing them out to whomever they felt, not on the basis of job performance, but I think on the basis sometimes of the political process, the parties that they belong to.

I feel that with negotiations, that we should come up with something to give you more of a strong hand to deal with problems such as this, rather than having the procedures that are going on now.

MR. NEIMEISER: Mr. Chairman, I believe you, I really do, and I want to move a piece of legislation. My problem very simply is, this bill does not vary very much in terms of language or mechanism from S-750 or S-1414, which was introduced in 1979, as a response to the Ridgefield Park court case, or A-706 -- whatever it was that Assemblyman Cowan introduced back in 1980. This bill doesn't vary very much. There are a couple of changes in terms of language. None of those bills saw the Assembly or Senate floor in terms of a vote.

There was a public hearing held on S-1414, where Jeff Tener, who was then the Chairman of PERC, gave testimony. Now, that was a neutral giving testimony. The Commission itself had taken a position about the need for a bill, and yet, nothing happened. It wasn't because people weren't hurting back then. It wasn't because there weren't layoffs going on back then. Maybe the magnitude was somewhat less, but there were layoffs. There were changes. There were people who couldn't negotiate contracts. There was misuse and abuse here at Rutgers, much as there is today, of workers. The bills did not move. It didn't move in 1979, it didn't move in 1980, it didn't move in 1981; and, here we are at the end of 1982, and the bill isn't moving. I would suggest to you that what we need to do is find something that will move.

Someone made the reference this morning to the tax question. I think it was Assemblyman Rod. I would suggest to you that it is not any different from that -- that the problem with the Legislature in terms of tax right now is that people are often cornered to have the income tax folks over here, and the sales tax folks over here, and no-tax folks over in another corner. What we need is something to get people to move, and I would just suggest to you that that is what is necessary at this point.

This bill is not new legislation -- it is not new. We know that it has some very good components in it, and for some reason, it has not moved. Maybe it is just that people are often in the corners, and it is an unusual role for me to act as an advocate for bringing parties together. I usually like to bang it out with whomever comes along, but at this point, I feel that I have to encourage you to bring the

parties together. Let me defer to Ray before he hits me.

MR. PETERSON: I wouldn't hit you, Mark.

ASSEMBLYMAN PATERO: Assemblyman Cowan?

ASSEMBLYMAN COWAN: I understand you are talking about moving and putting the parties together. Is that the verbiage I hear?

MR. NEIMEISER: That is correct.

ASSEMBLYMAN COWAN: This bill was introduced back in March. Has anything been done along these lines as far as trying to get things together, or suggestions of any type?

MR. NEIMEISER: No, unfortunately it has not. What I think occurred was that the bill came about and had the imprint of some organizations on it, either pro or opposed, and other organizations began to position themselves to the positions that seemed to be taken with the bill with the people who helped to write the bill or construct the bill. That is unfortunate. What I would like to see is by bringing the parties together, that some legislation, some nuance, some wrinkles come about which allow it to go forward. Right now you have people in corners, Tom, and that is where it is.

ASSEMBLYMAN COWAN: I understand, and again, if I am interpreting things correctly here this morning as to what has been said to this point in time-- that there is some movement. Do I understand that?

MR. NEIMEISER: The Governor's Office is moving--

ASSEMBLYMAN COWAN: Let's leave the Governor's Office out of this right now, please.

MR. NEIMEISER: The chairman is prepared to move, and we stand ready, and I assume others stand ready. I think that at some point you have to examine the process. The legislative process is a complex one. We have to keep looking at what-- by having the public hearing, by the fact that the bill has not moved for a number of years, this would indicate that something is wrong, not with the bill necessarily, but in terms of the parties and their positions. We need something to free that up. We need something--

ASSEMBLYMAN COWAN: I see a lot of people in the room today, and I was just wondering if that movement may have started today, and perhaps something could be--

MR. NEIMEISER: As a product of the hearing, hopefully.

ASSEMBLYMAN COWAN: Perhaps something could be followed up along those lines.

MR. SMITH: I would like to make a comment to Assemblyman Cowan.

ASSEMBLYMAN PATERO: Yes?

MR. SMITH: We are not looking for a showcase-type piece of legislation. Without the Governor's consent and support, he won't sign it. So naturally, he has to have his input in it also, and that is what we tried to do with the creation of this Labor Advisory Committee -- for counsel, so that we can get input into the Governor's Office and find some common ground that we could all live with together.

ASSEMBLYMAN COWAN: As an elected representative myself for my third time, I don't think I have every put anything into the showcase. I have worked for my constituency on a broad basis, and I would just like to see that followed along the lines here-- What we are talking about is some movement to get something resolved. If you feel there is a real problem, and you have been kicking it around yourselves as labor representatives, along with the school boards which sit here, and other

employers, that certainly, after a period of time since 1974, or eight years, that some resolve would be coming to the fore, where if it can be done in other areas and other states, which has been presented here today, that this could also be followed in the State of New Jersey. I do not consider this a showcase.

MR. NEIMEISER: Assemblyman Cowan, that bill was given to you. It has got a marking on it of an organization, and that organization came to you with that piece of legislation, and you introduced it. Correct?

ASSEMBLYMAN COWAN: I don't understand what --

MR. NEIMEISER: I think you have to look at the positives.

ASSEMBLYMAN COWAN: I don't understand the -- Is that a question, or a statement?

MR. NEIMEISER: Whatever. Assemblyman Cowan, I think we have to look at the positives. The fact of the matter is, when bills have moved that are controversial in this State, it comes about as the product of parties from various sides getting together, and, in effect, creating a document which then surfaces and has support, because everyone has given up something. It is similar to bargaining over the table. The best contracts are generally those when everybody walks away angry because, they, in effect, have reached some compromise. Being in politics for the years that you have been in, as well as being part of the union yourself, and being part of those politics, you know, of course, that sometimes the art of achieving the doable is reaching compromise and being able to discuss with your enemies those points which they can live with and you can live with.

I am used to a full orchestra behind me when I give these kinds of speeches. It may be because I don't do them all that often that there is no orchestra behind me.

ASSEMBLYMAN PATERO: Mr. Neimeiser, what you have to remember, too, is sure, this bill has been in the past, but there has not been that much of a push to get the bill out of Committee, outside of the leadership from all sides that are involved. I think that you have to go back; the times are different. What was good in 1976 doesn't mean it is not good in 1980, and I think the fact that we had 12,000 teachers in front of the State House demonstrating is what brought this to a head.

I feel that if this bill does come up for a floor vote, and we don't have the support of all public employees, we are not going to have a bill, and I would not want to embarrass Assemblyman Tom Cowan with having this bill go on the floor if there is a split. So, we definitely are going to be hearing all sides, and I hope we can come up with a bill that we know will pass both the Assembly and the Senate.

MR. SMITH: That was my response to the showcase. We could get movement, people together --

ASSEMBLYMAN PATERO: You are right.

MR. SMITH: So that we can get a bill that everybody can live with -- not a confrontation between the NJEA and the New Jersey School Boards Association, which I witnessed here this morning, because tomorrow morning in the press, that is what you will read. It is not a public employee bill, it is a teacher bill. "Thorough and efficient" -- it is written in there.

ASSEMBLYMAN PATERO: Well, once we get the testimony, we will look at

what the testimony says. We will make the changes by amendment, but, again, I think we all realize that if we want a bill like this out for public employees, which includes teachers and so forth, if we do not have the unity of all the groups, we just don't have a bill.

Now we will go to Mr. Peterson.

MR. PETERSON: Thank you, Mr. Chairman. Thank you for this opportunity to share my views with you on this important issue.

There is no doubt in my mind that public employees need a bill that would restore the bargaining rights that have been lost through a series of unfavorable court decisions.

For approximately ten years, the Public Employment Relations Commission has resolved questions of negotiability, or had resolved questions of negotiability on a case-by-case basis, following well-settled principles that had been established in labor law, either through rulings of the National Labor Relations Board, or through court decisions. We favor the restoration of those rights through a restoration to the Public Employment Relations Commission of its role as the agency which is charged with the responsibility for deciding questions of negotiability on a case-by-case basis.

When the Legislature enacted the law stating that terms and conditions of employment were negotiable, we believed that the Legislature meant what it said: "that anything that is not illegal, prohibited by law, was negotiable."

It was well established in the private sector forty years ago that an employer must discuss, but need not agree to, the requests of the union. That precedent was established in the New Jersey public sector through PERC Decision Number 1, in which the Commission ruled that a discussion of an issue did not mean that either side was required to make a concession, but only that the subject could be discussed. From personal experience, I know that many things that were discussed at the bargaining table were resolved in a mutually satisfactory way, even though the employer chose not to agree to put anything in writing. In other cases, after sufficient discussion, perceptions and points of view were clarified so that workable solutions to problems could be set down in writing and signed. My whole point is this: a discussion usually resolves problems, and a refusal to discuss things usually generates problems.

The purpose of the Public Employment Relations Act was to provide for a harmonious system of labor relations in the public sector. What we have now is a system that invites litigation, frustration, and acrimony. We hope that the Legislature will see the wisdom of restoring PERC the role that it performed for at least ten years.

There are many aspects of this bill that we can support, but there are flaws in the bill. There is at least one proposed change that should definitely be deleted. That is the proposed change on page 9, line 45, where the proponents of the bill seek a change in the PERC rules regarding the determination of bargaining units. If the proposed change were enacted, it would mean that a PERC hearing officer need not look at the bargaining history of a small unit of employees when a larger unit seeks to absorb that unit through a unit consolidation hearing.

There are cases in which a unit of secretaries in a public school system, or a unit of janitors, might be represented by a union that has no connection

with teachers, and might not want to be represented by the organization that represents the teachers in that district. To be specific, I am aware of districts and community colleges in which the non-teaching employees are represented by the Teamsters, the Operating Engineers, the Retail, Wholesale and Department Store Employees Union, the American Federation of State, County and Municipal Employees, the IUE, and the CWA, as well as the AFT.

I have heard from representatives of each of the above unions that they have experienced raids or attempted raids by the organization that represents the teachers in those school districts. In most cases, the employees rejected the attempts of the so-called professional organization to capture those bargaining units through representation elections within the units. Most of these units have had satisfactory bargaining histories, and it would serve no useful purpose to allow them to be swallowed up by a larger organization through unit consolidations, when that same organization was unable to win them through secret ballot elections in smaller units.

In my opinion, that proposed section of the law is a booby trap that could backfire on any public employee union that represents employees in the public schools. Therefore, we cannot support this bill as it is presented.

We believe that all public employee unions must unite behind a bill that is developed by consensus-- one that contains no booby traps. A consensus is developing within the AFL-CIO, and when it is reached, I will be the first to recommend that we contact the NJEA.

At the present time, most other public employee unions are focusing their energies on the number one priority -- the resolution of the State funding crisis. Our top priorities are jobs and economic justice, and as soon as we get those issues resolved, we will focus our energies on a scope of negotiations bill that all public employee unions can support.

Thank you for your time. I would be glad to answer any questions that you may have.

ASSEMBLYMAN PATERO: I have no questions. Assemblyman Cowan, do you have any questions?

ASSEMBLYMAN COWAN: Yes, Ray, you had brought this to my attention, as I recall, perhaps four or six weeks ago.

MR. PETERSON: And several months before that too.

ASSEMBLYMAN COWAN: Do you have any amendatory language for that section?

MR. PETERSON: I would delete certain sections of it, but there have been some technical flaws that have been pointed out by Mark Neimeiser, and I don't think we can negotiate that here and now. I think Mark's previous remarks were well taken, and I do think think a consensus is developing and can be reached soon.

ASSEMBLYMAN PATERO: One recourse we always have is, if we can come up with some consensus, we can always put in a Committee substitute rather than go through the whole procedure of bill filing and getting sponsors and so forth. That is one option that we have.

Mr. Rod?

ASSEMBLYMAN ROD: Yes. You stated that the Governor is going to form a Committee. You talked to the Governor this morning.

MR. SMITH: I talked to the Governor's office this morning. This has been in the works for some time, but because of the fiscal problems, naturally their attention was devoted to that first. But, they did tell me this morning that this would be done either late today or tomorrow -- the Governor's Labor Advisory Council.

ASSEMBLYMAN ROD: Is that going to come from the Governor's office?

MR. SMITH: Yes. It is going to be done by executive order, and one of its first priorities will be to address, to work with us, and I would hope with you to address the problem of the scope of negotiations within the Public Employment Relations Act.

ASSEMBLYMAN ROD: Is he going to assign personnel from his department, or is he going to make it a combination of --

MR. SMITH: I don't have the information on just how it is going to be structured.

ASSEMBLYMAN ROD: I agree with Assemblyman Patero -- the statement he made before as far as committees sometimes being formed to delay some of the actions, and I think in order to prevent any delay on this issue, I would like to recommend to the Labor Committee that it might be possible to put a resolution in at the next meeting, establishing some time period -- a short period of time. By a short period of time, I am saying maybe 60 days or 90 days -- nothing beyond the 120-day time period, so that we can get some results, and not let the entire year of 1984 go by and still be in the same situation.

I do agree with Assemblyman Cowan that this bill was introduced back in March, and here we are at a public hearing, trying to come up with some type of agreement. I think that we missed some time between March and now, and I would like to see this come to a head, and I would like to offer the Governor's office the opportunity to put a committee together. But, I think a time limitation is very important to come up with a solution to the problem and to address the issue properly.

MR. SMITH: That recommendation was made to them -- that there be no delays in getting the council formed and getting the PERC study underway. I am quite sure that some of us here in the room possibly will be sitting on that committee. I am not positive, but I assume that some people from organized labor would be on it. We will certainly, whomever from organized labor, be pushing to get it done as quickly as possible --

ASSEMBLYMAN PATERO: As I discussed with Assemblyman Rod --

MR. SMITH: -- to work with you.

ASSEMBLYMAN PATERO: I know the Governor's office talked about this when we were going through Assembly Bill 706, and they should have some papers or information that they have right now. I think it would be proper for us at the next meeting if we put down that a report has to come from that committee by April 1st. As you know, we have a budget break, and if we put it in any sooner, it just wouldn't be right, because we couldn't vote on the bill anyway. So, I think the suggestion of Assemblyman Rod is proper, and at the next Labor Committee meeting, we will pass this resolution, which we will submit to the Governor.

MR. SMITH: It is.

ASSEMBLYMAN PATERO: We still don't know the full details on just what the Governor is consisting --

MR. SMITH: Right, we don't know either.

ASSEMBLYMAN PATERO: I don't know who the members are going to be on this committee, but as Assemblyman Rod and Assemblyman Cowan said, we just don't want this to go into the next legislative session.

MR. SMITH: Well, I, myself, know that sometimes committees and councils are formed for various reasons, but this one, I do believe, sincerely will be formed to work with you and everybody concerned to get something done.

ASSEMBLYMAN PATERO: I hope you are correct.

MR. SMITH: So do I.

ASSEMBLYMAN PATERO: Okay. Mr. Phillippi just came in. Do you want to testify along with these gentlemen?

D O N A L D R. P H I L L I P P I: Thank you, Mr. Chairman and members of the Committee. I just want to cover two areas. One is on the disciplinary matters, because our local union was involved with the Supreme Court case involving that matter.

I would just like to have the members of the Committee have an understanding of how some of those events took place.

In fact, it was right in this very hall that we held negotiations with the State. In the morning of the day of negotiations on discipline, they handed us an article from them with binding arbitration on all disciplinary matters, and we signed that article. We initialed that that morning.

They came back in the afternoon, about 3 o'clock, and said, "We shouldn't have given you that article. We have just been told by the Attorney General's office that we cannot negotiate on disciplinary matters." I said, "I don't care what you did. You signed it. We've got an agreement. That is bargaining in bad faith. How can you do this? There is no way." They said, "Well, this is what we are told. If you don't think it is right, you can go to PERC." So, we were forced to go to PERC, and PERC upheld us -- that it is a mandatory subject of collective bargaining, and it was, in fact, the State of New Jersey, the Office of Employee Relations, the same ones who handed us the article that went to court. They had that decision overturned. That is the kind of bargaining that we were faced with with the State. But, it was their office that gave us the article, and signed it and initialed it. We certainly feel that that is a mandatory subject of negotiations. It is discipline, and we have had nothing but problems since that case developed.

The second area that we are approaching that might surprise a few members of the Committee -- recently we were in negotiations with the State, and prior to that, we asked for information necessary for bargaining. They failed to supply us with just about everything that we asked for. One figure that we did get from them -- we have a number of people in our bargaining unit who are not members of the PERS. They are not members of any pension system. There are over 500 members of our union who are not in the pension system, but who are in our bargaining unit. The reason for that is, they opted in about 1955 -- they had a choice not to go into the pension system. But, the point is, we wanted the figures on that. They also have no life insurance coverage. So, we said to the

State, "We want to negotiate life insurance coverage for those 500 people who are not in the pension system, because they have no insurance." Do you know what they told us? "No way, that is not negotiable. It is not negotiable because the life insurance is tied to the pension." So, we are faced with another hassle.

One of the main decisions that came out before when the amendments came up on Chapter 123 was the language they decided. It was that last language -- it was that statute or other statutes and what that meant.

I see at least two members of the Committee, I believe, who were in the Legislature, because I believe those were the so-called Burstein amendments. What was involved with 123 -- statutes or other statutes. Many that day were defeated, and some passed.

The real intent and meaning of that is that everything was negotiable, except pensions, and not a reading into the statute that you could go into Chapter 18 and read something in there that is going to contradict the contract. So you say, "that is not negotiable." You go into the Civil Service law and say, "Can we negotiate vacations, because in the Civil Service statute, there says something about vacations, or does that mean that is only a minimum and we can negotiate anything beyond that?" We can play this game. They can go through all types of statutes and always find something that is in our contract to run into court with. That is the problem that I think you have to be (inaudible) but I think the original intent of 123 was everything was negotiable, except pensions. That was the concern of many legislators, and they didn't want things in the pension negotiated. They wanted the final approval on that.

But, we are faced with this issue now, and the life insurance coverage. The State has told us that they will not bargain about life insurance for these 500 people because they are notin the pension system, and life insurance is covered in the pension system.

Our union is willing -- we worked closely with the Public Employees Committee to sit down and work out these problems, and I'm glad I heard from the chairman of our Public Employees , Pete Smith, who stated that the Governer has assigned the study commission to work on this bill. We hope to cooperate with that commission. Thank you.

ASSEMBLYMAN PATERO: We also want you to know that we will still be working on this bill, so in April, if we know there is nothing going on, then we will have a bill to move with you --

MR. NEIMEISER: Mr. Chairman, I think I speak for the four unions that are represented here, and Ray and I have been authorized to represent a number of others. Obviously the Public Employee Council represents close to 40 international unions on it, including the Operating Engineers.

We stand ready to meet as long and as continuously as need be to come up with a piece of legislation that you can present to your colleagues and get passed, and the Senate will pass, and that the Governor will sign. We want something that is doable; we need help. We stand ready.

If you want to conduct your first session right now, we're ready to go. We'll cancel all appointments to just keep going, and I am sure there are other groups that would be willing to do that. If the managers are good managers and

are serious about it, they would make the same commitment.

ASSEMBLYMAN PATERO: We can't do it now. We have other speakers, but rest assured --

MR. NEIMEISER: It is not because I knew the League of Municipalities was next either.

AUDIENCE: (Laughter)

ASSEMBLYMAN PATERO: But, Mark, you can rest assured that you represented the 40 other unions well. Thank you very much.

Our next speaker is Rosalyn Bressler, and she is from the League of Municipalties.

R O S A L Y N L. B R E S S L E R: I am Rosalyn L. Bressler, Assistant Corporation Counsel of the Law Department in the City of Newark, and I am here to speak on behalf of both the City of Newark and the League of Municipalities.

With me is Mr. William Dressler.

W I L L I A M D R E S S L E R: Yes, Mr. Chairman, Rosalyn Bressler will present the oral testimony today. I have indicated to your staff aide that written testimony will be forthcoming shortly from our labor counsel.

ASSEMBLYMAN PATERO: Again, like we said, we are holding this up for two weeks, so if we get it within two weeks, we'll make sure it is in the record.

MR. DRESSLER: Thank you.

MS. BRESSLER: Prior to stating our objections to the legislation, I would like to comment, if I may, on an interchange between this Committee and Dr. Connerton. I refer to two particular areas.

Dr. Connerton gave his situation, an example of how a school board constantly harassed union members by assigning them to new positions, new schools, new locations every year. In response to a question, I believe, perhaps from Assemblyman Cowan or perhaps from another person on the Committee, Dr. Connerton indicated that they have no recourse. There is no recourse in the State law as it now stands to prevent such a situation.

I would suggest that the union leaders consider filing an unfair practices charge under the Public Employer/Employee Relations Act. They do, indeed, have such recourse. Public employers may not retaliate against union leadership. They may not take steps which would chill public employees in the exercise of their rights under the act.

There was one other matter that was a subject of discussion between this Committee and Dr. Connerton, and that was the question of the costs of litigation. Assemblyman Cowan asked Dr. Connerton whether, in fact, there has been increased litigation in recent years in the labor field, and Dr. Connerton said, "yes, indeed, there has been." I would agree with that; there has been a great deal of litigation in this field. But, I would suggest to this Committee that the reason for the litigation has been because there have been several legislative enactments in this field, and the provisions of these laws have been challenged as being unconstitutional.

Because of this, there have been many decisions going all the way up to the Supreme Court level, dealing with the provisions of laws relating to labor relations. At this point, we have reached, one might say, a plateau. It appears that all the major objections have been made, or at least objections as to the

legislation which has already been enacted. The Supreme Court on a few occasions has reviewed the legislation, has made their pronouncements as to the validity of various provisions in the legislation, and the Supreme Court has offered guidelines for public employers and public employees in dealing with their rights and obligations under the act.

I would suggest to this Committee that further legislation, rather than limiting litigation, would only start a new round of litigation as the courts are asked to interpret the provisions of the legislation, and as the courts are asked, indeed, to overturn the legislation on the grounds of it being unconstitutional. This brings me now to our objections to Assembly Bill 585.

Our objections to the legislation are twofold. First, its provisions are unconstitutional, and second, and equally important, we believe the legislation is not in the best interest of the public.

In decision after decision, the New Jersey Supreme Court has limited the scope of collective negotiations. It has done so, not only because of its reading of the legislative intent in enacting the Public Employer/Employee Relations Act, but also because of its constitutional concerns regarding our democratic system of government.

These concerns were most eloquently expressed in the Ridgefield Park decision when the court stated, "the very foundation of representative democracy would be endangered if decisions on significant matters of governmental policy were left to the process of collective negotiation where citizen participation is precluded. This court would be most reluctant to sanction collective agreement on matters which are essentially managerial in nature, because the true managers are the people. Our democratic system demands that governmental bodies retain their accountability to the citizenry."

Our concern is with the very function of government. Both State and Federal doctrines of substantive due process prohibit delegations of governmental policy-making power to private groups where a serious potential for self-serving action is created thereby.

The constitutional considerations of the Ridgefield Park decision have been cited with approval in subsequent Supreme Court and Appellate Division decisions, which held that legislative enactments on the subject of collective negotiations and provisions in collective negotiations agreements are limited by the constitutional requirement that public entities retain control over managerial matters which significantly pertain to the determination of governmental policy.

Assembly Bill 585 is unconstitutional because it would remove this control from public employers. It would broaden the scope of mandatory subjects for collective negotiations to include discipline and the impact of managerial decisions. It would create a permissive category of subjects which are neither mandatory nor specifically prohibited by statutory language.

To the extent this legislation either mandates or even permits negotiations which place limitations on government's policy-making powers, it is simply unconstitutional. For example, the inclusion of discipline as a mandatory subject runs contrary to the Appellate Division holding in State versus Local 195, IFPTE, which called discipline, and I quote, "as an integral and essential part of fundamental

government policy."

Negotiations on the impact of managerial decisions is less clear. That provision may or may not be unconstitutional, depending on whether the negotiations fetters governmental policy-making powers. As for permissive subjects, this bill clearly expands the category beyond what the Supreme Court found in the Paterson PBA case to be consitutional.

Now, it is not enough to say that there is nothing in A-585 which would force public employers to negotiate on permissive matters. Government managers cannot, at their option, bargain away managerial prerogatives such as the size of the workforce or the assignment of personnel. The public's right to participate in the making of government policy may not be defeated by the voluntary acts of government officials.

Equally important as the constitutional considerations is our belief that the legislation is not in the best interests of the public. Public employees are presently protected in their right to representation and to collective negotiations. They are protected through Civil Service laws, they are protected through tenure laws. What is being sought through this legislation is more than protection of employees in the public sector. What is sought here is the right of public employees to limit, through collective negotiations agreements, managerial decisions involving governmental policy.

The present time, with the loss of Federal aid, the economic situation, the limitations imposed by the "cap" law on municipalities and other public entities, is perhaps the most difficult of all times for public employers. We are asked to be magicians to provide the public with more when we have less. If only like Aladdin we had a magic lamp which we could rub and conjure up a genie who would apprehend the criminals and douse the fires and sweep the streets, although I suppose that the genie, unless he were an independent contractor, would be subject to the seniority rights of other Civil Service employees, and if he weren't, God forbid, a disabled veteran, he may never even be reached on a Civil Service list.

At this present time, the cities are basically trapped. We must provide the services. We have a duty to provide these public services, and yet we are lacking the wherewithal with which to provide the services, to pay for them. All we can do, the only sphere in which we can maneuver, is to use our imagination, our creativity, to come up with ways in which we can be more efficient, and ways in which we can use managerial tools and creative managerial programs to deliver more services with less. We should not be hampered in this ability by provisions in collective negotiation agreements.

I would like to cite some examples of problems the City of Newark faces just to give an idea to the members of the Committee of the problems that we have, so that you can appreciate better the importance of government employees being free to exercise their inherent managerial prerogatives.

The City of Newark, from its peak period in the mid-1970's of more than 8,500 employees, funded both through Federal funds and city funds, has in 1982 fewer than 5,000 employees, a loss of more than 40% in that short period. Our uniformed police employees, which in the mid-1970's numbered over 1,600, are now down to a little over 1,100. Our Department of Recreation consists presently

of a skeleton staff of 28 employees, where once we had hundreds. We were forced to close several fire companies in the last few years, and we recently laid off 131 employees, 62 of whom are fire fighters.

The continued erosion of Federal and State support has brought Newark to a posture such that the mere continuation of the low level of employees and services which exists in 1982, that continuation of that level in 1983 would require the city to raise $28 million more in taxes and to spend $9 million more than it is permitted to spend under the "cap" law. While Newark's figures may be more dramatic than those in other municipalities, the problems that the smaller municipalities face are similar.

Public employees cannot be burdened in their decision-making process by contractual provisions relating to managerial prerogatives. Rather they must have the ability to manage efficiently, and to develop and use innovative and flexible programs to maximize limited resources. Anything less would hamper the efficient delivery of services to the public and be inimical to the public interest.

I thank you.

ASSEMBLYMAN PATERO: I am sorry about the noise outside. We have no control over that. That was a very good testimony.

Are there any questions?

ASSEMBLYMAN COWAN: I just have one thing I am very apprehensive about. You quoted some very good statistics there so far as the number of people employed, etc., and when it got down to the Department of Recreation, you said you had 28 out of several hundred. Haven't there been some changes since the cutback? I am not trying to get into too many details, but, I just don't want things in my own concept here lost -- some changes since revenue-sharing, the Federal cutbacks where people have been moved around in different departments and are now servicing people in other ways?

MS. BRESSLER: No, there has been a great loss of Federal aid. The loss of the anti-recession funds and other cutbacks in grant programs, both Federal and State, has resulted in the department having only 28 employees. I do not believe that there are other persons outside the department who are performing the same functions. At least to my knowledge, that is not true.

It is just that when the City of Newark had to make the decisions to make these drastic cuts, we tried to minimize the effect on police and fire and sanitation and other essential services, and recreation, which, by anyone's standard, certainly in an urban area of poor people, as Newark is -- while recreation is very important, when decisions had to be made, the Recreation Department was the one that ended up suffering the greatest number of cuts in employees.

ASSEMBLYMAN COWAN: It is almost incomprehensible for me to think that the largest city in the State has 28 people in their Department of Recreation. I would think that would probably be all supervisory personnel, because they couldn't be doing anything.

MS. BRESSLER: What I will do, Assemblyman Cowan, because I agree with you, these figures are shocking -- I will check them out further and I'll be glad to let you know if I have any other information on this.

ASSEMBLYMAN COWAN: It is not that I want to question the authority of

the City Council or the Mayor; that is their prerogative.

MS. BRESSLER: Tough decisions, as can be seen, have had to be made.

ASSEMBLYMAN PATERO: There are no other questions. Thank you very much. Next Mr. James Cunningham from Burlington County College?

R O S E M. C H A N N I N G: I don't think you've got the right name. I am representing the county colleges.

ASSEMBLYMAN PATERO: I have James Cunningham from Burlington. What is your name?

DR. CHANNING: Dr. Rose Channing.

ASSEMBLYMAN PATERO: We have you listed after him, but since he is not here, we will give the floor to you.

DR. CHANNING: Good afternoon. I am Dr. Rose Channing, President of Middlesex County College. I am representing a viewpoint from the county colleges of New Jersey. As you may know, the county colleges are part of the public education system; however, we are somewhat different in that unlike the State colleges, and so on, we have our own local boards of trustees and have our negotiations separately from those of the State colleges, and each college negotiates with its own union. The various unions are different among the county colleges.

The issues that I am going to address are similar among the county colleges, and we are speaking from the county college perspective and in opposition to this particular bill.

ASSEMBLYMAN COWAN: Excuse me, doctor, are you representing just the Middlesex County College or the Association?

DR. CHANNING: No, I have been asked by the Council of County Colleges to represent the viewpoint of the county colleges in general.

ASSEMBLYMAN COWAN: Okay, thank you.

DR. CHANNING: We do agree with the sponsors of A-585, and its companion, S-1235, that it is in the public interest to prevent labor disputes, and that the attendant conflict of such disputes is unproductive and wasteful. However, we do not believe that the fundamental and wide-ranging disruption of existing public-sector collective bargaining mechanisms proposed by these bills would improve either productivity or efficiency. Nor will these proposed changes bring about a more just and equitable environment in which to conduct public-sector employer-employee relations. On the contrary, these bills, if enacted, will hamper the efforts of schools and colleges to provide the highest quality education to our citizens at the lowest possible cost. They will work against the public interest by preventing us from exercising prerogatives that are in that interest, and after all, it is the public that pays the bills.

Specifically, these bills would impede our efforts by severely restricting the ability of our administrations and boards of trustees to manage the institutions effectively. As President of the State's largest community college, I have seen the combination of diminishing resources and societal and economic changes increasingly force us to remain flexible in our use of personnel and facilities. The problems we face in helping New Jersey adapt to a revolution in technology and employment patterns are educational ones, and do not lend themselves to solution over a bargaining table. Nor can we, as public agencies, go bankrupt and operate

under the protection of bankruptcy laws as can a private company.

The bills under discussion would hamper the management of our institutions in the following ways:

First, the permissive category of public-sector negotiations would be reinstated in this bill. This would reverse the exclusion of a number of educational concerns from the collective bargaining process by the New Jersey Supreme Court's landmark Ridgefield Park decision. Doing so would permit such matters, and you have heard these before -- curriculum, discipline, budget formulation, staff qualifications, and evaluation to become fair game for adversarial disputes, rather than remain the responsibility of those who are legally accountable for them.

Allowing these and other concerns to become topics for collective bargaining goes to the very heart of an institution's freedom to respond to emerging community and business needs. We could destroy, in effect, a great strength of the county colleges, the ability to quickly establish or modify new programs serving the unemployed, women, minorities, and local companies.

The second point, the impact of nonnegotiable decisions on employees' terms and conditions of employment would itself become negotiable according to this bill. As a result, the implementation of certain budgetary or programmatic decisions, because of their indirect impact on employees, could become bogged down in the mechanism of labor negotiations, adding an extraneous and cumbersome dimension to decision-making, again for which we are responsible.

Third, the definition of "confidential employee" would be so restrictive as to be functionally useless. Worse yet, such exclusion from this category would place our middle-management people such as deans, directors, and chairpersons in a potentially conflicting situation. If only those, and this is the way we interpret the bill -- if only those with direct, ongoing involvement with negotiations are deemed "confidential," these other individuals would be in a possibly compromising position in which, as nonconfidential employees, they may be on both sides of the fence at various times. As a result, management would be hard-pressed to maintain the confidentiality of its positions or plans in dealing with collective negotiations. Instead of easing labor tensions, these bills would raise them by putting a major segment of the campus community in conflict with itself. This would ignore traditional patterns of collegial governance, patterns which deserve preservations not on tradition alone, but because they foster an institutional spirit of common purpose essential to any higher education endeavor. To superimpose an additional overlay of industrial-model labor relations on the already difficult process of managing our colleges through hard times could literally immobilize some colleges.

The fourth point, discipline and related managerial responsibilities would become a mandatory subject of bargaining. The proposed legislation would interfere with, and essentially nullify, the historical personnel practices with respect to faculty that have permitted the colleges to retain qualified personnel. The problems our public colleges already have in dealing with an overly high proportion of tenured faculty in an age of retrenchment would be severely compounded. Under these bills, elimination of current discretionary prerogatives in selecting faculty members for retention, tenure, or promotion is entirely possible.

This change would also fly in the face of the intent of A-706, passed

last year to amend the New Jersey Employer/Employee Relations Act. When A-706 was enacted, its amended form gave public employees the right to negotiate disciplinary procedures, but specifically excluded tenured faculty with statutory protection, from whom the procedure incorporated into this protection was to be used in disciplinary situations. The proposed legislation would permit tenured faculty to grieve under any negotiated disciplinary procedure, yet retain the statutory protections of the existing tenure law, thereby complicating an already cumbersome process.

And fifth, the "balance of powers" inherent in our current labor relations process involving participation by the Executive, Legislative, and Judiciary arms of State government would be destroyed.

The proposed legislation would permit negotiated agreements to supercede rules and regulations made by a State agency, effectively eliminating the authority of the Executive Branch in governing labor relations on our campuses. In addition, these bills are regressive in nullifying the State Supreme Court's 1978 Ridgefield Park decision. They would return us from a climate in which categories for bargaining are either clearly mandatory or illegal, to one in which permissive categories affecting virtually the whole substance of a college's operations and mission are again part of the bargaining context. This would, in our view, confuse, rather than clarify what are appropriate topics for negotiation, and would set aside the power of the courts to bring their valuable perspective to bear on disputed issues.

These five concerns I have cited must be seen in the context in which public higher education operates in New Jersey.

I have no hidden agenda of maintaining control for its own sake, and putting these concerns squarely in that context. I will summarize by saying our colleges are not companies. Our motive is not profit, but public service. Our traditions of governance include long-established channels of shared staff and administrative communication and deliberation on what, when, to whom, and how we offer educational opportunities. There are few sectors in our nation's public life in which the so-called "workers," which are our faculty and our professional staff, exercise so many prerogatives in conducting their professional affairs. This freedom and independence is not historically the result of any bargaining session, but, instead, arises from long-standing traditions of mutual respect and the sharing of a common goal. The proposed legislation will contribute significantly toward denying us the means to pursue that goal. The intangible, but real damage to the higher education environment, as well as the prevention of those who are legally accountable from fulfilling their public mandate to manage our colleges, makes us urge the Legislature to vote "no" on A-585 and S-1235.

Thank you.

ASSEMBLYMAN PATERO: Thank you. Are there any comments or any questions? There are no questions? Assemblyman Rod?

ASSEMBLYMAN ROD: No.

ASSEMBLYMAN PATERO: Okay, again, thank you for your testimony.

DR. CHANNING: Thank you.

ASSEMBLYMAN PATERO: Next Rich Egree, NJEA? (no response)

George Dobish?

G E O R G E D O B I S H: Ladies and gentlemen, I would like to give testimony on freedom or the lack thereof for public employees in the State of New Jersey.

ASSEMBLYMAN PATERO: Would you give your name and the organization you are representing?

MR. DOBISH: George Dobish, Bridgewater-Raritan Education Association, Bridgewater, New Jersey.

I would like to give testimony on freedom or lack thereof for public employees in the State of Jersey. Lincoln freed the slaves nearly 120 years ago, but some of the same conditions that existed for them exist for my colleagues and myself. These include unilateral change in terms of conditions of employment, lack of compensation for increased workload, nonnegotiability of impact of "riffing" loss of just cause in a matter of discipline, and unnecessary transfers.

Indentured servitude would probably be the closest parallel that I can draw upon to describe the conditions that exist for public employees. I was advised by a number of my colleagues to come before this Committee wrapped in chains and shackles to demonstrate the lack of freedom that exists for us. I felt this might be too dramatic, so I opted for a more rational approach.

Let me begin by citing a number of cases that have occurred in my district which have impacted dramatically upon the working conditions for employees I represent.

Probably the most notorious case involved Peter Morrow. Peter was a music director in one of our two high schools. His band, as well as his smaller performing groups, were outstanding. These groups had won numerous awards for the schools throughout the State. Mr. Morrow was generally acknowledged to be a superb teacher. His evaluation for nearly three years in the district was excellent. No one had any doubts that he would be granted tenure. He had been recommended for tenure by his principal.

Peter Morrow made one mistake. During a traditional Thanksgiving football game between the two high schools, his band symbolically killed a falcon, which is the emblem of the opposing high school. A board member from that opposing school found this offensive. Pressure was put on Peter's principal to dismiss him. This dismissal was without just cause.

The passage of A-585 would ensure the current just-cause provisions would be enforced and would have, in this case, allowed an arbitrator at least to deal with the factual anomalies.

In PERC's scope case number A-354, a contractual procedure in our agreement required the board to follow a specific format for custodial discipline. However, three of our custodians were disciplined without this procedure being implemented. This is a clear violation of our contract. However, PERC decided for the board since just cause has not been recognized by the State as a negotiable item as it relates to letters of reprimand, even though it had been previously bargained for in good faith prior to that time.

Custodial maintenance, transportation personnel, and cafeteria workers are employees who I represent whose major employment rights have their roots in the collective bargaining process. A-585 would allow, at least, the just-cause provision to ensure due process as it relates to disciplinary and dismissal procedures. Those individuals are not protected by statutory tenure.

Letters of reprimand are a major source of harassment in public schools. These are used indiscriminately, and in the cases I have just cited, there were serious questions which needed the preview of a third party. A-585, at least, would guarantee that purview.

Let me cite a number of arbitration awards which our district has had, which impacted upon workloads of our employees. Triple "A" case number 1839-0212-79 involved mandating that teachers create math folders. This is a burdensome, tedious, clerical job, which took hours of the teachers' time to create and maintain. The arbitrator decided for the board, stating that the action was within the authority of the board, so long as that increase was within the total work year.

The board seems to be able to continually change working conditions without negotiating impact or compensation.

In addition to the cases I have cited, the board has also been able to assign with impunity both teacher and non-teaching duties within the school days which previously did not exist and were not negotiated. That is not fair.

The passage of A-585 would make the subjects negotiable and enforceable in labor agreements with binding arbitration.

Triple "A" case number 1839-0027-79D occurred when an assistant superintendent of schools changed the schedule in an entire department on the first day of school. It had been a long-standing practice for teachers to receive teaching assignments during the preceding school year. The practice was protected by contract language. The arbitrator agreed that the schedule change created an impact upon the educators' workload, but he was unable to award monetary compensation or equivalent released time because the state of the law at that time rendered our language unenforceable.

This is another example of arbitrary and capricious actions made without showing just cause. Furthermore, although it demanded much extra time and effort on the part of the teachers who would have been teaching classes they had not prepared for, they received no compensation in any way.

In Triple "A" case number 1839-0466-81D, teachers were given reading assignments as harassment. The principal expected that the teachers would do the reading on their own time. The arbitrator decided for the board because this assignment was used as an evaulation procedure which could not be negotiated.

ASSEMBLYMAN PATERO: Excuse me, a reading assignment?

MR. DOBISH: Yes. Ladies and gentlemen, anything could be considered currently an evaluation procedure. This assignment was a clear increase in the teachers' workload, and it demanded personal time beyond their normal workday.

A-585 would stop this kind of abuse.

In other cases, despite past practice, a coach who had been producing winning teams was not given a coaching contract for the next year. PERC not only denied the coaching contract, but did not even require clarification for the reasons for the contract denial.

Just as in the previous case, PERC ruled that our contract language was unenforceable. If A-585 were passed, the coach would at least be entitled to an appearance before an arbitrator for nonrenewal of his contract. PERC's decision changed the past practice procedures in our district and altered the meaning of the contract language which had been mutually agreed upon in collective bargaining.

PERC has also determined that whether or not we negotiate procedures for selections of posting or extracurricular positions, these subjects are non-arbitrable.

A-585 would at least ensure that is we negotiate something with our employers, whether it is called mandatory or permissive, after we have reached that agreement, it will be binding on both parties, and enforceable if violated.

Annually in my school district an average of 15 positions are "riffed." which is a school term for "laid off." Because of the current state of the law, we aren't able to negotiate the impact of those layoffs or any procedure to make them more fair. Since our bargaining rights have been limited to money and benefits, there is little hope for the professional educator in bargaining for working conditions or input into the educational process. Without the contribution of the professional educators, our schools are experiencing serious difficulty.

If the board and the association bargain contractual items in good faith, and if the law stips away those provisions, negotiations become a farce. We do not have the right to stike. When a right is granted under law, there must be a speedy and efficient form of redress that is equitable to both parties. Without equitability, the process becomes a sham. You can't continue to deny basic rights of bargaining terms and conditions of employment without the society as a whole suffering in the long run.

I can testify from my own involvement in education. There are numerous professional educators leaving education because of the conditions that exist. Why should an individual enter the profession earning $13 thousand or $14 thousand a year when a major corporation can almost double a starting salary? Why should an individual enter a profession when the law, as it presently stands, allows an employer to increase workload without compensation? Why should an individual enter into the profession when there is no just-cause protection against unfair discipline and dismissal?

It is time for the law to be clarified so that the courts and other agencies who deal with the collective bargaining will have less to interpret. The passage of A-585 at least will remove us from the classification of indentured servants.

Thank you.

ASSEMBLYMAN PATERO: Thank you. Are there any questions? If there are no questions, thank you very much.

We have Helene Samango?

H E L E N E S A M A N G O: My name is Helene Samango, and I am the President of the Camden Education Association. We represent about 1,700 members, and they include teachers, secretaries, clerks, security guards, attendance officers, and instructional assistants.

I believe that when there is a large number of areas for negotiations, compromise, and thus settlement, is much easier. The Legislature apparently also recognized this when they molded the first public employee bargaining bill, Public Law 303 of 1968. In 1974, it was once again necessary for public employees to return to the Legislature and ask for the restoration of negotiation rights.

When Public Law 123 of 1974 was passed, we believed that once again we would be able to negotiate our terms and conditions of employment. Then in 1978,

the Supreme Court in their Ridgefield Park decision eliminated the entire area of permissive subjects from negotiations.

In Camden, the elimination of this area has caused a number of problems. We can no longer negotiate the criteria needed to evaluate our members and their job performance. Yet, we have had instances where the criteria for the successful completion of the task had been changed by the administration, and the individual had never been apprised of the change.

We can no longer negotiate the criteria for assignment to summer school positions, evening school positions, and extracurricular positions. In some cases, administrators are giving these jobs to their fellow administrators, people who have not been in the classroom for many, many years.

The Camden Education Association believes that we should be able to negotiate with our board a fair and impartial method whereby these positions would go to the most qualified individuals presently teaching in the district. In addition, we believe extracurricular and co-curricular positions should be available to the most qualified individuals who wish to work in those areas. Our board should not be able to do what they do, and that is to assign a teacher an activity that he or she may not want, may not have any interest in, or may not be qualified for.

In Camden, we were able to negotiate an instructional and professional development committee, a committee that is made up of both administrators and teachers. What we were able to do in this committee was to bring curricular concerns to the district-wide committee for study, review and possible implementation. Our board is now demanding that this committee be eliminated because such study and review is the prerogative of the board and no longer subject to negotiations as the Ridgefield Park case eliminated all permissive areas of bargaining.

Camden has 33 schools. An important aspect to any uban area is stability. Our belief is that unnecessary transfers of personnel is disruptive to the student and the employee. Yet, it is not unusual in Camden to have over 100 transfers every summer, transfers that are given notice after August 1. We find it disruptive for a teacher to learn either in August or in September that he or she will be teaching in a different school, a different subject, and a different grade level. Why are there so many transfers? We don't know. The courts have forbidden us from negotiating transfer language that would at least mandate a review of these transfers.

Just last week a teacher was transferred and given no notice. He arrived in the school and was told to report elsewhere. Now, that may not seem bad in itself, but this teacher has no car, he moved to be near the school, and now he has to take three buses to get to the other school.

In the areas of discipline, also addressed by this bill, we see justice through due process. Let me relate just one incident for you.

One of my teachers received a letter of reprimand, and the letter of reprimand was placed in her file. There was factually incorrect information in that, and yet a third-party review is impossible under the present structure.

We have had many programs eliminated. In the elementary school, we no longer have art, physical education, music, guidance and librarians. What this has done is caused additional workloads for my classroom teachers with no opportunity

for us to bargain the increased workload.

When I first learned of this hearing, I marked it on my calendar. As I was doing that, I noticed that today is the Bill of Rights Day. Hopefully, you will take a step to return the rights to public employees that the Legislature approved initially, and hopefully, you will approve, and the Governor will sign A-585. We are not seeking something new, only the return to us of what initially was ours and granted by you.

Thank you. Any questions?

ASSEMBLYMAN PATERO: There aren't any questions. Your testimony was very good, and I am glad you brought some of those cases to us. That is what we are trying to correct in A-585.

ASSEMBLYMAN ROD: Excuse me, Mr. Chairman, I have a question.

ASSEMBLYMAN PATERO: Yes.

ASSEMBLYMAN ROD: I know that the question of transfer was brought up twice. One, I think, was September 1, and the other was August 1. Isn't one of the reasons you have transfers in the school system because you have to face the enrollment from one year to another, and the summer period of time, and you have a lot of shift from one school to another, especially in a district like Camden?

MS. SAMANGO: No, I don't think so, because what actually happens is that the transfers occur in such a manner and in such a way that it is quite suspect. Some transfers are in accordance with what you are saying, but not over 100 every summer after August 1.

ASSEMBLYMAN ROD: June, July and August is the enrollment period for the school system. Am I correct?

MS. SAMANGO: Yes, but our numbers don't change that heavily. Maybe from one school to the other, and even that change isn't that great. The person I mentioned just last week was a bilingual teacher in one school, and now he is in a bilingual program in another school, and they are going to put someone else in his position, I'm sure.

ASSEMBLYMAN PATERO: I also feel that the students are advised before August 1 of what school they are going to attend, so they have an idea of just how many students they are going to have in another school. So, they should know.

MS. SAMANGO: There may be some changes, but the changes after that are minute, not enough to warrant that type of transfer that late.

ASSEMBLYMAN PATERO: Okay, thank you very much.

MS. SAMANGO: Thank you.

ASSEMBLYMAN PATERO: I don't know if these people here in the audience -- Aurora Solette and Barbara Hutkins -- did Mr. Rich Egree get back? (no response) Does the Committee have any comments to make? Is there anyone else who wants to testify?

Just give your name and who you represent.

J A C K S W E E N E Y: My name is Jack Sweeney. I represent the New Jersey State Firemens' Mutual Benevolent Association. The FMBA represents over 65% of the fire fighters in New Jersey.

We basically agree with the position of the NJEA. We support a broadening of the scope of bargaining. However, we desire that any change in the public-sector bargaining law specifically state that issues that directly affect the safety and

health of employees be a mandatory subject of negotiation. The FMBA will submit additional comments for the record prior to the deadline.

Thank you.

ASSEMBLYMAN PATERO: Very good.

MR. SWEENEY: Are there any questions?

ASSEMBLYMAN PATERO: No, we agree with you. Since there is no one else in the audience who wishes to speak, I call this public hearing to an end.

Thank you very much.

(Hearing concluded)

APPENDIX ITEM NO. 1

"THE SCOPE OF NEGOTIATIONS"

(Reprinted from Negotiations 1983, NJSBA 1982)

THE SCOPE OF NEGOTIATIONS

The definition of the scope of negotiations for New Jersey's public sector has been continuously evolving since the 1968 enactment of the Employer-Employee Relations Act. Although, under the Act, PERC has the primary jurisdiction to determine the negotiability of specific issues, the principal actor in defining the boundaries of negotiability has been the New Jersey Supreme Court.

In its decisions, the Supreme Court has been guided by the belief that the scope of negotiations in the public sector must be more limited than that of the private sector: the public employer, as a government entity, has special responsibilities to the public not shared by private employers.[1] The public employer has a unique responsibility: to make and implement public policy. The Court believes that, within our democratic system, the public employer must retain accountability to the public and that matters of public policy are properly decided by the political process and not by collective negotiations. Thus, in *Ridgefield Park,* the Court held that there are only two categories of negotiations for most public employees: mandatorily negotiable terms and conditions of employment and non-negotiable matters of governmental policy.[2]

To determine whether a subject is negotiable, the Court will balance the legitimate interests of the employer and the employees. The most recently developed test of negotiability, defined in *Local 195* but evolving from prior court decisions, is three-pronged. To be negotiable a subject

- must intimately and directly affect the work and welfare of public employees;[3] and
- must not be preempted by a statute or regulation which speaks in the imperative and leaves nothing to the discretion of the public employer;[4] and
- must not significantly interfere with the exercise of inherent management prerogatives pertaining to the determination of governmental policy.[5]

When the subject intimately affects employees' working conditions but does not meet the other two criteria, it is non-negotiable.

The Supreme Court has also held that non-negotiable managerial prerogatives may not be submitted to *binding arbitration.* An arbitrator's decision is intended to be final and binding on the board; if arbitration of management prerogatives were permitted, the arbitrator, a private individual not accountable to the public, could become the framer of public policy. Disputes arising out of the application of managerial prerogatives may, however, be submitted to advisory arbitration, as this type of decision does not result in a final determination of public policy. The Court, in *Bernards Township,*[8] described the advisory arbitration process as protecting employees' interests without encroaching on the employers' authority to set governmental policy.

As of September 1982, Court decisions and PERC determinations have held that the following are *mandatory topics of negotiations.* Remember—you must negotiate these issues but you do not have to concede unless you wish to do so.

Advisory arbitration for the application of management prerogatives to individual employees
After school teacher-only workshops
Agency shop
Committees on non-negotiable topics that have merely advisory authority
Compensation
Disciplinary procedures for employees that do not infringe upon management's right to discipline
Duty free lunch
Evaluation procedures that do not contravene statute or administrative code
Fair dismissal procedures
Fringe benefits, including benefits for RIFfed teachers if incorporated into the contract
Grievance procedures
Holidays
Holdback of salary
Hours
Insurance, including disability income
Job security (for employees not covered by tenure)
Length of the collective bargaining agreement
Merit pay
Payment for unused accumulated sick leave
Past practice
Personal leave
Personnel file, access to
Physical and mental exam, beyond statutory authority
Physical facilities and working conditions, smoking in teachers' lounge

1. *In the Matter of Local 195, IFPTE, AFL-CIO v. State of New Jersey,* 88 *N.J.* 393, 1982; *Paterson Police P.B.A. Local No. 1 v. Paterson,* 87 *N.J.* 1981; *Ridgefield Park Education Association v. Ridgefield Park Board of Education,* 78 *N.J.* 144 (1978)
2. Negotiations involving police and fire employees are controlled by a specific statute providing for a third class of subjects, termed "permissive topics of negotiations," which include certain management prerogatives.
3. *Board of Education of Woodstown-Pilesgrove v. Woodstown-Pilesgrove Education Association,* 81 *N.J.* 582 (1980)
4. *State v. State Supervisory Employees Association,* 78 *N.J.* 54, 1978
5. *Paterson,* and *Woodstown-Pilesgrove*
6. *Local 195,* 88 *N.J.* 393
7. *State of New Jersey,* cert. denied 1982
8. *Bernards Township Board of Education v. Bernards Township Education Association,* 78 *N.J.* 311, 1979

Reprinted from Negotiations 1983

Posting procedures
Preparation periods
Procedures for selection and promotion of department chairpersons, other positions
Representation for teacher conferences, other meetings
Sabbatical leaves
Safety issues
Salary guide, initial placement, credit for experience
Sick leave, above the statutory minimum
Teacher-pupil contact time
Teaching periods, number of
Transfer and assignment procedures
Union business, time off for, use of prep period
Tuition reimbursement
Vacations
Workload
Work day, length of
Work year, length of[9]
Zipper clause

The following items have been determined to be *illegal topics of bargaining because they involve matters of educational policy or inherent management prerogatives:*

Absenteeism and tardiness policies
Academic calendar
Affirmative action plans
Application of evaluation criteria
Assignment
Audio-visual equipment, use of
Budget formulation
Class size
Contact time for students
Curriculum
Decision to assign bus, cafeteria, corridor and playground supervision
Decision to reschedule snow days in teacher vacation period
Decision to go to split sessions
Discipline
Evaluation, advance notice of observation and who evaluates
Extracurricular activities, assignment of
Facilities relating to the education process
Impact[10] of non-negotiable decisions
Lesson plans, format of and scheduling of submission
Productivity studies
Qualifications for employment
Qualifications for increment
Qualifications for promotion
Staffing, number of employees
Student safety
Student testing
Subcontracting
Supervision, of employees by department chairperson
Transfer, decisions and criteria
Use of teacher aides

The following items have been held to be *illegal topics of bargaining because they contravene specific statutes or regulations:*

Composition of the bargaining team
Decision to RIF
Early retirement incentives
Evaluation criteria
Extended sick leave
Impact of RIF on remaining teachers, and on RIFfed teachers
Maintenance of membership clauses
Non-renewals
Parity
Pensions
Procedures for RIF
Religious leave (paid), if not charged to general personal leave or vacation
Seniority provisions inconsistent with Title 18A
Sick leave, use of for other than statutory purposes
Student grievance procedures
Sunshine bargaining as a precondition to negotiations
Withholding of increments

9. This is generally mandatory for public employees, however, for teachers it is mandatory only to those days in excess of the 180 minimum required for state aid.
10. Impact was declared illegal under *Woodstown-Pilesgrove*

APPENDIX ITEM NO. 2

"NJSBA ANALYSIS OF THE NJEA SAMPLE AGREEMENT FOR 1983-84"

(Reprinted from Negotiations 1983, NJSBA 1982)

NJSBA ANALYSIS OF THE NJEA SAMPLE AGREEMENT FOR 1983-84

The NJEA is not issuing a revised Sample Agreement this year. Our analysis of the Sample Agreement, on the other hand, is substantially revised, because of changes in the laws governing negotiations and in trends and patterns in bargaining demands. Use our analysis when reviewing your present contract as you prepare for negotiations, and when reviewing the union's proposals and counterproposals.

In addition, be certain to analyze any proposed changes in your present contract **in the context of the rest of the contract.** A particular proposal might be acceptable on its own, but becomes unacceptable when viewed in tandem with other parts of the contract.

On the left of each page appears the text of the NJEA Sample Agreement. On the right of each page appears our commentary. References to **PERC** refer to **What Every School Board Member Should Know About the PERC Law** (copyright 1979, NJSBA); references to **Administering the Negotiated Agreement** refer to Volume 7 in NJSBA's School Board Library Series (copyright 1980).

PREAMBLE

This Agreement entered into this day of 19 , by and between the Board of Education of ,The City of , New Jersey, hereinafter called the "Board," and Association, hereinafter called the "Association."

This section notes the date the contract was entered and is standard and acceptable.

WITNESSETH:

WHEREAS, the Board and the Association recognize and declare that providing a quality education for the students of the School District is their primary aim and that the character of such education depends predominantly upon the quality of teaching, the availability of materials, the functional utility of facilities, the release of imagination in planning, the application of democratic processes in administration, and the maintenance of high morale among the teaching faculty, and

WHEREAS, the members of the teaching profession are particularly qualified to advise the formulation of policies and programs designed to improve educational standards, and

WHEREAS, the Board has an obligation, pursuant to Chapter 303, Public Laws 1968 to negotiate with the Association as the representative of employees hereinafter designated with respect to the terms and conditions of employment, and

The primary purposes of a labor agreement are: (1) to state the terms and conditions of employment of employees; (2) to place limitations on the ability of the employer to change those terms and conditions; and (3) to specify certain kinds of duties or requirements of employees. If a clause in the contract does not fulfill one or more of these purposes, it is extraneous.

The first two whereas clauses are illegal topics of negotiation. **Fairview Board of Education,** PERC No. 80-18.

The clauses in this section are extraneous. It is better deleted inasmuch as it may be used by an arbitrator or other third party to modify the meaning of the Agreement. The General Counsel of the NEA states: *"From a strict legal point of view they are not necessary. They may, however, be viewed by an arbitrator or a court as providing a clue to the intention of the parties in construing ambiguous provisions in the agreement. If such statements are to be included, therefore, the language should be carefully drafted."* (See **The Law and Practice of Teacher Negotiations,** 3:16, cited in **Bibliography,** earlier.)

WHEREAS, the parties have reached certain understandings which they desire to confirm in this Agreement, be it

RESOLVED, in consideration of the following mutual covenants, it is hereby agreed as follows:

This is standard language.

Article I, *Recognition*

A. Unit

The Board hereby recognizes the Association as the exclusive and sole representative for collective negotiation concerning grievances and terms and conditions of employment for all personnel whether under contract, on leave, on a per diem basis, employed or to be employed by the Board, but excluding:

(Insert positions excluded from the negotiating unit.)

The definition of the bargaining unit is very important. The board has the same right as the union to insist upon the proper negotiation unit. The unit should be limited to classifications of employees which have what is called a "community of interest." In a teachers' unit, this would include all certificated teaching personnel under contract. The unit may also include nurses, psychologists, and social workers. The unit will differ from district to district.

A few districts have "mixed units" containing certificated personnel and some or all of the non-professional employees in the district.

Under Chapter 123, the superintendent and assistant superintendent must be excluded from

all bargaining units. Confidential employees also are excluded from bargaining units under Chapter 123. Should the board have any questions concerning the appropriateness of the bargaining unit as constituted, it may file with PERC a petition for clarification of unit. In addition, new supervisory bargaining units may not be represented by unions which admit non-supervisors to membership (such as the NJEA). Nor can a unit formed after 1968 contain supervisors and non-supervisors. PERC has recently held that persons designated to evaluate teachers are supervisors under the PERC law and may not remain in the teachers' bargaining unit. **Cinnaminson,** D.R. No. 81-39. (For a full discussion of bargaining units see **PERC,** Chapter Two, "Representation.")

PERC's Director of Representation has ruled that substitute teachers who meet certain strict criteria have the right to negotiate under Chapter 123. **Bridgewater-Raritan Board of Education,** D.R. No. 79-12.

For more information on bargaining units, see "Bargaining Units: Consolidation, Severance, and Additions," at page 13 of this book.

B. Definition of Teacher

Unless otherwise indicated, the term "teachers," when used hereinafter in this Agreement, shall refer to all professional employees represented by the Association in the negotiating unit as above defined, and references to male teachers shall include female teachers.

Paragraph B means that every right granted a classroom teacher applies equally to all professionals who are not classroom teachers. The board may wish to reserve certain rights and privileges only to classroom teachers and/or to full-time employees, such as preparation periods or tuition reimbursement. Whether or not you have such a definition, be careful to specify when a contract clause does not apply to all employees.

Article II, *Negotiation of Successor Agreement*

A. Deadline Date

The parties agree to enter into collective negotiation over a successor Agreement in accordance with Chapter 123, Public Laws 1975 in a good-faith effort to reach agreement on all matters concerning the terms and conditions of teachers' employment. Such negotiations shall begin not later than August 1 of the calendar year preceding the calendar year in which this Agreement expires. Any agreement so negotiated shall apply to all teachers, be reduced to writing, be signed by the Board and the Association, and be adopted by the Board.

Under the Rules and Regulations of PERC, there is now a beginning date for negotiations on successor agreements. This year it is December 7. If the parties agree to begin at a later date they may do so.

The Sample Agreement would begin bargaining on or before August 1st. In effect, boards would be bargaining over a successor to a contract **which has not even taken effect.** While timing of negotiations is within the power of the parties subject only to PERC's rules, this last point should be

kept in mind. Generally it is better for boards to begin negotiations late in the Fall. If proposals are exchanged in December and actual negotiations are begun in January, so much the better. For an explanation as to why we advise this, see "When to Start Bargaining" in **Negotiations 1981**.

Regarding the last sentence: you should always notify the union prior to negotiations that the full board of education retains the right to ratify or reject any agreements reached during negotiations. Boards should not agree to a clause like this last sentence.

B. Grants from Federal or State Agencies

The Board agrees that the procedure set forth in this ARTICLE shall be applicable to the determination and implementation of the grants to be requested by the Board pursuant to any federal and/or state laws, provided; however, that the relevant time-table shall be shortened if necessary to comply with time requirements in making or processing applications under the relevant federal or state laws.

C. Increase in State Aid

The Board agrees to reopen negotiations and permit amendments to any section of this Agreement whenever state and/or federal funds in addition to and/or in excess of those amounts previously anticipated for the fiscal year(s) covered by this Agreement have been appropriated. The Board shall so inform the Association within five (5) days of its notification of the amounts to be received in such subsequent state and/or federal appropriation.

Boards should reject B. and C. These call for automatic reopening of a contract in certain circumstances. When the contract is reached, it is preferable that it resolve all issues for its entire term. No mention is made, it is noted, of reopening negotiations in the event of a **decrease** in State or Federal aid. No New Jersey boards have agreed to such a clause.

D. Modification

This Agreement shall not be modified in whole or in part by the parties except by an instrument in writing duly executed by both parties.

Section D. is a standard clause and should be retained in the agreement.

Article III, *Grievance Procedure*

The grievance procedure may be the most important section of any contract. Ideally, a grievance procedure will define a grievance, identify who may file a grievance, set a time limit on the filing of a grievance and detail individual steps through which a grievance must pass. Grievance procedures can provide a positive means for resolution of disputes.

For a thorough analysis of the legal and practical considerations that affect grievance procedures, see **Administering the Negotiated Agreement,** pp. 1-24. This book also contains a sample grievance procedure at Appendix D which modifies much of the NJEA Sample Agreement language to make it more workable for school boards and administrators.

A. Definitions

1. Grievance

A "grievance" is a claim by a teacher or the Association based upon the interpretation, application, or violation of this Agreement, policies or administrative decisions and practices affecting a teacher or a group of teachers.

The definition of a grievance should be limited to the **mandatory definition of grievance** established in the Supreme Court's **West Windsor** decision, 78 **N.J.** 98 (1978). In that case the Court stated that all grievance procedures must permit grievances over the interpretation, application or alleged violation of negotiated agreements, board policies and administrative decisions affecting employees' **terms and conditions of employment.** A later case **permits** employers to negotiate a grievance procedure over non-terms and conditions of employment, such as class size, as long as such a procedure **does not end in binding arbitration. Bernards Township,** 79 **N.J.** 311 (1979).

Therefore, if a board does not specifically limit its grievance procedure to terms and conditions of employment, it risks having PERC or an arbitrator misinterpret it to allow grievances over **virtually any topic at all,** as long as such grievances do not proceed to binding arbitration. This risk is especially high if your present grievance procedure ends in **advisory arbitration.** See **Watchung Hills Regional,** PERC No. 81-86.

To avoid this problem, delete the NJEA Model Agreement phrase, "a teacher or group of teachers" and substitute, "the terms and conditions of employment of a teacher or group of teachers."

Even with this definition of a grievance, a board should not agree to permit all such grievances to go to binding arbitration. (Binding arbitration, of course, is a negotiable topic, **not** a mandate. You may have binding arbitration for some, all or none of the grievances in your district that concern terms and conditions of employment.)

Boards which have agreed to an arbitration clause should only agree to submit grievances to binding arbitration which arise under the express terms of the agreement. Grievances over "board policies and administrative decisions and practices" should not fall under an arbitration clause.

Grievances concerning "policies" should start and end with the board. Grievances concerning "administrative decisions" might start with the administrator responsible for the

decision and end with the board. Grievances over statutes and regulations should start with the superintendent and end at the board, subject to appeal to the appropriate administrative agency. See **Administering the Negotiated Agreement**, pp. 18-23.

Boards should avoid agreeing to a grievance definition that includes "practices" as grievable, because the word is too ambiguous: consistent practices, known practices, building practices, grade practices, random practices or individual supervisor practices?

2. Aggrieved person
An "aggrieved person" is the person or persons or the Association making the claim.

3. Party in interest
A "party in interest" is the person or persons making the claim and any person including the Association or the Board, who might be required to take action or against whom action might be taken in order to resolve the claim.

Who May File a Grievance: The Supreme Court decided on August 3, 1978, that the majority representative union has the constitutional and statutory right to present grievances on behalf of employees, and that this right cannot be waived through contrary contractual language. The case, involving the **Red Bank Regional Board of Education**, 78 **N.J.** 122, thus prohibits the negotiation of a clause to restrict the filing of grievances to individual employees. The Court decision assumed that individuals have a concurrent right to present grievances themselves; it did not address whether a union can file a grievance against the wishes of the affected employee.

B. Purpose
The purpose of this procedure is to secure, at the lowest possible level, equitable solutions to the problems which may from time to time arise affecting teachers. Both parties agree that these proceedings will be kept as informal and confidential as may be appropriate at any level of the procedure.

The purpose of the grievance procedure is not to achieve "equitable" solutions, but to resolve differences concerning the **rights** of the parties regarding the terms and conditions of employment of the employees covered by the contract. The sample language grants unlimited discretion to an arbitrator to fashion an "equitable" solution according to his or her personal definition of justice. This is too broad a grant of authority to an arbitrator.

C. Procedure

1. Time limits
The number of days indicated at each level should be considered as a maximum and every effort should be made to expedite the process. The time limits specified may, however, be extended by mutual agreement.

Time Limit: The Sample Agreement places rigid time limits on the board's administrative personnel but places no time limit on the grievant. It is in the interest of the parties that a time limitation be placed in the contract. If you find that you do not have enough time at any step to adequately consider

2. Year end grievances
In the event a grievance is filed at such time that it cannot be processed through all the steps in this grievance procedure by the end of the school year, and, if left

unresolved until the beginning of the following school year, could result in irreparable harm to a party in interest the time limits set forth herein shall be reduced so that the grievance procedure may be exhausted prior to the end of the school year or as soon thereafter as is practicable.

a grievance, propose different time limitations. The contracts in the private sector often place a 3 day limit on the initial filing of grievances. While this may seem unduly restrictive, two weeks would not seem so. This time limit should appear prior to or in the first step of the procedure.

The phrase "should be considered" is unnecessary and should be replaced by the word "is".

3. Level one—principal or immediate superior

A teacher with a grievance shall first discuss it with his principal or immediate superior, either directly or through the Association's designated representative, with the objective of resolving the matter informally.

4. Level two—superintendent

If the aggrieved person is not satisfied with the disposition of his grievance at Level One, or if no decision has been rendered within five (5) school days after the presentation of the grievance, he may file the grievance in writing with the Association within five (5) schools days after the decision at Level One or ten (10) school days after the grievance was presented, whichever is sooner. Within five (5) school days after receiving the written grievance, the Association shall refer it to the superintendent of schools.

The Sample Agreement's procedure begins with the principal or immediate superior and goes on to the superintendent. Those boards which have department chairmen may wish to involve these supervisors in the grievance procedure.

The practice in nearly all districts in New Jersey is to provide that the board of education is a formal step in the grievance procedure, hearing grievances appealed beyond the superintendent's level. Most boards feel it is their obligation to receive and act on employee grievances directly.

There is another school of thought, however, which states that a board should engage only in policy-**making** and that grievances are really only concerned about the **implementation** of the board's policies, which is an **administrative** function.

If your board believes that it spends too much time reviewing employee grievances, consider negotiating yourselves out of the process. Instruct your chief school administrator to consult with you on the more complex grievances, and to use his administrative judgment on the others. For some boards, removing themselves from grievance handling may "de-politicize" district labor relations substantially, as well as free up board time for policy functions while buttressing the authority of the administration. It may be particularly appropriate for the board to delete itself from the grievance procedure if most grievances the board handles proceed to arbitration anyway.

The appropriate role for the board in your district's grievance procedure will depend on the number of grievances that arise, your relations with the administration and the union and the other demands on your time.

5. Level three—arbitration

(a) If the aggrieved person is not satisfied with the disposition of his grievance at Level Two, or if no decision has been rendered within ten (10) school days after the grievance was delivered to the superintendent, he may, within five (5) school days after a decision by the superintendent or fifteen (15) school days after the grievance was delivered to the superintendent, whichever is sooner, request in writing that the Association submit its grievance to arbitration. If the Association determines that the grievance is meritorious, it may submit the grievance to arbitration within fifteen (15) school days after receipt of a request by the aggrieved person.

(b) Within ten (10) school days after such written notice of submission to arbitration, the Board and the Association shall attempt to agree upon a mutually acceptable arbitrator and shall obtain a commitment from said arbitrator to serve. If the parties are unable to agree upon an arbitrator or to obtain such a commitment within the specified period, a request for a list of arbitrators may be made to the American Arbitration Association by either party. The parties shall then be bound by the rules and procedures of the American Arbitration Association.

(c) The arbitrator's decision shall be in writing and shall be submitted to the Board and the Association and shall be final and binding on the parties.

Boards differ on whether they desire to have themselves, advisory or binding arbitration as the last step of the grievance procedure. 35% of school boards have not agreed to binding arbitration. No board is required to agree to binding arbitration. Prior to doing so you should be sure that you can operate the school system adequately with the definition of a grievance and the contract clauses to which you have agreed. Binding arbitration can prove harmful especially where you have agreed to a "savings clause," or a "past practice clause." Remember, no matter how responsible you believe the union to be, expect the organization to seek the most favorable (in their eyes) interpretation of a given clause. Can you now live with that interpretation? The amount of no or yes answers you give to this question may help you determine whether you desire to agree to binding arbitration.

If the union is intent on gaining binding grievance arbitration, they should be willing to remove any "past practice" clause. In addition, the board should insist on a "no strike or work stoppage" clause.

If you have agreed to binding arbitration, it is now critical because of the **West Windsor** decision to limit such arbitration to the "express terms of the written Agreement." Whether or not you have done that earlier in your procedure, you should do it here also. See **Administering the Negotiated Agreement**, p. 22, for sample language.

The following language should also be contained in any arbitration clause to limit the arbitrator to his or her proper role: *"The arbitrator shall be limited to the issues submitted and shall consider nothing else. The arbitrator can add nothing to nor subtract anything from the Agreement between the parties."*

(d) In the event that arbitrability of a grievance is at issue between the parties, jurisdiction to resolve the issue shall rest solely with the arbitrator selected in accordance with the provisions of Section C.5 (b) of this Article.

(e) The costs for the services of the arbitrator, including per diem expenses, if any, and actual and necessary travel, subsistence expenses and the cost of the hearing room shall be borne equally by the Board and the Association. Any other expenses incurred shall be paid by the party incurring same.

Boards should not agree to 5.d. This clause is designed to remove PERC and the courts from making decisions on what is negotiable and arbitrable, and is not in the best interest of the board. 5.e. is standard. See **Administering the Negotiated Agreement**, pp. 83-85 and pp. 131-133 for a detailed discussion of arbitrability.

D. Rights of Teachers to Representation

1. Teacher and association

Any aggrieved person may be represented at all stages of the grievance procedure by himself, or at his option by representative(s) selected or approved by the Association. When a teacher is not represented by the Association, the Association shall have the right to be present and to state its views at all stages of the grievance procedure.

D.1. This is standard language. The first sentence is a paraphrase of law regarding the right to Association representation. It implies, however, that an employee can demand to represent himself during arbitration, not likely the intent of the clause. The second sentence is general labor relations practice.

2. Reprisals

No reprisals of any kind shall be taken by the Board or by any member of the administration against any party in interest, any representative, any member of the Association, or any other participant in the grievance procedure by reason of such participation.

D.2. is a paraphrase of law. These protections are guaranteed by the law and need not be included in the contract. The inclusion of such a clause implies that, without the clause, the board **would** engage in reprisals against employees for filing grievances. Agreeing to the clause indicates to your staff that the union has won for them protection against board retaliation which, in fact, wouldn't occur anyway.

E. Miscellaneous

1. Group grievance

If, in the judgment of the Association, a grievance affects a group or class of teachers, the Association may submit such grievance in writing to the superintendent directly and the processing of such grievance shall be commenced at Level Two. The Association may process such a grievance through all levels of the grievance procedure even though the aggrieved person does not wish to do so.

E.1. Note that the grievance would begin with the superintendent rather than the principal or immediate supervisor. This would be acceptable, with this addition at the end of the first sentence: *"where the administrator handling grievances at Level One of this procedure does not have the authority to resolve the grievance."*

The second sentence is merely **negotiable** beyond Level One of the procedure. There is no statutory right for a union to process grievances beyond Level One.

2. Written decisions

Decisions rendered at Level One which are unsatisfactory to the aggrieved person and all decisions rendered at Levels Two and Three of the grievance procedure shall be in writing setting forth the decision and the reasons therefore and shall be transmitted promptly to all parties in interest and to the Association. Decisions rendered at Level Three shall be in accordance with the procedures set forth in Section C, paragraph 5 (c) of this ARTICLE.

E.2. You retain the flexibility to agree on various approaches to your procedure. Some boards have highly formalized procedures, with written answers on prepared forms. Others find an informal approach more useful. Use what works for you.

3. Separate grievance file

All documents, communications and records dealing with the processing of a grievance shall be filed in a separate grievance file and shall not be kept in the personnel file of any of the participants.

4. Forms

Forms for filing grievances, serving notices, taking appeals, making reports and recommendations, and other necessary documents shall be prepared jointly by the superintendent and the Association and given appropriate distribution so as to facilitate operation of the grievance procedure.

The joint agreement on forms for filing grievances is a standard procedure. However, there need be no agreement to jointly construct forms for the balance of items listed in E.4. Of course, E.4.'s last few phrases might require a board to distribute grievance forms on a regular basis, a thoroughly ridiculous act.

A "Sample Grievance Form" is contained in **Administering the Negotiated Agreement** at p. 200.

5. Meetings and hearings

All meetings and hearings under this procedure shall not be conducted in public and shall include only such parties in interest and their designated or selected representatives, heretofore referred to in this ARTICLE.

E.5. is a standard clause. It cannot be used, however, to deny an employee any rights he has under the "Sunshine Law" to compel a public discussion of his grievance. See **New Milford Board of Education,** PERC No. 81-36.

Article IV, *Teacher Rights*

A. Rights and Protection in Representation

Pursuant to Chapter 123, Public Laws 1975, the Board hereby agrees that every employee of the Board shall have the right freely to organize, join and support the Association and its affiliates for the purpose of engaging in collective negotiations and other concerted activities for mutual aid and protection. As a duly selected body exercising governmental power under the laws of the State of New Jersey, the Board undertakes and agrees that it shall not directly or indirectly discourage or deprive or coerce any teacher in the enjoyment of any rights conferred by Chapter 123, Public Laws 1975 or other laws of New Jersey or the Constitutions of New Jersey and the United States; that it shall not discriminate against any teacher with respect to hours, wages, or any terms or conditions of employment by reason of his membership in the Association and its affiliates, his participation in any activities of the Association and its affiliates, collective negotiations with the Board, or his institution of any grievance, complaint or proceeding under this Agreement or otherwise with respect to any terms or conditions of employment.

This is an example of an unnecessary commitment to a paraphrase of law. The PERC law provides: "Except as hereinafter provided, public employees shall have, and shall be protected in the exercise of, the right, freely and without fear of reprisal, to form, join and assist any employee organization or to refrain from any such activity." Note that the Sample Agreement language does not protect employees who don't join the NJEA, although the PERC law does.

School boards should also avoid the phrase beginning on the fourth line of paragraph A: *"and other concerted activities for mutual aid and protection."* This is not defined, but is an addition to the PERC law language, and could be used by the union to justify illegal job actions and strikes.

B. Statutory Savings Clause

Nothing contained herein shall be construed to deny or restrict to any teacher such rights as he may have under New Jersey School Laws or other applicable laws and regulations. The rights granted to teachers hereunder shall be deemed to be in addition to those provided elsewhere.

Note that paragraph A incorporates not only the PERC law, but also all "other laws of New Jersey or the Constitutions of New Jersey and the United States"! Paragraph B. incorporates all "other applicable laws and regulations," meaning Federal statutes.

Boards should generally refrain from placing statutory provisions in labor agreements. Certainly, your contract shouldn't incorporate by reference Federal statutes, nor the State and Federal constitutions. If references must be made to law, they should be **specific** references, not paraphrases. Furthermore, boards should think twice before agreeing to allow arbitrators to make determinations on the meaning of statutes. An arbitration clause that is limited to the "terms of this agreement" would probably permit an arbitrator to rule on alleged violations of statutes which are referenced in the agreement. **The arbitration clause can be as narrow as the parties make it.**

You can exclude disputes over statutory terms and conditions of

employment from arbitration with language such as the following:

Alleged violations of Article IV. A. and B. may be appealed before the Public Employment Relations Commission, the State Commissioner of Education, the State Board of Education, or other appropriate legal forums, and shall not be arbitrable under Article III of this agreement.

If your contract presently has clauses such as A. and B. above, and the union adamantly refuses to 1) delete them (your first choice) or 2) make them not arbitrable (your second choice), consider a third option. Limit the employee to a choice of arbitration **or** some other legal forum, but in no case both. Certainly a negotiated agreement can block an employee's access to arbitration when he chooses to go to a governmental agency or the courts, since arbitration can be as narrow as the parties agree to make it. Under the **State of New Jersey** decision, 78 **N.J.** 54 (1978), it may be that an employee can waive his access on a certain issue to a statutory forum such as the Commissioner of Education as the **quid pro quo** for arbitrating a grievance on that issue. The following language would have this result:

An employee who chooses to arbitrate a grievance alleging a violation or misinterpretation of this clause shall be precluded from submitting the same grievance or complaint to any other legal forum. An employee who files a grievance or complaint in any other legal forum regarding the rights delineated in this paragraph shall be precluded from submitting the same grievance to arbitration.

Consult your attorney if you are interested in this approach.

C. Just Cause Provision

No teacher shall be discharged, disciplined, reprimanded, reduced in rank or compensation, or deprived of any professional advantage, or given an adverse evaluation of his professional services without just cause. Any such action asserted by the Board, or any agent or representative thereof, shall be subject to the grievance procedure herein set forth.

Virtually all of paragraph C. involves illegal topics for negotiations.

- The decision to non-renew a teacher for poor performance is not arbitrable. **Bethlehem,** PERC No. 80-5.
- The decision to non-renew a teacher due to a RIF is not arbitrable. **Maywood,** 168 **N.J. Super.** 45. (1979).
- Withholding of increments cannot be grieved to binding arbitration. **Bernards Twp.,** 79 **N.J.** 311 (1979).
- Professional advantages, if referring

to assignments, or to the availability of aides, is non-negotiable. **Rahway,** PERC No. 79-30; **North Bergen,** PERC No. 82-109.

- Transfers are not arbitrable. **Jefferson,** PERC No. 80-21.
- Discipline (and reprimands are a form of discipline) is not arbitrable. **State of New Jersey,** 179 **N.J. Super.** 146 (1979), cert. denied 89 **N.J.** 433 (1982).
- Adverse evaluations are not arbitrable. **Mahwah,** PERC No. 81-44.

Reductions in rank or compensation, if for disciplinary reasons, would also be non-arbitrable. Thus it is uncertain what, if any, topics could legally be subject to a just cause standard before an arbitrator. Because of the complexity of this issue, please seek guidance prior to even discussing this clause in negotiations.

D. Required Meetings or Hearings

Whenever any teacher is required to appear before any administrator or supervisor, Board or any committee, member, representative or agent thereof concerning any matter which could adversely affect the continuation of that teacher in his office, position or employment or the salary or any increments pertaining thereto, then he shall be given prior written notice of the reasons for such meeting or interview and shall be entitled to have representative(s) of the Association present to advise him and represent him during such meeting or interview. Any suspension of a teacher pending charges shall be with pay.

An employee has a statutory right to representation in an investigatory meeting which he reasonably believes could result in discipline. **North Warren Regional Board of Education,** PERC No. 79-9. Much of this clause is therefore unnecessary. But note that this right does not apply to evaluation conferences. Before agreeing to any clause such as this, boards should insist on knowing exactly what meetings the union has in mind.

E. Evaluation of Students

The teacher shall maintain the exclusive right and responsibility to determine grades and other evaluations of students within the grading policies of the School District based upon his professional judgment of available criteria pertinent to any given subject area or activity to which he is responsible. No grade or evaluation shall be changed without approval of the teacher.

The **Ridgefield Park** decision renders this an illegal subject. But even prior to that decision, it seemed clear that the clause was a violation of law. In a decision by the Acting Commissioner of Education in July, 1977, the following appeared:

It is essential that local boards must retain such authority of review to prevent assignment of unreasonable or arbitrary grades. The acts of teachers may neither be insulated from administrative review of their supervisors and administrators nor from quasi-judicial review by the Commissioner or judicial review by the courts. **Talarsky v. Edison Township Board of Education,** 1977 **S.L.D.** 862.

F. Criticism of Teachers

Any question or criticism by a supervisor, administrator, or board member of a teacher and his instructional methodology shall be made in confidence and not in the presence of students, parents, or other public gatherings.

G. Association Identification

No teacher shall be prevented from wearing pins or other identification of membership in the Association or its affiliates.

This section, if enforced in every case, probably would run counter to the Sunshine Law. Court decisions have determined that it is the individual employee who can select or reject public discussion of a personnel matter. The union cannot waive individual rights. If a teacher, for example, desires a discussion of his or her teaching performance to be held in public, the intent of this clause would have to be violated by the board as it complied with the Open Public Meetings Act.

Article V, *Association Rights and Privileges*

A. Information

The board agrees to furnish to the Association in response to reasonable requests from time to time all available information concerning the educational program and the financial resources of the district, including but not limited to: class size, number of specialists, annual financial reports and audits, register of certificated personnel, tentative budgetary requirements and allocations, agendas and minutes of all Board meetings, census data, individual and group teacher health insurance premiums and experience figures, names and addresses of all teachers, and such other information that shall assist the Association in developing intelligent, accurate, informed and constructive programs on behalf of the teachers and their students, together with information which may be necessary for the Association to process any grievance or complaint.

A. goes well beyond the legal requirements to provide information. First, the union's right to certain information will rest on an interpretation of Chapter 123. Therefore, there is no need for this clause in the contract. Second, the sample language guarantees that the board will supply data that has little or no relevance to collective negotiations. Particularly disturbing is the reference to "tentative budgetary requirements and allocations," whatever that means.

Unions generally have a right to information possessed by the employer which is **reasonably** needed to carry out the union's duty to negotiate on behalf of its members or to fairly process grievances. If you are presented with a demand which you believe goes beyond these standards, consult your board attorney or professional negotiator.

The reference in the latter part of this clause to "developing intelligent, accurate, informed and constructive programs on behalf of the teachers and their students" is inappropriate in a labor contract and is probably an illegal topic of negotiations.

The balance of Article V grants certain rights to the union. You are under no legal obligation to grant any of these rights.

B. Released Time for Meetings

Whenever any representative of the Association or any teacher participates during working hours in negotiations, grievance proceedings, conferences, or meetings, he shall suffer no loss in pay.

B. could be agreed to if the "no loss of pay" provision covered employees **mutually scheduled** to participate in union activities.

C. Use of School Buildings

The Association and its representatives shall have the right to use school buildings at all reasonable hours for meetings. The principal of the building in question shall

C. in its "no approval" section could substantially interfere with the educational and/or extracurricular

be notified in advance of the time and place of all such meetings. No approval shall be required.

program in the district. It would be wiser to retain prior approval.

D. Use of School Equipment

The Association shall have the right to use school facilities and equipment, including typewriters, mimeographing machines, other duplicating equipment, calculating machines, and all types of audio-visual equipment at reasonable times, when such equipment is not otherwise in use. The Association shall pay for the reasonable cost of all materials and supplies incident to such use, and for any repairs necessitated as a result thereof.

D. requires no advance approval. Is this acceptable to your administrators?

E. Bulletin Boards

The Association shall have, in each school building, the exclusive use of a bulletin board in each faculty lounge and teachers' dining room. The Association shall also be assigned adequate space on the bulletin board in the central office for Association notices. The location of the Association bulletin boards in each room shall be designated by the Association. Copies of all materials to be posted on such bulletin boards shall be given to the building principal, but no approval shall be required.

Some boards feel that it is inappropriate for the district to subsidize the union by providing district bulletin boards for union use, but consider it reasonable for the union to have exclusive use of those bulletin boards which it purchases and installs. Certainly the building principal should have the right to approve or disapprove those materials being posted on the central office bulletin boards.

F. Mail Facilities and Mail Boxes

The Association shall have the right to use the inter-school mail facilities and school mail boxes as it deems necessary and without the approval of building principals or other members of the administration.

F. The United States Postal Service has ruled that it is a violation of the federal postal statutes for a board to permit a union to use a district inter-building mail service. This decision is presently being challenged by the NEA and other parties in federal district court. A board which has such a clause, or is willing to agree to one, should insist that the union agree to language indemnifying the district against any costs it might incur, including an order for retroactive payment of postage, related to its compliance with this clause.

G. Office Space

The Association shall be provided without cost to it, with adequate office space in a building at a location and of a description to be mutually agreed upon. The Association shall be allowed to install a telephone in such office at its own expense.

G., H. Most districts will find it impossible to comply with these demands.

H. Leave for Association President

The Board shall grant up to full leave with pay to the president of the Association during his term in office according to a schedule submitted by the president prior to the beginning of each school year.

I. Released Time for Faculty Representative

The Board shall provide up to ( ) hours per week of released time to a faculty representative designated by the Association in each building to perform his functions as Association representative in the enforcement of this Agreement. Said time shall be in addition to regularly scheduled preparation time and lunch period as provided in this Agreement.

I. In larger districts, leave is granted in limited amounts. Your circumstance should dictate whether a similar clause is acceptable.

J. Orientation Programs

All orientation programs for new teachers shall be co-sponsored by the Board and

J. makes the union an equal partner with the board and administration in

the Association with the Association obligated to assume only such costs as may be mutually agreed upon during the planning of such programs. To the extent prohibited by law, the Board shall not be expected to assume the cost of purely social events conducted as part of such orientation programs, nor shall the Association be expected to assume the cost of speakers, consultants, and services normally considered an appropriate professional in-service training activity of a board of education. Duties and responsibilities of teachers involving student supervision outside of regular class work shall be clearly explained as part of the regular orientation program.

orientation programs. The advisability of this depends on your district's relationship with its teachers' union.

K. Sub Contracting

The Board shall enter into no contract which will result in instruction being provided, supervised, or otherwise influenced by any person or persons, organization, group or company other than properly certificated persons directly employed by the Board or by the Association without the express written approval of the Association.

Subcontracting is an illegal topic of bargaining. **State of New Jersey, 88 N.J. 393 (1982).** A clause prohibiting subcontracting, or mandating negotiations prior to subcontracting, would be illegal and unenforceable. A board could, however, negotiate a clause providing for **discussions** with employee unions regarding a decision to subcontract, where the sole motivation for subcontracting is to save money. Procedural aspects of the decision to subcontract which affect terms and conditions of employment, such as reasonable notice of RIF due to the subcontracting, are negotiable.

L. Exclusive Rights

The rights and privileges of the Association and its representatives as set forth in this Agreement shall be granted only to the Association as the exclusive representative of the teachers, and to no other organizations.

Article VI, *Teacher Work Year*

A. In-School Work Year

1. Ten (10) month personnel

The in-school work year for teachers employed on a ten month basis (other than new personnel who may be required to attend an additional ( ) days of orientation) shall not exceed ( ) days. The first day of the in-school work day shall commence no earlier than September , 19 , and the last day shall be no later than June , 19 .

The second sentence of A.1. attempts to establish the beginning and ending dates of the academic calendar. C.1. attempts to establish through negotiations the vacation breaks within the academic calendar. The **Burlington County College** Supreme Court decision and recent PERC decisions hold that, while the actual number of days to be worked in a year is negotiable, the placement of those days is not.

Most boards have found that local unions have little desire to negotiate the calendar itself. Consultation with teachers is usually all that is needed, and is generally a good practice. But a clause requiring consultation **prior** to establishing or changing the calendar is not negotiable. **New Milford,** PERC No. 81-36.

2. Twelve (12) month personnel

a. The in-school work year of teachers employed on a twelve (12) month basis shall not exceed ( ) days.

b. Teachers on a twelve (12) month basis shall be entitled to ( ) vacation days, which shall occur between July 1 and August 31.

3. Definition of in-school work year

The in-school work year shall include days when pupils are in attendance, orientation days, and any other days on which teacher attendance is required.

4. Inclement weather

Teacher attendance shall not be required whenever student attendance is not required due to inclement weather.

B. Holidays

Teachers shall be entitled to the following holidays: (*denotes legal holiday)

*Labor Day	*Washington's Birthday
Rosh Hashanah	*Good Friday
*Columbus Day	*Memorial Day
Yom Kippur	*Independence Day
*Election Day	*Christmas Day
*Veterans' Day	*New Years Day
*Martin Luther King Day	*Thanksgiving Day
*Lincoln's Birthday	

Teachers have a statutory right to leave with pay on legal holidays. Most districts do not close school on these days, however, in order to provide Christmas and spring vacation periods and an early June dismissal; the great majority of teachers cooperate by attending school on these days when so scheduled.

C. Vacation Periods

1. Teachers shall be entitled to the following vacation periods each year of the contract:

November _____ -November _____
December _____ -January _____
April _____ -April _____
Other _____ - _____

2. The work day prior to a vacation period shall be a half day (not to exceed four (4) hours).

D. Voluntary Work

The Board and/or the Administration may request voluntary work. However, any voluntary work performed on or during a holiday or vacation period shall be compensated at double the daily rate as determined by a 180-day work year. A teacher shall have the right to refuse to perform volunteer work during a holiday or vacation period.

This is a typical trade union proposal. Double time has never been agreed to by a school board for its professional staff.

Article VII, *Work Hours and Work Load*

A. Work Day

1. Teachers shall not be required to "clock in or clock out" by hours and minutes. Teachers shall indicate their presence for duty by placing a check mark in the appropriate column of the faculty "sign-in" roster.

A.1. Boards may desire more proof of presence than a check mark on a roster.

2. The arrival and departure times for all teachers shall be designated in Schedule C; however, their total in-school work day shall consist of not more than ( ) hours and ( ) minutes which shall include a duty-free lunch period as guaranteed to teachers under Section C of this ARTICLE.

A.2. While the length of the school day is a required subject of negotiations, you must be very careful to avoid limiting district operation. Districts which negotiate **total** hours of the work day, rather than the **actual times** employee attendance is required, have substantially more flexibility to meet changing conditions.

3. Except as clarified in paragraph 4 below, no teacher shall be required to report for duty earlier than ( ) minutes before the opening of the pupil's school day, and shall be permitted to leave ( ) minutes after the close of the pupil's school day, except as otherwise designated in Schedule C. On Fridays or on days preceding holidays, the teachers' day shall end at the close of the pupils' day.

A.3. In order to protect flexibility in assignment, it would be wise for a board to avoid specifying the actual arrival and dismissal time for teaching personnel.

4. Any teacher who is required to work beyond the regular teacher in-school work year as defined in ARTICLE VI, Section A.1, or beyond his/her total in-school work day as defined in paragraph 2 and 3 above, shall be compensated at the rate prescribed in ARTICLE VI, Section F.

A.4. should be refused on the grounds that, as professionals, teachers should perform reasonable amounts of work beyond the normal work day. Under the clause, an argument can be made that grading

and preparation must be additionally compensated for. At the least, this clause would mandate extra pay for attendance at faculty meetings and after-school parent conferences.

B. Workload

1. Junior and Senior High School

a. The daily workload in the junior and senior high school shall be ( ) students per day which shall be equitably distributed through ( ) teaching periods per day and shall not exceed ( ) hours per day.

b. Junior and Senior High School teachers shall not be required to teach more than ( ) subject area(s), nor more than a total of ( ) teaching preparations.

c. Regular classroom teachers in the junior and senior high schools shall not be required to change subject area teaching stations more than ( ) time(s) during the school day.

d. Secondary teachers shall not be required to teach continuously for more than periods, nor ( ) where double periods are used.

2. Elementary School

a. The daily workload in the elementary school shall be ( ) students per day and shall not exceed ( ) hours per day.

b. Regular classroom teachers in the elementary school shall not be required to change teaching stations.

c. Elementary teachers shall not be required to teach continuously for more than ( ) hours.

d. Grade level workload shall be equalized.

B.1.a. and B.2.a. are, in part, class size clauses; class size is an illegal topic of bargaining since the **Ridgefield Park** decision. PERC has further held that the effect upon workload of an increase in class size is not negotiable because it is "inescapably intertwined and inseparable from" the decision to increase class size. **N.J.I.T.**, PERC No. 80-27. By contrast, PERC has generally held that the number of assigned teaching periods and duty periods per day involves "work hours" and is a required topic for negotiations. **Buena Reg.**, PERC No. 79-63.

B.1.b., c., d., and B.2.b, c., and d. are illegal topics for negotiations. Teacher assignments are a central aspect of a district's educational program. Such clauses are rare in teachers' agreements.

3. Specialists

The workload of each specialist shall be equalized and shall be determined by the following number of students per specialist:

a. Elementary Level	Options-Per Day/ Per Period/Per Wk.
Art Teachers	_____
Vocal Music Teachers	_____
Foreign Language Teachers	_____
Physical Education Teachers	_____
Guidance Counselors	_____
Reading Specialists	_____
Nurses	_____
Instructional Media Specialists (Librarians)	_____
Other	_____

b. Secondary Level	Options-Per Day/ Per Period/Per Wk.
Guidance Counselors	_____
Reading Specialist	_____
Instructional Media Specialists (Librarians)	_____
Distributive Education	_____
Nurses	_____
Other	_____

c. Specialists shall not be required to teach continuously for more than ( ) hours.

B.3. is the equivalent of a class size clause and is probably illegal.

4. Reduction of Workload Exceptions

Any class based on the maximum per teacher limits stated in paragraphs 1, 2, and 3 above shall be reduced when the number of pupils assigned to any room is larger than:

a. The capacity of teaching facilities, number of adequate teaching stations and number of adequate pupil stations available in the room,

b. The appropriateness of the room to content of the course, the methods

B.4. is a class size provision and is illegal.

of instruction to be employed, and the prior preparation of teachers therefore,

c. The availability of equipment for adequate teacher demonstration and student use,

d. Any other conditions which affect the health, safety, and supervision of the pupils.

5. Overload

a. Where overload is necessary, teachers shall receive additional salary which shall be calculated by dividing the teacher's salary by the maximum class and multiplying by the number of overload students.

b. Any overload in excess of five (5) students shall be double the normal overload formula as determined above.

c. The determination of the actual workload shall be made on the third day of pupil attendance. Any overload shall be calculated and added to a teacher's salary immediately. Any additional overload thereafter shall be added to salary as of the date of the overload.

B.5. It is likely that PERC will find a clause such as this, which does not prohibit increases in class size but provides premium pay for teaching in such a class, to be legal. Few boards have agreed to such clauses.

6. Lunch Periods

a. Grade Level and Other

Teachers shall have a daily duty-free lunch period of at least the following lengths:

1. Elementary School— _____
2. Junior High School— _____
3. Senior High School— _____
4. Other — _____

b. Leaving the Building

Teachers may leave the building without requesting permission during their scheduled duty-free lunch periods.

B.6.b. Some boards may desire to require notice of a teacher leaving.

7. Preparation Time

a. Grade Level

Classroom teachers shall, in addition to their lunch period, have daily preparation time during which they shall not be assigned to any other duties as follows:

1. Elementary School— _____
2. Junior High School— _____
3. Senior High School— _____
4. Other members of the negotiating unit who are not regular classroom teachers shall be provided with preparation time to the same extent as other teachers.

B.7.a. must be considered in light of the specific requirements and duties of each classification in the unit. Note that 7.a.4. would grant preparation time to nurses, librarians, and part-time employees covered by this contract. It may be unreasonable to provide these people with preparation time in light of their duties.

b. Extra Pay and/or Released Time

1. It is desirable for each teacher to have an uninterrupted preparation period each day. The practice of using a regular teacher as a substitute, thereby depriving him/her of his/her preparation period, is undesirable and shall be discouraged. In those cases where regular substitutes are not available, regular teachers who volunteer may be used as substitutes during their non-teaching time. In the absence of volunteers, a teacher may be assigned to serve as substitute. Volunteers and assigned teachers shall be paid at the rate of 1/1000 of their annual contract salary per class covered or the teacher may choose to credit these periods up to a total of ( ) periods which shall entitle him to ( ) additional personal business day(s) to be taken before the end of the current school year. Such coverage shall be arranged by the principal of the school in question and shall be distributed as equitably as possible among the teachers in said school.

The second sentence is an illegal topic for negotiations, because it concerns the hiring process. **Elizabeth**, PERC No. 80-10. The rest of the clause is legal. Very few boards have agreed to pay extra money to teachers who must teach combined classes because of a lack of substitutes.

2. In those cases where regular substitutes are not available and two classes are to be combined for the day or a major part thereof, the teacher in charge shall be paid 1/200 of his annual contract salary in addition to his regular salary; if the class is divided between two or more other teachers, each teacher teaching any part of the split class shall receive 1/400 of his/her annual salary in addition to his/her regular salary.

22x

c. Exceptions

Exceptions to the provisions of Sections a and b above, may be made only in cases of extreme emergency. The Association shall be notified in each such instance, in advance, if possible.

B.7.c. It is likely that any arbitration award involving this clause that prohibited an employer from acting in an emergency according to the employer's definition of "emergency" would be illegal.

d. Extra-curricular Activities

1. Approved Activites

The board and the Association agree that the extra-curricular activities listed in Schedule E.

This clause should conclude ". . .are educationally worthwhile." It should be rejected as illegal, and because it opens the door for an arbitrator to forbid the termination of an extra-curriculuar activity.

2. Salary

Teacher participation in extra-curricular activities which extend beyond the regularly scheduled in-school day shall be voluntary, and shall be compensated according to the rate of pay and/or released time in Schedule E.

3. Staggered Schedule

In cases where released time is stipulated for extra-curricular assignments, such time shall be scheduled as a block at the beginning or end of the in-school day and attendance of the teacher at school shall not be required during said time.

The decision to assign particular teachers to extracurricular positions, and the workload increase that necessarily accompanies that decision, is not negotiable. **Ramapo-Indian Hills,** PERC No. 80-9. While it is obviously preferable to have voluntary coverage of these activities, circumstances may not allow it for all activities.

e. Field Trips

Field trips shall be scheduled and implemented in a manner which shall be mutually agreed upon by teachers participating in them. Written permission for field trips shall be obtained from the superintendent to guarantee insurance coverage as a school-sponsored activity. For participation in field trips which extend beyond the teachers' in-school workday, and overnight or weekend trips, teachers shall be compensated at the rate set forth in Section A, paragraph 4 of this ARTICLE.

B.7.e. The first sentence concerns an illegal topic for negotiations. See the commentary above.

8. Meetings

a. Teachers may be required to remain after the end of the regular workday, without additional compensation, for the purpose of attending faculty or other professional meetings ( ) day(s) each month. Such meetings shall begin no later than ( ) minutes after the student dismissal time and shall run for no more than ( ) minutes. Except in cases of an emergency involving the health and safety of students and teachers, if additional time is needed, students shall be dismissed early.

b. Meetings which take place after the regular in-school workday and which require attendance shall not be called on Fridays or on any day immediately preceding any holiday, or other day upon which teacher attendance is not required at school.

B.8.a., b. and e. limit the district's ability to schedule after-school meetings for faculty. Before agreeing to such a clause, the board must be sure that the administration finds it practical. The clause should be limited to faculty meetings so as not to limit the board's right to schedule parent-teacher meetings or to assign teachers to special assignments and programs presented by the students.

c. An association representative may speak to the teachers during any meeting referred to in paragraph 1 above for at least ( ) minutes on the request of the representative.

d. The notice of and agenda for any meeting shall be given to the teachers involved at least ( ) days prior to the meeting, except in an emergency. Teachers shall have the opportunity to suggest items for the agenda.

e. Teachers may be required to attend no more than ( ) evening assignments or meetings each school year without additional compensation.

B.8.c. It is legally questionable, and impractical, for the union to have a right to speak at all meetings which teachers are required to attend.

C. Department Heads

Department heads shall not be assigned more than ( ) student instruction-supervision periods each day, and shall be excused from regular study hall duties and homeroom assignments. A student instruction-supervision period means any period during which a teacher is responsible for directing the learning or supervising the behavior of students.

C. Department heads who are truly supervisors within the meaning of the PERC law should not be included in the teachers' bargaining unit. See PERC, pp. 8-10.

D. Instructional Planning

Every teacher shall plan and teach course content in the manner he considers most practical and useful. Teachers who have received satisfactory evaluations shall not be required to submit standardized daily or weekly lesson plans which involve a mandated procedure or form. Teachers shall provide substitutes with daily, weekly, and/or alternate plans as needed, according to procedures developed by the principal and the Liaison Committee in each building as hereafter established under ARTICLE XXII of this Agreement.

D. The first and second sentences are illegal, and agreement to them would severely limit an administrator's ability to monitor the achievement of educational goals in a building and to evaluate the performance of staff. **Fairview,** PERC No. 81-19. The obligation to develop procedures for providing lessons for substitutes in consultation with the Liaison Committee is legal only as long as it doesn't interfere in the principal's access to the lesson plans or his ability to provide them to substitutes. (The Liaison Committee article is actually Article XVIII.)

E. A teaching period shall be defined as any pupil contact situation.

F. Any violations of the above procedures which cause inconvenience, additional workload or impact on working conditions shall be remedied immediately.

F. The ambiguity of this clause is enough to warrant its rejection. The reference to "additional workload" may be illegal as it relates to increases in class size.

Article VIII, *Nonteaching Duties*

A. Intent

The Board and Association acknowledge that a teacher's primary responsibility is to teach and that his energies should, to the extent possible, be utilized to this end. Therefore, they agree as follows:

Paragraph A. of Article VIII is a goal statement and should not be agreed to.

B. Application

1. List of nonteaching duties

Option (a)

Personnel other than teachers shall perform nonteaching duties and teachers shall not be required to perform the following duties:

1. Nonprofessional assignments, including but not limited to milk distribution and supervision of cafeterias, sidewalks, bus loading or unloading or playgrounds.
2. Collecting money from students.
3. Inventorying and storing books, delivering books to classrooms, duplicating instructional and other materials, keeping registers and cumulative record cards, and other clerical and/or custodial functions.
4. Correcting standardized tests used at the direction of the Board or the Administration.

Option (b)

1. Teachers may volunteer to perform the following nonteaching duties at the rate of $ per period.

a. Cafeteria duty.
b. Supervision of playgrounds.
c. Supervision of bus loading.
d. Supervision of bus unloading.
e. Milk distribution.

PERC and the courts have been ambiguous on whether the decision to assign non-teaching duties to teachers is negotiable. If a clause is written in terms of workload, it will usually be considered binding; e.g., ". . .no more than five assigned periods per day." If it is written as a blanket prohibition on the assignment of teachers to non-teaching duties, it will be non-negotiable. It is lawful, on the other hand, to agree to extra pay for such duties. Very few boards have done so, however, because it is illogical to pay extra money to someone to do work which he is presently doing as part of the traditional responsibilities of the position.

The interested reader seeking more information on the dichotomy between

Nonteaching Duties

2. Personnel other than teachers shall perform nonteaching duties and teachers shall not be required to perform the following duties.
   a. Collecting money from students.
   b. Inventorying and storing books, delivering books to classrooms, duplicating instructional and other materials, keeping registers and cumulative record cards, and other clerical and/or custodial functions.
   c. Correcting standardized tests used at the direction of the Board or the Administration.

the negotiability of increased workload and the non-negotiability of non-teaching assignments is directed to **Plainfield,** PERC No. 80-42; **Bayonne,** App. Div., Nov. 3, 1980 (unpublished); **Camden County Vocational,** PERC No. 80-162; **Spotswood,** PERC No 81-109; **Dover,** App. Div., March 16, 1982 (unpublished); and **Wanaque,** PERC No. 82-54.

2. Secretarial assistance

By the beginning of the 19 - school year, the Board shall hire one (1) secretary for every ( ) teachers to assist teachers in the preparation of materials, correspondence, ordering supplies and other duties related exclusively to teachers.

The decision to hire secretaries, or any other personnel, is not negotiable.

3. Noneducational activities

Activities which have no educational objective shall be barred from the classroom. There shall be no collection of funds from students for:

   a. Activities in which all pupils are expected to participate which should be legitimately financed by the Board.
   b. Other activities of such a desirable educational nature that they should be legitimately financed by the Board.
   c. Activities and charitable purposes not appropriate or directly related to the age and interests of the pupils.
   d. Activities and charitable purposes beyond the ability to pay of the least able pupil in the classroom.

The decision as to whether funds will be collected from students, and what those funds will be used for, is not a legal topic for negotiations. Some of the restrictions in this clause may be sound educational/administrative policy, and may already be the practice in your district; they are not, however, suitable topics for labor contracts. Few, if any, boards have agreed to such a clause.

4. Transporting students

a. Teachers shall not be required to drive students. A teacher may do so voluntarily, however, with the advance approval of his principal or immediate supervisor. He shall be compensated at the rate of (¢) cents per mile for the use of his own automobile.

b. By the beginning of the 19 - school year, the Board shall cover all damages, losses, and expenses incurred by a teacher arising out of the authorized use of his automobile in the performance of school duties.

Article IX, *Teacher Employment*

Article IX brings the union into the hiring process. This area is considered, for good reason, a basic management prerogative.

In **Ridgefield Park,** the Court relied heavily on C.212, the T & E law, which very specifically lists hiring as a policymaking function to be carried out with a "maximum of citizen participation." As such, agreements which limit boards in setting criteria for hiring (within the framework of existing law) are illegal.

A. Certification

1. Standard certificates

The Board agrees to hire fully certificated teachers holding standard certificates issued by the New Jersey State Board of Examiners for every teaching assignment.

2. Notification

Upon employment the superintendent shall report to the Association in writing the certificates and degrees held, major and minor fields of study, and prior experience of each new teacher.

There is no valid reason why the superintendent should be required to "report" to the association the information demanded in paragraph A., clause 2 except as it is needed to ascertain whether the employee was placed on the proper salary level.

B. No Reduction

The Board agrees there shall be no reduction in the number of teachers from the previous year in positions defined in the unit represented by the Association as heretofore specified in ARTICLE I, Section A, of this Agreement for the duration of the Agreement.

(Notice to Association Leaders: If reduction in force is a threat in your district, the UniServ office will supply sample language for your contract.)

B. This is an illegal subject of negotiations.

C. Non-Certificated Personnel

The duties of non-certificated personnel shall be confined solely and exclusively to such duties as would assist certificated professional personnel in the performance of their respective duties. In no case shall any non-certificated employee be requested or required to perform any duty previously performed by a duly certificated professional employee.

C. The assignment of personnel, as long as it is carried out consistent with existing law, is major educational policy and, therefore, an illegal subject. The second sentence appears to refer to using employees outside of the bargaining unit (see Chapter 2, "Representation," in **PERC**) to do work normally assigned to members of the unit. This is a required topic for negotiations according to PERC. **Rutgers,** PERC No. 79-72.

D. Placement on Salary Schedule

1. Adjustment to salary schedule

Each teacher shall be placed on his proper step of the salary schedule as of the beginning of the 19 - school year in accordance with paragraph 2 below. Any teacher employed prior to February 1 of any school year shall be given full credit for one (1) year of service toward the next increment step for the following year.

2. Credit for experience

Credit up to the ( ) step of any salary level on the Teacher Salary Schedule shall be given for previous outside teaching experience in a duly accredited school upon initial employment in accordance with the provisions of Schedule A. Additional credit not to exceed ( ) years for military experience or alternative civilian service required by the Selective Service System and credit not to exceed ( ) years for Peace Corps; VISTA or National Teacher Corps work and time spent on a Fulbright Scholarship shall be given upon initial employment. As of the beginning of the 19 - school year, the aforementioned credit shall be given to any presently employed teacher who has not heretofore received it.

E. Returning to the District

A teacher with previous teaching experience in the School District shall upon returning to the system receive full credit on the salary schedule for all outside teaching experience, military experience or alternative civilian service required by the Selective Service System, Peace Corps, VISTA or National Teacher Training Corps work and time spent on a Fulbright Scholarship up to the maximum set forth in Section B above. Such teachers who have not been engaged in other teaching or the other activities indicated above shall, upon returning to the system, be restored to the next position on the salary schedule above that at which they left.

Paragraphs D.2. and E. should be rejected or modified, because they restrict your discretion in two serious ways. First, they **mandate** that you give credit on the salary schedule for certain types of experience. You may know that an applicant is very willing to work at a lesser salary, or that the prior experience is irrelevant to the position he or she is entering. For these reasons, a mandate to grant credit for the types of experience noted in D.2. and E. may force a board to expend money unnecessarily or unwisely, or lead it to reject a candidate because that person's "entitlement" under this clause would be much greater than other candidates.

Second, these clauses **limit** your ability to offer an employee a **higher** starting salary than is provided by this clause. Such a limitation puts a district at a disadvantage in relation to another district without such a clause. It also severely restricts your ability to compete with the private sector for certain types of staff, particularly math and science teachers.

For these reasons, a board should insist on complete discretion in the initial placement of personnel on the salary schedule. Note, however, that **N.J.S.A.** 18A:29-11 requires a board to give credit on the salary schedule for military service, to a maximum of four years.

F. Previous Sick Leave Accumulation

Previously accumulated unused leave days shall be restored to all returning teachers.

Paragraph F.: There is no statutory compulsion that boards grant such a provision.

G. Notification of Contract and Salary

Teachers shall be notified of their contract and salary status for the ensuing year no later than_____.

Agreement on any dates for contract notification should be made only after careful consultation with the superintendent. Early notification dates have caused difficulties in many districts.

Article X, *Salaries*

A. Salary Schedule

The salary of each teacher covered by this Agreement is set forth in Schedule "A" which is attached hereto and made a part hereof.

B. Procedure for Withholding Increment

Regular salary guide increments excluding adjustment may be withheld in whole or in part for inefficiency or other just cause related to the performance of duties and only in accordance with the following:

1. Subject to ARTICLE IV, Section C.
2. That the procedures be adhered to as outlined in ARTICLE XVIII, "Teacher Evaluation."
3. The immediate superior and/or the principal shall not forward any recommendation to withhold a teacher's increment or a part thereof through the superintendent to the Board unless at least (90) ninety calendar days prior thereto, and in no case later than April 1 of the preceding school year in which such action would take effect, the principal has given to the teacher against whom the recommendations shall be made, written notice of the alleged cause(s) for the recommendations specifying the nature thereof with such particulars as to furnish the teacher an opportunity to correct and overcome the same.
4. Once a recommendation is forwarded to the teacher and the Board, the teacher may within ten (10) school days file a grievance commencing at the Superintendent level. No action shall be taken on the recommendation until the grievance is heard according to the grievance procedure as set forth heretofore in ARTICLE III of this Agreement.
5. Any action by the Board to withhold an increment or any part thereof shall be subject to appeal to arbitration as set forth in ARTICLE III of this Agreement. The arbitrator shall have the authority to restore all or part of the increment withheld retroactively.
6. Salary guide increment or part thereof withheld under this provision shall be restored the following year unless the procedures set forth in this provision are followed once again, in which case the increment or increments previously withheld and any additional increments which may be due may be withheld in whole or in part.

Paragraph B. of this article restricts the board's authority to withhold a teacher's salary increment. In **Bernards Township,** the Supreme Court held such a restriction to be illegal (see "The Scope of Negotiations," earlier). The only aspects of withholding of an increment that may be negotiated are procedural matters that are consistent with **N.J.S.A.** 18A:29-14, such as notice to the teacher of the intent to withhold the increment, and the right to grieve the board's decision to **advisory arbitration.** (The article on teacher evaluation is actually ARTICLE XIV.)

C. Method of Payment

1. Twelve (12) month

Each member employed on a twelve (12) month basis shall have the option of being paid in twenty-four semi-monthly installments or in twelve (12) monthly installments.

2. Ten (10) month

Each teacher employed on a ten (10) month basis shall have the option of being paid in twenty (20) equal semi-monthly installments, or ten (10) equal monthly installments.

3. Summer pay plan

Each teacher may individually elect to have ten (10%) percent of his monthly salary deducted from his pay. These funds shall be paid to the teacher or his estate on the final pay day in June, according to a schedule of payment throughout the summer as requested by the teacher, or upon death or termination of employment, if earlier.

4. Exceptions

When a pay day falls on or during a school holiday, vacation or week-end, teachers

Agreements with respect to methods of payment must meet your own administrative needs and be consistent with legal requirements.

shall receive their pay checks on the last previous working day.

5. Final pay

Each teacher shall receive his final pay and the pay schedule for the following year on his last working day in June.

Article XI, *Teacher Work Stations*

Notice provisions related to teacher assignment are required subjects for negotiations. Any aspect of this article, however, which infringes on the right of boards to make education-related decisions regarding assignments is illegal. Most of this article was subject to PERC analysis in **Fairview Board of Education,** PERC No. 80-18.

Paragraph A.1., 2., and 3. concern required topics for negotiations, because they are strictly procedural in nature. The dates on which notice can reasonably be given is a judgment for your district's administrators making these assignments.

A. Procedure

1. All teachers shall be given written notice of their salary schedules, class and/or subject stations, building and room stations for the forthcoming year not later than . A list of said schedules and stations shall be simultaneously sent to the Association.

2. The superintendent shall notify all newly-appointed personnel of their specific positions within that subject area and/or grade level for which the Board has appointed them. The Superintendent shall give notice of work stations to new teachers as soon as practicable, and except in cases of emergency, not later than .

3. In the event that changes in such schedules, class and/or subject, building or room stations are proposed after , the Association and any teacher affected shall be notified promptly in writing and, upon the request of the teacher and the Association, the changes shall be promptly reviewed between the superintendent or his representative and the teacher affected and at his option a representative of the Association.

B. Teachers shall only be assigned to teach in areas for which they hold a standard teaching certificate issued by the New Jersey State Board of Examiners.

This is an illegal topic because it concerns the criteria for assignment.

C. 1. Schedules of teachers who travel to more than one school shall be arranged so that no such teacher shall be required to engage in an unreasonable amount of inter-school travel. Such teachers shall be notified of any changes in their schedules as soon as practicable.

2. Teachers who may be required to use their own automobiles in the performance of their duties and/or teachers who are assigned to more than one (1) school per day shall be reimbursed for all such travel at the rate of ( ) cents per mile for all driving done between arrival at the first location at the beginning of their workday, provided, however, that if the distance from the teacher's home to his first location or from the teacher's last location to his home is greater than the distance between the teacher's home and his base school, he shall be reimbursed for the difference at the rate of ( ) cents per mile.

C.1. The first sentence of this clause is illegal because it imposes a limitation upon the board's ability to make up teacher schedules. The second sentence is procedural and negotiable.

D. Procedure for Change in Teacher Work Stations

1. The superintendent shall deliver to the Association and post in all school buildings a list of the known vacancies as they occur.

2. Teachers who desire a change in grade and/or subject station or who desire to change to another building may file a written statement of such desire with the superintendent. Such statement shall include the grade and/or subject to which the teacher desires to be placed and the school or schools to which he/she desires to be placed, in order of preference. Such requests for change in the work station for the following year shall be submitted no later than .

3. As soon as practicable, and no later than , the superintendent shall post in each school and deliver to the Association a system-wide schedule showing the names of all teachers whose work station has been changed, including the nature of the change.

D.1.,2.,3., and 6. are procedural and negotiable. If agreed to, be certain any dates included are administratively feasible.

4. In the determination of requests for a change in work station, the wishes of the individual teacher shall be honored to the extent that the change does not conflict with the instructional requirements and best interests of the school system. No such request shall be denied arbitrarily, capriciously, or without basis in fact. If a teacher's request for change has been denied, a renewed or subsequent request made in the following school year shall be granted under the conditions described

D.4. and 5. are illegal because they concern the criteria for selection and assignment of personnel.

above, unless there is no available position or an adequate replacement for the teacher cannot be obtained. If more than one teacher has applied for the same position, the determination as to which teacher shall receive it shall be made by lottery.

5. No vacancy shall be filled by means of involuntary change in work station if there is a qualified volunteer available to fill said position.

6. Notice of a voluntary change in work station will be given to teachers as soon as practicable, and except in cases of emergency not later than_____.

7. When an involuntary change in work station is necessary, a teacher's area of competence, major or minor field of study, length of service in the School District, length of service in the particular school building, and other relevant factors including, among other things, state and/or federal laws, rules, regulations or administrative directives, shall be considered in determining which teacher is to be selected for a change in work station.

D.7. also concerns criteria for assignment and is illegal.

8. An involuntary change in work station shall be made only after a meeting between the teacher involved and the [insert appropriate title], at which time the teacher shall be notified of the reason therefor. In the event that a teacher objects to the change at this meeting, upon the request of the teacher, the superintendent shall meet with him. The teacher may, at his option, have Association representative(s) present at such meeting.

D.8. According to PERC, the right to a meeting to discuss a transfer prior to the scheduled date of the transfer is a procedural matter and is negotiable. However, "the existence of such a procedure cannot prohibit effectuation of an assignment until after such a meeting takes place." Failure to comply with a prior meeting clause may not authorize rescission of an assignment. **East Orange,** PERC No. 81-25. In other words, the clause is negotiable, but apparently unenforceable. Such clauses don't help either party. A better approach would be to place such a clause into administrative regulation and to exclude it from arbitration.

9. A list of open positions in the school district shall be made available to all teachers being involuntarily changed. Such teachers may request the work stations in order of preference, to which they desire to be changed. All such teachers shall be given adequate time off for the purpose of visiting schools at which open positions exist. Teachers being involuntarily changed from their present positions shall have preference over those seeking voluntary change in regard to choice among those positions which are vacant. A teacher being involuntarily changed shall be placed only in an equivalent position—i.e., one which among other things does not involve reduction in rank or in total compensation.

D.9. The first two sentences in this paragraph are procedural and negotiable, and may be acceptable to most boards. The third sentence is likewise negotiable, but may cause too many administrative problems regarding the length and scheduling of such visits to be acceptable in your district.

The fourth sentence gives preference to involuntarily transferred teachers in filling vacancies. Such preference is illegal because it interferes in the assignment of personnel by management.

The last sentence is legal in some aspects, but at least potentially illegal in others. It is legal to the extent that it concerns matters that are themselves negotiable, e.g. protection against decreased compensation. It would be illegal if it were interpreted to concern non-negotiable matters; "equivalent position" cannot refer to class size, teaching assignment, or other such items.

10. Any teacher whose work station is changed shall be provided assistance in the following manner:

a. In cases of changes of work station during the work year, the teacher shall be provided one work week free of pupil contact in order to prepare for the new work station.

b. In cases of changes in work station determined during the summer vacation period, or changes scheduled during the work year effective for the next work year, the teacher shall have the option to work any one week during the summer vacation period. The teacher shall be compensated at the rate of pay appropriate to the new work year.

c. In the event a teacher takes courses related to the change in work station, the board shall pay the full cost of tuition and all related personal expenses.

D.10 has not been considered by PERC. It appears to be negotiable, relating only to paid leaves, extra compensation, and tuition reimbursement. 10a. and b., however, will be found by most boards to be unnecessary and therefore unacceptable.

Article XII, *Promotions*

If the board agrees to a notification procedure for promotions, the time limits agreed upon must be feasible.

The proposed definition of promotion should include reference not only to increased salary or salary differential, but should also make clear that extra work and/or extra pay assignments should not constitute promotions.

There appears to be no good reason to require the superintendent to acknowledge a request for a promotion; if, however, such acknowledgement must be made, it should be nothing more than a simple form reply.

The superintendent should not be required to maintain a continuous file nor be required to constantly review old applications until such applications are withdrawn. A new application should be required for each vacancy.

It should be stated definitely and clearly that it is the function of the superintendent to determine the qualifications required for any promotion.

A. Positions Included

Promotional positions are defined as follows:
Positions paying a salary differential and/or positions on the administrator-supervisory levels of responsibility including but not limited to positions as (list by title)
All vacancies in promotional positions, including specialists and/or special projects teachers, pupil personnel workers and positions funded by the federal government shall be adequately publicized by the superintendent in accordance with the following procedure:

1. Date of posting

When school is in session, a notice shall be posted in each school as far in advance as practicable, ordinarily at least thirty (30) school days before the final date when applications must be submitted and in no event less than fifteen (15) school days before such date. A copy of said notice shall be given to the Association at the time of posting. Teachers who desire to apply for such vacancies shall submit their applications in writing to the superintendent within the time limit specified in the notice, and the superintendent shall acknowledge promptly in writing the receipt of all such applications. Applications shall be kept on file in the superintendent's office for continual consideration for future vacancies until the office is notified in writing by an applicant that the application is withdrawn.

2. Application procedure

Teachers who desire to apply for a promotional position which may be filled during the summer period when school is not regularly in session shall submit their names to the superintendent, together with the position(s) for which they desire to apply, and an address where they can be reached during the summer. The superintendent shall notify such teachers of any vacancy in a position for which they desire to apply. Such notice shall be sent as far in advance as practicable, ordinarily at least twenty-one (21) days before the final date when applications must be submitted and in no event less than fourteen (14) days before such date. In addition, the superintendent shall, within the same time period, post a list of promotional positions to be filled during the summer period at the administration office, in each school, and a copy of said notice shall be given to the Association.

B. Criteria for Notice

B. The third sentence is an illegal subject for negotiations, because it would interfere in the board's right to determine the qualifications for promotion. **Newark,** PERC No. 80-2.

In both situations set forth in Section A above, the qualifications for the position, its duties, and the rate of compensation, shall be clearly set forth. The qualifications set forth for a particular position shall not be changed when such future vacancies occur unless the Association has been notified in advance of such changes and the reason therefor. A disagreement over the necessity for such changes shall be subject to the grievance procedures set forth in this Agreement. No vacancy in a promotional position shall be filled other than in accordance with the above procedure.

C. Two Optional Plans (Select One)

Option (a)

C. In Option (a) the first sentence and sentences four through seven are procedural issues normally held by PERC to be required topics.

The second and third sentences go

All qualified teachers shall be given adequate opportunity to make application and no position shall be filled until all properly submitted applications have been considered. The Board agrees to give due consideration to the professional back-

ground and attainments of all applicants, and other relevant factors. In filling such vacancies, preference shall be given to qualified teachers already employed by the Board and when all other factors are substantially equal, length of time in the School District shall be the deciding factor. Each teacher applicant not selected shall, upon request, receive a written explanation from the superintendent. Appointments shall be posted in the schools or the giving of notification to the interested teachers. Announcements of appointments shall be made by posting a list in the office of the central administration and in each school building. The list shall be given to the Association and shall indicate which positions have been filled and by whom.

to the criteria for promotion and are thus illegal topics.

Option (b)

1. All qualified teachers shall be given adequate opportunity to make application for such positions and no positions shall be filled until all properly submitted applications have been considered. The Board agrees to give due weight to the professional background and attainments of all applicants and other relevant factors. In filling such vacancies, preference shall be given to qualified teachers already employed by the Board and when all other factors are substantially equal, length of time in the School District shall be the deciding factor.

2. All promotional positions shall be filled according to the following procedures:

a. Each applicant who meets the qualifications for a vacancy shall be interviewed by a committee of ( ) persons, ( ) appointed by the superintendent and ( ) appointed by the president of the Association, and a record of the interview shall be filed with the application. Interview ratings for each applicant shall be prepared independently by each member of the committee.

b. The committee shall then combine the independent interview ratings, together with the applicant's formal training, professional experience and experience in the School District into a total rating.

c. All applicants shall be placed on a ranked list according to their total ratings.

d. Selection for a vacancy shall be made from among the three (3) top ranking applicants by the superintendent with the approval of the interviewing committee.

3. Appointments shall be made not later than sixty (60) days after the notice is posted in the schools or the giving of notification to the interested teachers. Announcements of appointments shall be made by posting a list in the office of the central administration and in each school building, and a list shall be given to the Association indicating which positions have been filled and by whom.

In Option (b), only the first sentence of the first paragraph and the last sentence of the last paragraph are procedural and negotiable. The rest of this article deals with the criteria for promotion and seriously restricts a board's discretion in this area.

For a detailed analysis by PERC on a similar clause, see **Newark**, PERC No. 80-2.

Article XIII, *Accredited Evening High School—Summer School—Home Teaching and Federal Programs*

A. Posting

All openings for positions in the accredited evening high school, summer school, home teaching, federal projects, and other programs (including non-teaching positions for which teachers may be qualified and eligible) shall be publicized by the superintendent in accordance with the procedure for publicizing promotional vacancies set forth in ARTICLE XVI, Sections A and B of this Agreement. Summer school and accredited evening high school openings shall be publicized not later than the preceding March 1 and June 1 respectively and teachers shall be notified of the action taken not later than May 1 and September 1, respectively. Home teaching openings shall be posted as they occur.

The first question concerning this article is: are evening high school and summer school program personnel included in your bargaining unit? If they are not, there should be no negotiations over the terms and conditions of employment for those positions.

Even if certain positions are not included in the bargaining unit, requirements for notification of position openings is a required subject (no concessions must be made in this area). The dates contained in A. may be too early in some districts.

B. Criteria

In filling such positions, consideration shall be given to a teacher's area of competence, major and/or minor field of study, quality of teaching performance, attendance record, and length of service in the School District. When

B. The criteria for selection of employees is not negotiable.

all other factors are substantially equal, preference shall be given first to teachers who have taught the subject area and/or grade level in question during the regular school year and then to teachers who have taught the grade and/or subject in question on a regular basis at any time during the preceding ( ) years. Teachers employed in the School District shall have priority to such assignments before appointment to applicants from outside the district.

C. Salary

Salary schedules for positions included in this ARTICLE shall be negotiated under procedures outlined in ARTICLE II of this Agreement along with regular salary schedules wherever possible, or at such other times as may be appropriate in order to conform to the time requirements for the implementation of said programs.

Again, C. and D. relate to terms and conditions of employment, but should not be a subject of negotiations unless these positions are included in the bargaining unit.

D. Coverage by Master Agreement

All of the provisions of this Agreement shall apply to teachers holding positions in the accredited evening high school, summer school, home teaching and/or under federal programs, except where clearly inapplicable.

Article XIV, *Teacher Evaluation*

Two major decisions by PERC provide considerable guidance on the legality of the Sample Agreement language. These cases should be carefully reviewed before negotiating on this topic. **Bethlehem Board of Education,** PERC No. 80-5, and **Fairview Board of Education,** PERC No. 80-18.

Because of the State Board's rules on tenured teacher evaluation, there is a different range of negotiable items for tenured teachers as compared to non-tenured teachers. In either case, all educational policy matters, such as the criteria for evaluation and the selection of the evaluator, are non-negotiable. For tenured teachers there are substantial limits on the kinds of evaluation procedures that can be negotiated, because districts must conform to the extensive State Board regulations. The legal requirements for the evaluation of non-tenured teachers are less comprehensive, so there is more room for negotiations in this area.

Equally important to knowing the law on this topic is to know what is practical and effective in teacher evaluation. The opinions of your administrative staff are invaluable here.

A. Evaluation Committee

1. Membership

No later than September 15, 19 , the Board and the Association agree to establish an Evaluation Committee consisting of ( ) members, ( ) members appointed by the Board, and ( ) members appointed by the Association.

2. Responsibility

This Committee shall develop specific criteria for the evaluation of teachers.

3. Report Date

The recommendations shall be submitted for adoption to the Board and the

Because the criteria for evaluation is an illegal subject, the creation of an employee committee that has anything more than advisory authority is non-negotiable. The committee should not be able to obstruct the board's ability to adopt or change evaluation criteria. While the board should encourage wide professional involvement in

Association no later than December 15, 19

evaluation criteria development, that involvement may not exclude the public or individual teachers from having input.

B. Procedure

1. **Frequency**

a. Teachers shall be observed through classroom visitation by a certified supervisor at least ( ) times in each school year, to be followed in each instance by a written evaluation report and by a conference between the teacher and his immediate supervisor for the purpose of identifying any deficiencies, extending assistance for their correction and improving instructions. Each observation shall consist of at least a full period in the junior/senior high school or a complete lesson in the elementary school(s).

B.1.a. is procedural and negotiable. The minimum duration of an observation for a non-tenured teacher is set out in **N.J.A.C.** 6:3-1.19.

b. Teachers shall be informed of classroom visitation at least five (5) work days in advance of said visitation.

PERC has held advance notice of evaluations to directly affect the substantive aspects of the evaluation process and therefore to be illegal topics for negotiations.

c. Classroom visitations/observation shall not occur on the same day, nor shall any observation occur prior to the previous evaluation conference. In no case should any observation occur within ten (10) school days of the previous evaluation. All visitations/observations shall occur in the same work year.

B.1.c. This is procedural and negotiable.

2. **Non-tenured Review**

Violations of or disagreements over any of the provisions of this ARTICLE in cases involving nonrenewal of contract or termination of employment of nontenure teachers shall be subject to review under the Fair Dismissal Procedure established in ARTICLE XIX of this Agreement and shall be considered grounds for reinstatement without loss of pay or any other benefit provided by this Agreement.

B.2. PERC has ruled, in keeping with various court decisions, that the decision to renew or not renew a non-tenured teacher is a non-negotiable management right. Hence this clause is illegal. (The Fair Dismissal Procedure is actually found at ARTICLE XV of the Sample Agreement.)

3. **Open Evaluation**

All monitoring or observation of the work performance of a teacher shall be conducted openly and with full knowledge of the teacher. The use of eavesdropping, public address, cameras, audio systems, and similar surveillance devices shall be strictly prohibited.

B.3. is negotiable.

4. **Evaluation by Certificated Supervisors**

a. Teachers shall be evaluated only by persons certificated by the New Jersey State Board of Examiners to supervise instruction. By September 1 of each school year, each teacher shall be given the name of the person who will evaluate his/her classroom performance.

b. Evaluators shall be regular full-time employees of the school district and shall be certified in the instructional areas they are evaluating.

B.4.a. The first sentence limits the board in selecting its evaluators, and is illegal. The second sentence, providing that teachers be notified of their evaluator's name, is procedural and negotiable. B.4.b. is illegal because it restricts the board's right to hire and assign employees.

5. **Copies of Evaluation**

A teacher shall be given a copy of any class visit evaluation report prepared by his/her evaluator at least one (1) day before any conference to discuss it. No such report shall be submitted to the central office, placed in the teacher's file or

B.5. The first and third sentences are legally negotiable. The second sentence is negotiable for non-tenured teachers, and mandated for tenured

otherwise acted upon without prior conference with the teacher. No teacher shall be required to sign a blank or incomplete evaluation form.

teachers under the State Board regulations.

6. Conferences

Evaluation conferences as described in Section B.1 shall occur within fifteen (15) days of the observation. The conference shall be held within the school day without loss of benefit to the teacher.

B.6. is negotiable.

7. Right to Representation

A teacher shall have the right to representation in an evaluation conference.

B.7. is negotible. Note that there is no right to such representation without a negotiated agreement so stating. A school board must consider the overall effect on the evaluation process of having a union representative present during an evaluation conference. Most administrators would find the presence of a union representative at an evaluation conference to be unnecessary and counterproductive.

8. Standardized Tests

Results of standardized tests used for evaluating students shall not be used to evaluate teacher performance.

B.8. is illegal as interference in the selection of evaluation criteria, and as contrary to the State Board regulations.

9. Communication

Prior to any evaluation report the immediate supervisor of a teacher shall have had appropriate communication, including but not limited to all steps in paragraph 10 below and the provisions of ARTICLE XXVIII, Section B of this Agreement with said teacher regarding his performance as a teacher.

B.9. is negotiable insofar as paragraph 10 is legal. The reference in the last two lines should be to ARTICLE XXV Section B. of the Sample Agreement, concerning an employee's right to counseling by his immediate superior.

10. Reports

Evaluation reports shall be presented to each teacher in accordance with the following procedures:

a. Such reports shall be issued in the name of the evaluator. The evaluator is the person who observed the teaching performance as required in Section B. of this ARTICLE.

b. Such reports shall be addressed to the teacher.

B.10. concerns the content of the evaluation report and is for the most part preempted by the State Board rules as they apply to tenured teachers. Only B.10.b., mandating that reports be addressed to the teacher, is a negotiable addition to tenured teacher evaluation procedures.

c. Such reports shall be written in narrative form and shall include, when pertinent:

(1) Strengths of the teacher as evidenced during the period since the previous report.

(2) Areas of improvement needed by the teacher as evidenced during the period since the previous report. If these areas of improvement are not repeated in subsequent reports said areas shall be considered remedied.

(3) Specific suggestions as to measures which the teacher might take to improve his performance in each of the areas wherein weaknesses have been indicated.

(4) Upon request the evaluator shall demonstrate the proper method(s) to correct any areas of improvement.

B.10.c. outlines the specific contents of the evaluation report. PERC has specifically ruled that B.10.c.(4) is not negotiable because it "relates to the evaluation." Following this logic it appears that all of B.10.c. is non-negotiable for non-tenured employees because it involves the substantive content of the report rather than the procedures involved, and therefore limits managerial prerogatives.

11. Final Evaluation

The annual summary evaluation of a teacher shall be determined by a compilation of the required evaluations as provided in this ARTICLE.

B.11, according to PERC, is not negotiable because it concerns the content of the report.

C. Personnel Records

1. File

A teacher shall have the right, upon request, to review the contents of his personnel file and to receive copies at Board expense of any documents contained therein. A teacher shall be entitled to have representative(s) of the Association accompany him/her during such review. At least once every ( ) years, a teacher shall have the right to indicate those documents and/or other materials in his file which he/she believes to be obsolete or otherwise inappropriate to retain. Said documents shall be reviewed by the Superintendent or his designee and if, in fact, they are obsolete or otherwise inappropriate to retain, they shall be destroyed. Disputes over the retention of said documents may be processed through the grievance procedure, commencing at Level Two.

Paragraph C., clause 1: To make disputes over whether or not materials included in the personnel file shall be expunged subject to the grievance process seems unwise. Since teachers generally have the ability to rebut materials contained in the file there seems little reason to become involved in controversy concerning expungement.

2. Derogatory Material

No material derogatory to a teacher's conduct, service, character or personality or any material which could have an adverse effect on a teacher's status shall be placed in his/her personnel file unless the teacher has had an opportunity to review the material. The teacher shall acknowledge that he/she has had the opportunity to review such material by affixing his signature to the copy to be filed with the express understanding that such signature in no way indicates agreement with the contents thereof. The teacher shall also have the right to submit a written answer to such material and his answer shall be reviewed by the Superintendent or his designee and attached to the file copy.

No Separate File

Although the Board agrees to protect the confidentially of personal references, academic credentials and other similar documents, it shall not establish any separate personnel file which is not available for the teacher's inspection.

D. Termination of Employment

Final evaluation of a teacher upon termination of his/her employment shall be concluded prior to any recommendation for severance and no documents and/or other material shall be placed in his/her personnel file of such teacher after severance or otherwise than in accordance with the procedure set forth in this ARTICLE.

Paragraph D. was ruled non-negotiable by the Appellate Division in **East Brunswick** (unpublished opinion, May 3, 1982). The court stated, "An employer might well be greatly and quite legitimately interested in matters concerning an employee after he leaves even though the matter may not be related to his employment." The reason: the employee may reapply in the future, and intervening events such as a criminal conviction would be of legitimate interest to the board in considering reemployment.

Article XV, *Fair Dismissal Procedure*

In 1975, the Legislature enacted a statute and the State Board of Education enacted rules more specifically enforcing the rights of non-tenured teachers set forth in the **Donaldson** case.

These rules do not alter the basic relationship between a board and its non-tenured teachers. The nature of a non-tenured teacher's contract of employment with a school board is one for personal services with a

commencement and a termination date. When the terminal date has been reached, the contract is discharged and there are no longer any rights, duties, or obligations chargeable to either party to the previous agreement. In short, no relationship binding in law exists between the parties, and so it has been held in several instances by the Courts of the State of New Jersey.

A. Fair Dismissal Committee

1. Membership

No later than September 15, 19 , the Board and the Association agree to establish a Fair Dismissal Committee consisting of ( ) members, ( ) members appointed by the Board and ( ) members appointed by the Association.

A. A committee that is merely advisory to the board on this topic, and which neither binds the board nor obstructs its right to act in this area, is legally negotiable. **Commercial Township,** PERC No. 80-20. This is, however, the responsibility of the administration and the board; such committees are rarely created through the negotiations process.

2. Responsibility

This Committee shall develop specific criteria which shall be used for nonrenewal of contract or termination of employment for nontenure teachers.

3. Report date

The recommended criteria shall be submitted for adoption to the Board and the Association no later than December 15, 19 , and shall become an addendum to this Agreement.

4. Distribution to nontenure teachers

The Board shall provide said criteria to all presently employed nontenure teachers, as soon as possible after adoption.

A.4. is a term and condition of employment.

B. Notification of Status

1. Date

On or before April 30 of each year, the Board shall give to each nontenure teacher continuously employed since the preceding September 30 either:

a. A written offer of a contract for employment for the next succeeding year providing for at least the same terms and conditions of employment but with such increases in salary and benefits as may be required by law or agreement between the Board and the Association, or

b. A written notice that such employment shall not be offered.

B.1. is a restatement of law and is unnecessary.

2. Reasons

Any nontenure teacher who receives a notice of nonemployment may within five (5) days thereafter, in writing, request a statement of reasons for such nonemployment from the superintendent, which statement shall be given to the teacher in writing within five (5) days after receipt of such request.

B.2. is an illegal modification of the statutory timelines found in **N.J.S.A.** 18A:27-3.2. The Appellate Division, in **East Brunswick** (see above), reversed PERC and found that the statute spoke in the imperative and did not permit modification through negotiations. Therefore, if you must have something in your contract on this issue, you should permit the employee up to **fifteen** (15) days to request a statement of reasons, and permit the board up to **thirty** (30) days to respond.

3. Hearing

Any nontenure teacher who has received such notice of nonemployment and statement of reasons shall be entitled to a hearing before the Board, provided a written request for hearing is received in the office of the secretary of the Board within five (5) days after receipt by the teacher of the statement of reasons.

B.3. The Administrative Code very specifically requires an **informal appearance,** not a hearing. It is not to be an adversary proceeding; it should be of reasonable length; the teacher

may be represented by one person or counsel; witnesses may be presented with no cross-examination; appearances shall be in private. The code at **N.J.A.C.** 6:3-1.20(a) provides that the request must be submitted within ten (10) calendar days. The limitation to five (5) is probably illegal under **East Brunswick.**

4. Board determination

The Board shall issue its written determination as to the employment or non-employment of said nontenure teacher for the next succeeding school year within five (5) days after the completion of the hearing. Said proceedings shall be completed and the Board's determination presented to the teacher no later than May 31.

B.4. The Administrative Code supporting the non-tenure evaluation law requires that the board's written determination be issued within **three** days of the informal appearance, not the five days listed in this clause.

Additionally, there is no requirement that a written decision issue prior to May 31st. Assume that notice not to reemploy was given on April 30th. The statement of reasons is requested on May 15th. The reasons are given on June 14th. On June 24th (the ten day period set forth in the Administrative Code), the affected teacher seeks an appearance which is held on July 24th, with a written determination issued on July 27th. Of course, most boards will proceed more quickly than this but if both parties exhausted each time limit, there would be no way to finish the process before late July.

5. Appeal to grievance procedure

If the teacher disagrees with the determination of the Board, he may submit the dispute through the grievance procedure as set forth in ARTICLE III of this Agreement, and said grievance shall commence at Level 3. In the event said grievance is submitted to arbitration, the arbitrator may restore the teacher to continued employment and may restore any loss of pay and/or benefits retroactively to which the teacher would be entitled under the terms and conditions of employment required by law or this Agreement between the Board and the Association.

B.5. As stated above, PERC has held that arbitrators have no authority to review a board's decision not to renew a non-tenured teacher. Arbitrators can hear grievances over procedural violations under this article, but, even if a procedural violation is found, the arbitrator is without any power to order reinstatement. **Fair Lawn,** App. Div., June 2, 1980, and **Fairview,** PERC No. 80-18.

C. Failure to Comply

Should the Board fail to give a nontenure teacher either an offer of contract for employment for the next succeeding year or a notice that such employment shall not be offered and upon request by the teacher to the superintendent, a statement of reasons and a hearing, and in the event of such hearing shall fail to make and serve a copy of the determination, all within the time and in the manner provided by this ARTICLE, the Board shall be deemed to have offered to that teacher continued employment for the next succeeding school year upon the terms and conditions of employment as may be required by law or agreement between the Board and the Association.

C. attempts to expand the statutory right of teachers to **automatic reemployment** due to a procedural error by the board. The statutes provide that an employee is deemed to be offered an employment contract if the board fails to offer a contract or notice of non-renewal by April 30. This clause would provide such an automatic offer of a contract if the board missed **any** of the timelines in the article, i.e., the 30 day limit on providing a statement of reasons, the 30 day limit for scheduling the informal

appearance and the three day limit for a written determination by the board following such an appearance. This is probably illegal. PERC has held that procedural violations in the evaluation process shall not be cause for reinstatement by an arbitrator; it follows that procedural errors in the appeal process also couldn't result in reinstatement.

D. Notification of Intention to Return

If the teacher desires to accept such employment, he shall notify the Board of such acceptance, in writing, on or before June 1, in which event such employment shall continue as provided for herein. In default of such notice the Board shall not be required to continue the employment of the teacher.

D. is a restatement of law.

E. Termination of Employment

Any nontenure teacher who receives a notice that his employment shall be terminated shall be entitled to a statement of reasons and a hearing as provided for in paragraphs 2, 3, 4, and 5 of this Section except that a determination of the Board shall be made and served thirty (30) days before the expiration of the notice period provided for in said contract. Should the Board fail to comply therewith, then said notice of termination shall be invalid and of no force and effect and the employment of the teacher shall continue as if such notice had not been given.

E. has stumped the entire Labor Relations Department. Any reader having information on the meaning or intent of this clause is invited to contact us as soon as possible. Prizes will not be given, but we'll publish winning entries. In the meantime, please don't put this into your contract.

Article XVI, *Complaint Procedure*

The essence of this article deals with a complaint lodged against a teacher, generally from an outside non-administrative source, for which the teacher grieves for relief and remedy against a potentially damaging influence which the complaint may have against the teacher's evaluation report.

Very few boards have such a complaint procedure in their agreement.

It would appear that Paragraph A., B. and C. of this article should alone suffice to ensure fair and equitable treatment to any complaint so lodged against a teacher.

A. Procedural Requirement

Any complaints regarding a teacher made to any member of the administration by any parent, student, or other person which does or may influence evaluation of a teacher shall be processed according to the procedure outlined below.

B. Meeting with Principal or Immediate Superior

The principal or immediate superior shall meet with the teacher to apprise the teacher of the full nature of the complaint and they shall attempt to resolve the matter informally.

C. Right to Representation

The teacher shall have the right to be represented by the Association at any meetings or conferences regarding such complaint.

D. Procedure

Step 1.

In the event a complaint is unresolved to the satisfaction of all parties, the teacher may request a conference with the complainant to attempt to resolve the complaint. If the complaint is unresolved as a result of such conference, or if no mutually acceptable conference can be agreed on, the complaint shall move to Step 2.

Step 2.

Any complaint unresolved under Step One at the request of the teacher or the complainant shall be reviewed by the building principal or counterpart supervisor in an attempt to resolve the matter to the satisfaction of all parties concerned.

Step 3.

Any complaint unresolved at Step Two may be submitted in writing by the complainant or the teacher to the building principal or counterpart supervisor who shall forthwith forward a copy to the superintendent or his designee and the complainant.

Step 4.

Upon receipt of the written complaint the superintendent or his designee shall confer with all parties. The teacher shall have the right to be present at all meetings of the superintendent or his designee and the complainant.

Step 5.
If the superintendent or his designee is unable to resolve a complaint to the satisfaction of all parties concerned, at the request of the complainant or the teacher he shall forward the results of his investigation along with his recommendation, in writing, to the Board and a copy to all parties concerned.

Step 6.
After receipt of the findings and recommendations of the superintendent or his designee, and before action thereon, the Board shall afford the parties the opportunity to meet with the Board and show cause why the recommendations of the superintendent or his designee should not be followed. Copies of the action taken by the Board shall be forwarded to all parties.

Step 7.
Any complaint unresolved under Step 6. may be submitted by the teacher to the grievance procedure as set forth in ARTICLE III of this Agreement and shall commence at Level 3.

Article XVII, *Teacher Facilities*

All of the items demanded in Paragraph A. must be questioned in light of the existing facilities in the district to determine the extent of change or if, indeed, change is at all possible or necessary.

Most of items 1 through 11 were found by PERC to be required topics of negotiations. Items 12 through 15 were deemed illegal topics, as related to the means and methods of providing education to the students. PERC rejected the union argument that these were really "tools of the trade." **Byram,** PERC No. 76-27, aff'd in part, 152 **N.J. Super.** 12 (App. Div., 1977).

A. Listing of Facilities
By the beginning of the 19 - school year, each school shall have the following facilities:

1. All rooms which are used for purposes of instruction during any portion of the months of May, June, July, August, September, and October shall be air conditioned;
2. Space for each teacher within each instructional area in which he teaches to store his instructional materials and supplies;
3. An air-conditioned teacher work area containing adequate equipment and supplies to aid in the preparation of instructional materials;
4. An appropriately furnished and air-conditioned room which shall be reserved for the exclusive use of teachers as a faculty lounge. Although teachers shall be expected to exercise reasonable care in maintaining the appearance and cleanliness of said lounge, it shall be regularly cleaned by the school's custodial staff.
5. A private pay telephone in each faculty lounge for the exclusive use of teachers;
6. A serviceable desk, chair, and filing cabinet for the exclusive use of each teacher;
7. A communication system so that teachers can communicate with the main building office from their classrooms;
8. Well-lighted and clean teacher rest rooms, separate for each sex and separate from the students' rest rooms;
9. A separate, private dining area for the exclusive use of the teachers;
10. Free and adequate off-street paved parking facilities, which are protected against vandalism, properly maintained, and identified exclusively for teacher use;
11. Suitable, private closet space with lock and key for each teacher to store coats, overshoes, and personal articles;
12. Copies, exclusively for each teacher's use, of all texts used in each of the courses he is to teach;
13. Adequate chalkboard space in every classroom;
14. A complete and unabridged dictionary in every classroom;
15. Adequate books, paper, pencils, pens, chalk, erasers and other such material required in daily teaching responsibility.

B. Special Clothing
By the beginning of the 19 - school year, the Board shall provide gym uniforms for physical education teachers, smocks for art and home economics teachers, laboratory coats for laboratory science teachers, shop coats for vocational and industrial arts teachers. Proper laundering service for all of said items shall be provided without charge to the teacher.

Paragraph B. must be considered strictly as a cost item.

C. Work Room and Office
By the beginning of the 19 - school year, an appropriate room and other facilities for teachers who work in more than one school building shall be assigned

Paragraph C. again presents a question concerning the allocation of space in specific schools. It must be

to them in each school in which they work to permit the effective discharge of their responsibilities to their pupils. Such teachers shall also be assigned a single classroom or office for their exclusive use outside of regular teaching hours, with a desk or other equivalent facility and a place to store materials and supplies for their personal use.

examined by the board in light of maintenance of flexibility with respect to the utilization of space, now and in the future.

D. Answering Service

The Board agrees to provide an answering service between p.m. and a.m. for teachers to report unavailability for work. Once a teacher has reported unavailability, it shall be the responsibility of the administration to arrange for a substitute.

E. Vending Machines

Upon the request of the Association, vending machines shall be installed in the teachers' lounge and teachers' lunchroom areas. The proceeds from all such machines shall be placed in a student scholarship fund created for that purpose. Awarding of scholarships shall be administered jointly by the Association and the superintendent. The Teacher-Administration Liaison Committee in each building established according to the provisions of ARTICLE XXII of this Agreement shall develop mutually acceptable procedures for servicing said machines and accounting for the funds.

The Teacher-Administration Liaison Committee clause is actually found in ARTICLE XVIII.

F. Keys

In order to permit freedom of access both during and after regular school hours, all teachers shall be given keys to the faculty lounge, teacher work area, and interior hallway gates of their base school, and upon request, and subject to reasonable regulation, shall be provided with a key or other means of access to an outside door in their area of the building during nonschool hours.

Paragraph F. presents essentially a security problem with respect to the distribution of keys, and therefore, it must be so examined.

G. Student Transportation

By the beginning of the 19 - school year, the Board shall provide a vehicle and a driver for the transportation of individual students or small groups of students. Said vehicle and driver shall be used to transport sick students from school to home during the course of the school day.

This is not a term and condition of employment, since it relates to students and not to teachers.

Article XVIII, *Teacher-Administration Liaison*

PERC has held that a Board-Teacher Liaison Committee proposal was a required topic for negotiations. This committee would have a majority of management representatives, would engage in discussions, not negotiations, and would meet at the agreement of the parties. The clause specifically guaranteed that the existence of the committee would not preclude the board from exercising any of its legal rights. With these caveats, PERC ruled that such a liaison committee, even though it would discuss only non-negotiable matters, was itself a required topic for negotiations. **Commercial Twp.**, PERC No. 80-20.

It is likely, therefore, that the establishment of monthly meetings between the Faculty Council and the school administration to discuss non-negotiable matters is legally negotiable, as a non-binding forum for

A. Building Level Faculty Council

1. Organization

The Association shall select a Faculty Council for each school building which shall meet with the principal at least once a month during the school day for the duration of the school year. Said Council shall consist of not more than (1) member for every ( ) teachers in the school building, but shall in no event have less than ( ) members.

2. Areas for Faculty Council consideration

Areas for consideration by the Council shall include but not be limited to school building level decisions regarding:

a. Administration of this Agreement;
b. Facilitation of programs and recommendations of the Instructional Council hereafter established in ARTICLE XXIII of this Agreement;
c. Revision and development of building policies and practices.

B. Meetings with Superintendent

The Association's representatives shall meet with the superintendent at least once a month during the school year to review and discuss current school problems and practices and the administration of this Agreement.

Article XIX, *Instructional Council*

A. Organization

1. Purpose

An Instructional Council shall be established and shall meet not later than 19 . The purpose of the Council shall be to strengthen the education program through recommendations, research, implementation, and evaluation by the superintendent and the Association to best meet the needs of the students, the schools, and the community. The Council may consider, but not be limited to, advising the Board and the Association on such matters as curriculum improvements, teaching techniques, instructional organizational patterns, experimentation, extra curricular programs, in-service training and staff development, pupil testing and evaluation, philosophy and educational goals of the district, teacher recruitment, research, educational specifications for buildings, and other related matters regarding the effective operation of the School District.

2. Membership

The Council shall consist of ( ) representatives appointed by the superintendent and ( ) representatives appointed by the Association.

3. Committees

The Council shall be authorized to establish sub-committees or ad hoc committees for specific projects to allow for those who would be affected by Council recommendations to have an opportunity to be involved.

4. Individual initiative for suggestions

The Council shall encourage the initiation of ideas and suggestions for projects by individual teachers, departments, grade levels, Association committees, administrators, Board members, students, parents, or other interested parties.

5. Additional members

Nothing in this ARTICLE shall be interpreted to prevent the Council from consulting or appointing to its committees such additional teachers, administrators, professional advisors, students, parents, or other persons as the original members herein designated shall determine are desirable and appropriate for said purposes. In the event that professional consultants are added, the Board agrees to provide adequate funds to pay for each such service.

6. Rules of procedure

The Council shall establish its own rules of procedure and shall provide for a rotating chairman who shall be responsible for the arrangement and conduct of meetings.

7. Meetings

The Council shall meet at least once each month.

8. Information

The Council and its sub-committees shall be provided with the same access to available school district information as provided to the Association as specified in ARTICLE V. Section A of this Agreement.

B. Reports

1. Board and Association action

The Board and the Association shall consider and study all written recommendations submitted by the Council for action. If the Board or the Association refuses to adopt any such recommendations, it shall state the specific reasons for such refusal in writing to the Council.

2. Minority reports

Reports of the Council or any sub-committee established by the Council may include minority as well as majority views.

C. Budget

As of September 1, 19 , the Board shall provide ($) dollars to the Instructional Council for the purpose of assisting said Council in establishing effective procedures for decision-making in implementing the responsibilities stated above in the School District.

D. Teacher Participation

1. Pay

Teachers who serve on the Instructional Council or any sub-committee organized by

the expression of teacher concerns over non-negotiable matters.

It is not clear whether PERC's analysis regarding a Board-Teacher Liaison Committee will be applied to Instructional Councils. The language in the Sample Agreement is much broader than that in the PERC case, and potentially much more restrictive.

Boards receiving this demand should consider establishing such a committee outside of the labor agreement, at the building and/or district level, for on-going consultation on non-negotiable matters.

it beyond the regularly scheduled in-school day or in-school year shall be paid at the rate specified in ARTICLE VII, Section A, paragraph 4 of this Agreement.

2. Released time

In addition to whatever unassigned time they may be entitled to under the terms of this Agreement, teachers who are members of the Instructional Council or any of its sub-committees shall be provided with released time at the following rate for the purpose of working on any of the projects defined above:

a. Elementary Schools— ( ) periods per day
b. Junior High Schools— ( ) periods per day
c. Senior High School— ( ) periods per day
d. Other — ( ) periods per day

E. Clerical Assistance

Adequate secretarial and clerical assistance shall be provided for the Council.

Article XX, *Sick Leave*

The amount of sick leave granted beyond ten days a year is purely a matter of economic ability and educational need. Any concession in this area should achieve an equivalent concession by the union.

A. Accumulative

As of September 1, 19 , all teachers employed shall be entitled to ( ) sick leave days each school year as of the first official day of said school year whether or not they report for duty on that day. Unused sick leave days shall be accumulated from year to year with no maximum limit.

B. Transfer from Other Districts

As of September 1, 19 , whenever the Board employs a teacher who has an unused accumulation of sick leave days from another school district in New Jersey, the Board shall grant additional sick leave credit in additional to the annual and accumulated sick leave provided in Section A of this ARTICLE as follows:

1. For the first year of employment in the School District a minimum of ( ) days or such lesser amount as may have been accumulated in the former district.

2. For each subsequent year of employment in the School District an additional ( ) days until all of the days accumulated in the former district have been credited.

3. The accumulation of sick leave days from another district shall be credited in accordance with the procedure outlined above after certification from the prior employing school district. The days of sick leave so credited may be used immediately or if not so used shall be accumulative for additional leave thereafter as may be needed.

B.3. The transfer of sick leave credit is not required by law and has been negotiated into very few contracts.

4. The aforementioned sick leave credit shall be given to any presently employed teacher under the provisions described above.

C. Nonaccumulative

Nonaccumulative additional sick leave benefits shall be allowed to teachers according to the following schedule:

(Local Association option on type of additional nonaccumulative sick leave to be submitted.)

C. PERC, the State Board of Education, and the Appellate Divison have all determined that automatic grants of sick leave beyond accumulated days are prohibited by **N.J.S.A** 18A:30-6. See, for example, **Piscataway,** 152 **N.J. Super.** 235 (App. Div., 1977).

D. Summer School

As of September 1, 19 , teachers employed in the summer school program shall be granted ( ) nonaccumulative sick leave days.

Paragraph D. covers summer school jobs which are not in the bargaining unit. For this reason, this clause should be rejected.

E. Notification of Accumulation

Teachers shall be given a written accounting of accumulated sick leave days no later than September of each school year.

F. Retirement

Upon retirement, the retiring teacher shall be compensated for his or her accumulated sick leave at the rate of pay at the time of retirement.

See "Payment for Unused Sick Leave" at page 10 of this publication. for a detailed discussion of this matter.

Article XXI, *Temporary Leaves of Absence*

A. Types of Leave

As of the beginning of the 19 - school year, teachers shall be entitled to the following temporary nonaccumulative leaves of absence with full pay each school year:

1. Personal

( ) days leave of absence for personal, legal, business, household or family matters which require absence during school hours. Application to the teacher's principal or other immediate superior for personal leave shall be made at least ( ) day(s) before taking such leave (except in the case of emergencies) and the applicant for such leave shall not be required to state the reason for taking such leave other than that he is taking it under this Section.

See "Personal Leave," pages 7 to 9 of this book for a detailed discussion of what should be contained and avoided in a personal leave clause.

2. Religious

Up to ( ) days per school year for observance of religious holidays, where said observance prevents the teacher from working on said days.

A.2. PERC has held that contract clauses granting paid leave for religious holidays, which is not deducted from personal or vacation days equally available to non-religious employees, is unconstitutional. **Hunterdon Central High School Board of Education,** PERC No. 80-4, aff'd, 86 **N.J.** 43 (1981). Permitting employees to use unspecified personal or vacation leave for religious observance, on the other hand, is legally negotiable. **Haddonfield,** PERC No. 82-106.

3. School visitation

Up to ( ) days for the purpose of visiting other schools or attending meetings or conferences of an educational nature.

4. Community service leave

Any teacher who is a member of a community service organization or who is requested by any such organization to attend or participate in meetings or programs of the organization conducted during school hours shall be granted time off with pay for such purpose upon request.

5. Conferences of affiliates

Up to ( ) days for ( ) representatives of the Association to attend conferences and conventions of state and national affiliated organizations.

6. Legal

Time necessary for appearances in any legal proceeding connected with the teacher's employment or with the school system or in any other legal proceeding if the teacher is required by law to attend.

7. Death

Up to ( ) days at any one time in the event of death or serious illness of a teacher's spouse, child, son-in-law, daughter-in-law, parent, father-in-law, mother-in-law, brother, sister, brother-in-law, sister-in-law, and any other member of the immediate household. Teachers shall be granted up to ( ) days in the event of death of a teacher's friend or relative outside the teacher's immediate family as defined above. In the event of the death of a teacher or student in the School District, the principal or immediate superior of said teacher or student shall grant to an appropriate number of teachers sufficient time off to attend the funeral.

8. Summer school

Up to a total of ( ) days at the end of a school year and/or at the beginning of a school year, as may be required to attend summer school classes and/or to travel to the place where such classes are to be held.

Paragraphs A.3. to A.9. must be analyzed locally regarding their cost and effect on administrative and educational efficiency. A.6. should, at the least, not include legal appearances where the board and teacher are adversaries, e.g. tenure hearings and PERC hearings.

9. Marriage and honeymoon
Up to ( ) days for the purpose of marriage and honeymoon or up to ( ) days for the purpose of attending the marriage of a member of the immediate family.

10. Temporary Military
Time necessary for persons called into temporary active duty of any unit of the U.S. Reserves or the State National Guard. A teacher shall be paid his regular pay in addition to any pay which he receives from the state or federal government.

11. Good cause
Other leaves of absence with pay may be granted by the Board for good reason.

A.11. can present serious difficulties especially to boards who have "past practice" or "savings clauses." The granting of additional leaves might establish an unwanted precedent. Unfortunately, a labor contract sometimes has the effect of limiting the ability of an employer to grant fringe benefits in excess of the contract simply because the employer's action to help employees in a given situation can force the employer to grant the same benefit in all similar cases.

B. In Addition to Sick Leave
Leaves taken pursuant to Section A above shall be in addition to any sick leave to which the teacher is entitled.

C. NJEA Convention
Each teacher who attends the NJEA Convention shall fully be compensated for all costs incurred for travel, tolls, meals and hotel.

C. First, Chapter 123 as noted earlier, prohibits an employer from assisting a union. The NJEA is a union. While no decision in this area has been issued, it is very possible that any agreement to this clause or any payment under it is a violation of law.

Practically, paragraph C. is unacceptable even if legal. There is no limit on any expense incurred. The cost to the board could be enormous if only a portion of teachers sought reimbursement for their expenses. No boards, to our knowledge, have agreed to such a clause.

Article XXIII, *Extended Leaves of Absences*

A. Association
The Board agrees that up to ( ) teachers designated by the Association shall, upon request, be granted a leave of absence without pay for up to ( ) year(s) for the purpose of engaging in activities of the Association or its affiliates.

The granting of any of the leaves in this area, other than sick leave, should be upon application to the superintendent for approval unless the board specifically provides otherwise. Such applications should provide sufficient notice for the superintendent to secure a substitute, or the related clause may be ruled invalid. **South River,** PERC No. 81-108.

B. International and Federal Programs
A leave of absence without pay of up to ( ) years shall be granted to any teacher who joins the Peace Corps, VISTA, National Teachers Corps, or serves as an exchange teacher or overseas teacher, and is a full-time participant in either of such programs, or accepts a Fullbright Scholarship.

C. Outside Teaching
A teacher on tenure shall be granted a leave of absence without pay for up

to ( ) years to teach in an accredited college or university, private school or other public school district.

D. Military

Military leave without pay shall be granted to any teacher who is inducted or enlists in any branch of the armed forces of the United States for the period of said service and three (3) months thereafter, or three (3) months after recovery of any wound or sickness at time of discharge. A similar leave shall be granted to the spouse of any teacher who is so inducted or who enlists to join him for the period of special training in preparation for duty overseas in combat zones.

Maternity

1. Natural Birth

The Board shall grant maternity leave without pay to any teacher upon request subject to the following stipulations and limitations:

(a) Maternity leave shall commence and terminate, on the date requested by the teacher.

(b) Any teacher granted maternity leave without pay according to the provisions of this section may at her discretion elect to use all or any part of her accumulated sick leave during period of such absence and receive full pay and benefits for the same.

(c) Any teacher granted maternity leave shall at her request be restored to the exact same teaching position, subject area, and grade level vacated at the commencement of said leave.

(d) No teacher shall be required to leave work because of pregnancy at any specific time prior to expected childbirth nor be prevented from returning to work after childbirth solely on the ground that there has not been a time lapse of specific duration between childbirth and the desired date of return.

(e) The Board shall not remove any teacher from her duties during pregnancy unless the teacher cannot produce a certificate from her physician that she is medically able to continue teaching.

(f) The Board shall not discriminate against any person in violation of N.J.S.A. 10:5-1 et seq. the Law Against Discrimination, nor in violation of the Constitutions of the State of New Jersey and of the United States.

2. Any teacher who does not elect to take a maternity leave may continue to perform her duties as long as physically able to do so and will be entitled to return to her duties when her physician certifies that she is physically able to do so. The period of such absence will be deemed the same as for any other physical disability and she will be entitled to her annual and accumulated sick leave with pay during the period of absence.

This maternity leave clause has numerous problems. Paragraph 1.(a) is unacceptable because it ignores the negative impact upon the continuity of instruction that occurs when leaves begin and end during the school year.

At the least, **all maternity leaves should terminate at the beginning of a school year,** so that a substitute is not displaced in May or June. Some boards and unions have agreed that **maternity leaves will commence at the marking period nearest the onset of disability.** Others permit the leave to commence **following** the period of disability. Under such a clause, a pregnant teacher works until she is physically unable to do so; takes sick leave for the period of disability (generally, 30 days before and after the birth); and then begins her unpaid maternity leave.

Paragraph 1.(b) has been ruled illegal when applied to any period of time when the employee is not truly disabled. If an employee has accumulated 90 sick days, uses 35 of those days before and after the birth of her child, and then takes a maternity leave of absence for the purpose of raising the child, she is prohibited from utilizing her remaining sick days during this leave of absence. **Hackensack,** unpublished opinion (App. Div., March 9, 1982).

Paragraph 1.(c) is illegal because it interferes in the board's right to assign staff.

Paragraphs 1.(d) and (e) are restatements of current case law. See **Castellano,** 79 **N.J.** 407 (1979).

Paragraph 1.(f) is the kind of sweeping restatement of law that should never be included in a negotiated agreement. See page 40 of this Analysis for a discussion of how to handle such clauses.

Paragraph 2 is also a restatement of law.

3. Adoption

Any female teacher adopting an infant child shall receive similar leave which shall commence upon her receiving *de facto* custody of said infant, or earlier if necessary to fulfill the requirements for the adoption. No teacher on maternity leave shall, on the basis of said leave, be denied the opportunity to substitute in the School District in the area of her certification or competence.

E.3. Adoption differs from pregnancy-related disability and sickness. It is akin to child-rearing leave. There is no obligation to agree to adoption leave. This clause is discriminatory in that it applies only to female teachers.

F. Illness in Family

A leave of absence without pay of up to ( ) year(s) shall be granted for the purpose of caring for a sick member of the teacher's immediate family. Additional leave may be granted at the discretion of the Board.

Any time the board agrees to the phrase "immediate family" in the contract, it should be sure to clearly define who is included in that relationship.

G. Political

The Board shall grant a leave of absence without pay to any teacher to campaign for or serve in a public office, or to campaign for a candidate for a public office other than himself.

If a board is willing to agree to leaves for political purposes, it should limit the commencement date to the beginning of a school year, and the termination date to either the start of the first semester or marking period following the election, or to the beginning of the next school year.

H. Good Cause

Other leaves of absence without pay may be granted by the Board for good reason.

H. presents the same potential problems as Article XXI.A.11, discussed on page 69 of this book.

I. Return from Leave

1. Salary

Upon return from leave granted pursuant to this ARTICLE, a teacher shall be considered as if he were actively employed by the Board during the leave and shall be placed on the salary schedule at the level he would have achieved if he had not been absent.

I.1: There is no requirement that credit for teaching be given during periods of extended leave without pay. It is rarely done unless the teacher works for the district for over 90 days in the academic year of the leave.

2. Benefits

All benefits to which a teacher was entitled at the time his leave of absence commenced, including unused accumulated sick leave and credits toward sabbatical eligibility, shall be restored to him upon his return, and he shall be assigned to the same position which he held at the time said leave commenced, if available or, if not, to a substantially equivalent position.

J. Extension and Renewals

All extensions or renewals of leaves shall be applied for and granted in writing.

Article XXIV, *Sabbatical Leaves*

A. This language will result in teachers receiving paid sabbatical leaves to do nothing of value to the district, e.g., irrelevant travel, or study for a career outside of teaching. Boards should insist that the primary purpose of any sabbatical is to improve the teacher's value to the district upon return.

A. Purpose

A sabbatical leave shall be granted to a teacher by the Board for study, including study in another area of specialization, for travel, or for other reasons of value to the school system.

B. Conditions

Sabbatical leave shall be granted, subject to the following conditions:

B. The word "shall" seems to remove any discretion from the board.

1. Percentage of teachers

If there are sufficient qualified applicants, sabbatical leaves shall be granted to a minimum of (%) percent of teachers at any one time.

B.1. By granting only a minimum, there is no way to predict the maximum number of teachers receiving sabbaticals. This is too open-ended for most boards. Besides, what will happen if the minimum number of teachers don't apply?

2. Requests

Requests for sabbatical leave must be received by the superintendent in writing in such form as may be mutually agreed on by the Association and the superintedent, no later than January 1, and action must be taken on all such requests no later than February 1, of the school year preceding the school year for which the sabbatical leave is requested.

B.2 The January application date may be too late for proper budgeting by the board. The February date may not give the board enough time to evaluate the applications.

3. Minimum time to qualify

The teacher has completed at least seven (7) full school years of service in the School District.

4. Pay

A teacher on sabbatical leave (either for one-half (½) of a school year or for a full school year) shall be paid by the Board at (%) percent of the salary rate which he would have received if he had remained on active duty if said leave is for study and at (%) percent if for travel or other reason.

5. Return

Upon return from sabbatical leave, a teacher shall be placed on the salary schedule at the level which he would have achieved had he remained actively employed in the system during the period of his absence and he shall be credited with all other benefits for which he would have entitled during the period of his leave and continuing thereafter upon his return.

B.3.,4. and 5. are standard, except that most clauses don't permit sabbaticals for "travel or other reason" unless related to the teacher's responsibilities in the district. Most districts require that teachers who receive sabbatical leaves return to the district for one or two years following the sabbatical, or reimburse to the board the salary received during the sabbatical leave. See **Negotiations 80**, pp. 9-11, for more detail.

Article XXV, *Professional Development and Educational Improvement*

The question of the board agreeing to make certain payments in connection with this article is an appropriate subject for collective negotiations under the law.

A. Purpose

In our rapidly changing society teachers must constantly review curricular content, teaching methods and materials, educational philosophy and goals, social change and other topics related to education. The Board recognizes that it shares with its professional staff responsibility for the upgrading and updating of teacher performance and attitudes. The Board and the Association support the principle of continuing training of teachers and the improvement of instruction. The parties further agree that each teacher should fulfill the obligation for professional improvement in ways that best serve his own problems, functions, interests, and needs.

There is no need for A. Moreover, the second and fourth sentences are probably illegal in light of **Ridgefield Park.**

B. Assistance for Teachers

Within any one (1) week, a teacher who shall so request shall be granted at least thirty (30) minutes of counseling with his immediate superior. Such meetings shall be scheduled within the teacher work day and the teacher released from other duties therefor.

Paragraph B. provides for further reduction in the time a teacher might spend with students. Certainly such time can be found, without contract language, during preparation periods or, for elementary teachers, immediately after school. As professionals in other areas regularly expect to devote additional time to their profession beyond an eight hour day, so should teachers.

C. Programs

The Board agrees to implement the following at the beginning of the 19 - school year.

1. Pay and expenses for required training

To pay the full cost of tuition and other reasonable expenses incurred in connection with any courses, workshops, seminars, conferences, in-service training sessions, or

other such sessions which a teacher is required and/or requested by the administration to take. Said teacher shall also be compensated for all time spent in actual attendance at said sessions beyond his regular working day and year at his regular rate as defined in ARTICLE VII, Section A, paragraph 4 of this Agreement.

2. Professional Development Committee for reimbursement

a. To establish a Professional Development Committee to act upon requests from teachers for authorization to attend courses, workshops, seminars, conferences, in-service training sessions or other such sessions. Within ( ) days after signing this Agreement, the superintendent and the president of the Association shall each appoint ( ) members to the Committee and they shall select a chairman from among themselves. The superintendent and the president of the Association may, from time to time, replace members appointed by them.

b. To pay the reasonable expenses (including fees, meals, lodging and/or transportation) incurred by teachers who attend such sessions with the approval of the Professional Development Committee.

If the committee under C.2. is entrusted with determinations of the value of various in-service and professional development courses or programs, this is probably an illegal subject.

3. In-service workshops, conferences, programs

a. The Board shall provide in-service professional improvement programs which shall be cooperatively planned in the instructional council to meet priorities jointly determined by the Association and the administration. In-service programs shall be conducted during the in-school teacher workday if teacher attendance is required. All programs conducted during the summer shall be voluntary and compensated at the rate set forth in ARTICLE VII, Section A, paragraph 4.

b. Teachers who participate in an in-service program shall be given credit for each program as provided in schedule D.

Ridgefield Park would seem to make the first sentence of C.3.a. an illegal topic, particularly if this is meant to prohibit the introduction of inservice topics which the administration, but not the union, deems appropriate. The balance of a. and all of b. relate to terms and conditions of employment.

4. Professional library

To expend up to ($) dollars per teacher each school year to purchase books, equipment and/or other educational resource materials, as may be recommended by the aforementioned Professional Development Committee for use by the professional staff for professional development and educational improvement. The Board shall provide adequate space for housing said books and materials in convenient and readily accessible locations.

C.4. is not a required topic of negotiations. C.4. through 8 are almost never contained in contracts.

5. Recruitment

To establish a Recruitment Committee to study and improve teacher recruitment. This Committee shall develop ways to utilize incumbent teachers who agree to be recruiters. The superintendent and the president of the Association shall each appoint ( ) members to this Committee and they shall choose a chairman from among themselves. Teachers who participate as members of this Committee shall suffer no loss of compensation and shall be reimbursed for any travel and expenses incurred in the performance of their functions.

C.5. This is not a term and condition of employment but is a major educational policy function and is, therefore, an illegal area.

6. Summer program for professional development

To appropriate ($) dollars for a Voluntary Summer Program for Professional Development to afford teachers the opportunity to participate in activities which they propose and which shall contribute to the professional development of the participating teacher and to the educational advantage of the children served by the District. Participation in this program shall take place for a period of not more than one (1) month during July and/or August and participants shall be remunerated on a prorated basis, according to their monthly salary for the school year beginning July 1 of the summer employed.

a. Teachers may apply for this program no later than Applications shall be submitted to a Screening Committee consisting of ( ) members selected by the superintendent and ( ) members selected by the Association. The Committee shall receive, review, and approve or disapprove applications. All applicants shall be notified no later than May 1 of each year as to whether their applications have been approved.

b. The funds appropriated for this program shall be used to finance projects evaluated by the Screening Committee as fulfilling the objectives of the program.

c. The Screening Committee shall establish its own rules of procedure.

7. Innovative grants

To appropriate ($) dollars to establish a grant program to make funds available to teachers interested in designing and implementing innovative educational ideas and techniques.

a. The aim and purpose of this Section shall be to encourage creative and innovative teachers to experiment in order to better meet the educational needs of the students of the School District.

b. An Innovative Review Committee consisting of ( ) members appointed by the superintendent and ( ) members appointed by the Association shall be established no later than October 1, 19 . Said Committee shall receive, review, and approve or disapprove applications for grants. Applications for grants shall be submitted no later than and awards shall be announced no later than

c. No individual grant under the terms of this Section shall exceed ($) dollars.

d. The Innovative Review Committee shall establish its own rules of procedure.

8. Experimentation

a. The Association and the Board have a mutual responsibility to promote better instruction. The Board welcomes Association participation in all aspects of strengthening the education program to best meet the needs of the students, the schools, and the community.

b. The Association may participate in any aspect of an experimental or other project or program. Such participation shall include, but not be limited to, all phases of proposals, inquiry, study, research, deliberations, recommendations, implementation, evaluation and adoption. Any aspect of an experimental program which would affect the terms and conditions of teacher employment shall be negotiated with the Association before implementation.

C.8.a. is a general goal statement and should be rejected. It belongs in board policy, not in a labor contract.

With respect to any committee set up to review educational policy or programs, boards must be certain that input is not limited to the union. T & E requires broad participation by teaching staff members and, where appropriate, by the community. No contractual agreement should limit that participation.

Article XXVI, *Supervision of Student Teachers*

Consultation in the area of student teacher supervision seems desirable. Control of that program either by individual teachers or by the union does not. Almost no district in the State has negotiated on this topic.

The control over student teaching programs by the union through negotiated agreement is illegal. Certain provisions of this article do relate to teachers' terms and conditions of employment and are required subjects.

Given **Ridgefield Park,** it would appear that the following provisions are illegal: B.1., B.2., B.3., B.4., B.7., B.8., B.9.b., B.10., B.11., B.12.a. and b. and B.13. Those governing terms and conditions would seem to be: B.5., B.6., B.9.a. and B.12.c.

Some of the illegal matters are simply not terms and conditions of employment of the teacher (such as B.11., already covered by State law; it does not directly affect a teacher's working conditions). Others go to major educational policy-making (such

A. Mutual Responsibility

There is a continuing need for the recruitment of able teacher candidates and for the improvement of their preparation. Teachers enlisted to teach in any situation must be provided an education based on the best academic preparation supplemented with numerous planned experiences which can provide a working understanding of the students and classroom with which teachers must function effectively. Through the cooperation of the School District and the Association, the student teacher is provided with the setting to apply the professional knowledge and skills, theories, and philosophies which have been developed through college courses and related experiences. The Board and the Association accept the joint responsibility to prepare teachers and to provide student teachers with direct field experiences in the School District that are relevant to the teaching act.

B. Procedures

The following procedures shall govern the supervision of student teachers:

1. Teaching experience

No teacher shall have a student teacher under his supervision unless said teacher has had at least three years of teaching experience, with the most recent year in his present position.

2. Voluntary participation

Supervision by a teacher of a student teacher shall be voluntary. Each teacher shall be polled prior to any school year for willingness to participate in the student teaching program, but this shall not be construed as acceptance of any particular student teaching assignment.

3. Academic record of student teachers

Prior to the assignment of student teachers, the superintendent shall request each prospective student teacher to provide prospective cooperating teachers a transcript

of college courses and grades to date, statements relative to his academic proficiency from not fewer than ( ) of his college instructors, and a statement from his college assessing his potential strengths and weaknesses as exhibited in any previous field experiences or related training programs in classroom procedures or student relationships.

4. Consent

Each prospective cooperating teacher may accept or reject any student teacher. The teacher shall receive the request to take a student teacher at least ( ) weeks prior to the student's introduction to the classroom.

5. Released time

Each cooperating teacher shall be provided with released time with pay for attendance at regularly scheduled orientation and evaluation sessions sponsored by a student teacher's college or university.

6. Assignments

A cooperating teacher shall not involuntarily be given additional assignments outside of his regular responsibilities during the period he is supervising a student teacher.

7. Assuming responsibilities

The cooperating teacher and the student teacher shall assess the latter's readiness to assume teaching responsibilities and the cooperating teacher shall have authority for determining in what degrees those responsibilities shall be assumed.

8. Explanation of school personnel responsibilities

The superintendent, or his designee, shall arrange for other school personnel, including teachers, principal, remedial instructors, guidance counselors, curriculum coordinator, school psychologist, school nurse, and school social worker to assist the cooperating teacher in providing an understanding of their roles for the student teacher.

9. Materials and supplies

a. Upon request, a cooperating teacher shall be provided with a duplicate copy of all instructional materials and teacher manuals for use by the student teacher assigned.

b. Upon request a cooperating teacher shall be provided with those school records which he feels necessary for an understanding of the field experience by the student teacher. Upon completion of the field experience, the cooperating teacher shall arrange with the student teacher for the return of all such copies of student records.

10. Eligibility to teach

A student teacher shall be permitted to teach unsupervised only in areas for which he will be eligible for certification and only after the approval of the cooperating teacher.

11. Substitution

In accordance with State regulations, a student teacher can not be used as a substitute teacher.

12. Information for cooperating teachers

The superintendent or his designee, shall arrange for each cooperating teacher to be provided in writing with the following in accordance with college procedures:

a. Information about the student teacher, such as his background, college record, interests, talents, and special problems of which the cooperating teacher and school administrator should be aware.

b. Information about the college program and the college's expectations and requirements for student teachers.

c. Specific information about the date the student will begin the assignment, when he will complete the assignment, and holidays or special events which affect the student teacher's attendance.

13. Orientation

Prior to the commencement of the student teaching experience, the superintendent shall request that the prospective student teacher visit the School District for appropriate orientation by the superintendent or his designee and the cooperating teacher.

as B.7.). Some of these may be sound administrative practice; they are not, however, appropriate topics for negotiations.

Article XXVII, *Protection of Teachers, Students and Property*

Employee safety is a required topic for negotiations. A board must be very careful, however, to avoid vague language when making contractual commitments in this area. For example,

A. Unsafe and Hazardous Conditions

Teachers shall not be required to work under unsafe or hazardous conditions or to perform tasks which endanger their health, safety, or well-being.

the phrase "unsafe or hazardous conditions or to perform tasks which endanger health, safety or well-being" appears impossible to define precisely. Does the lack of air-conditioning endanger a teacher's well-being? The teacher may think so, and grievances arising from such a matter may result in arbitration awards that require the expenditure of vast sums of money.

On a proposal such as this, the union should be pressed to explain exactly what their specific concerns are. If these can be addressed through contract language, both parties may be satisfied to do so. If the union response is as vague as this clause, a board should not concede on this matter.

B. Procedure for Hazardous Conditions

When the Association makes a determination on a district-wide basis or a Faculty Council, as heretofore established in ARTICLE XXII, determines on a building basis that conditions are unsafe or hazardous for the health, safety, or well-being of students and teachers, the following conditions shall be established and exist until rescinded by the same body:

1. Meetings

In the event of any disorder or disruption in the regular school program, the Board, superintendent or affected building principals shall meet with the Association immediately on request of the Association to develop mutually acceptable programs to guarantee the safety of students, teachers, and property.

B.1. This clause, to the extent it does not deal with **teachers'** safety and personal property, is non-negotiable. PERC has ruled that a public employer can refuse to meet or negotiate with employee representatives **during an emergency situation,** even though employees' terms and conditions were affected. **Camden,** PERC No. 80-3. The Faculty Council clause is actually found in ARTICLE XVIII.

2. Association representatives

Representatives of the Association shall be allowed free access to buildings and teachers until conditions are no longer unsafe and hazardous.

3. Closings

The Association shall be consulted and be allowed to submit recommendations for consideration before any judgment is made to open or close school.

B.3. Other rulings, noted in the commentary accompanying ARTICLE XI, hold that the implementation of a management decision cannot be held up by a requirement to meet with employees or unions prior to the implementation. See **New Milford,** PERC No. 81-36.

4. Unauthorized visitors

During said unsafe and hazardous period, persons not employed by the School District shall not be allowed into any school without the knowledge and permission of the senior faculty representative in a building. This shall apply to students visiting a school other than where they are assigned.

B.4. This is an illegal delegation of managerial authority to a labor union.

C. Reasonable Force

As specified in 18A:6-1. a teacher may, within the scope of his employment, use and apply such amount of force as is reasonable and necessary: To quell a disturbance threatening physical injury to others; to obtain possession of weapons or other dangerous objects upon the person or within the control of the pupil; for the purpose of self-defense; and for the protection of persons or property.

D. Action before Board or Commissioner

Whenever any action is brought against a teacher before the Board or before the Commissioner of Education of the State of New Jersey which may affect his

employment or salary status, the Board of Education shall reimburse him for the cost of his defense if the action is dismissed or results in a final decision in favor of the teacher.

E. Assault

1. Legal assistance

The Board shall give full support including legal and other assistance for any assault upon the teacher while acting in the discharge of his duties.

2. Leave

When absence arises out of or from such assault or injury, the teacher shall be entitled to full salary and other benefits for the period of such absence but shall not forfeit any sick leave or personal leave.

3. Reimbursement for personal property damage

The Board shall reimburse teachers for the reasonable cost of any clothing or other personal property damaged or destroyed as a result of an assault suffered by a teacher while the teacher was acting in the discharge of his duties within the scope of his employment.

4. Medical

The Board shall reimburse a teacher for the cost of medical, surgical or hospital services incurred as the result of any injury sustained in the course of his employment.

5. Workmen's Compensation

Benefits derived under this or subsequent Agreements shall continue beyond the period of any Workmen's Compensation until the complete recovery of any teacher when absence arises out of or from assault or injury.

E.1. through 4. would be acceptable if they stipulated that such injury or legal proceeding was not determined to be the fault of the teacher.

F. Reporting Assaults

1. Principal or immediate superior

Teachers shall immediately report cases of assault suffered by them in connection with their employment to their principal or other immediate superior.

2. Superintendent

Such notification shall be immediately forwarded to the superintendent who shall comply with any reasonable request from the teacher for information in the possession of the superintendent relating to the incident or the persons involved, and shall act in appropriate ways as liaison between the teacher, the police, and the courts.

F.2. Access to confidential student records is not a term and condition of employment and, therefore, is an illegal topic.

G. Nurse

A school nurse shall be scheduled to be in each building for the entire school day as heretofore defined in ARTICLE VII. Section A of this Agreement.

Paragraph G. deals with a demand that requires the board to negotiate the scheduling of nurses. The board must insist that such a question is a matter for it to determine unilaterally. It represents a basic policy question and is not an item to be included in the terms and conditions of employment. **N.J.S.A.** 18A:40-1 **et seq.** prescribes the board's duties with respect to scheduling school nurses.

Article XXVIII, *Maintenance of Classroom Control and Discipline*

A. Definition of Responsibilities

A definition of the duties and responsibilites of all administrators, coordinators, supervisors and other personnel pertaining to student behavior shall be reduced to writing by the superintendent and presented to each teacher at the start of each school year.

B. Special Assistance

When, in the judgment of a teacher, a student requires the attention of the principal, assistant principal, a counselor, psychologist, physician or other special-

The board must retain the ultimate responsibility for the maintenance of control and discipline in the classroom. This is not an item that can be delegated to committees and it should not be negotiated.

The board may want to arrange for the use of a committee to provide suggestions and advice on this topic.

ist, he shall so inform his principal or immediate superior. The principal or immediate superior shall arrange as soon as possible for a conference among himself, the teacher, and an appropriate specialist to discuss the problem and to decide upon appropriate steps for its resolution.

C. Disruptive Students

When, in the judgment of a teacher, a student is by his behavior seriously disrupting the instructional program to the detriment of other students, the teacher may exclude the student from the classroom and refer him to the principal. In such cases the principal shall arrange as soon as possible, and under normal circumstances not later than the conclusion of the following school day, a conference among himself, the teacher and possibly an appropriate specialist to discuss the problem and to decide upon appropriate steps for its resolution. If the teacher in question objects to the proposed readmission of said student to the classroom, the matter shall, within twenty-four (24) hours after the decision by the principal, be referred to an ad hoc committee consisting of two (2) members appointed by the principal, two (2) members appointed by the teacher and a fifth (5th) member, who shall act as chairman, appointed by the other four (4) members. Said committee shall consult with the teacher, the principal, and other appropriate professional and/or lay persons, including the student's parents and/or guardians, and shall render a final decision in the matter within ( ) days after the conclusion of such consultation.

D. Student Behavior Committee

As soon as possible after the execution of this Agreement, a joint Student Behavior Committee (consisting of ( ) members appointed by the superintendent and ( ) members appointed by the Association) shall be established to develop appropriate guidelines to be used by teachers in handling disruptive students and to develop constructive programs for disruptive students whose presence in regular classes represent unusual problems for the regular learning process. Recommendations shall be submitted to the Instructional Council established pursuant to ARTICLE XXIII of this Agreement.

E. Building Procedures

An appropriate student disciplinary procedure shall be developed for each school building by its Liaison Committee (established pursuant to ARTICLE XXII of this Agreement). Said procedure shall be submitted to the building faculty for approval prior to its implementation.

F. Expanded Involvement

Nothing in this ARTICLE pertaining to the development of guidelines and procedures by the Student Behavior Committee or each school's Liaison Committee shall be interpreted to prevent these committees from consulting or adding to their number such additional teachers, professional advisors, parents, students, or other persons as the original members herein designated shall determine are desirable and appropriate for said purposes.

The Liaison Committee article is actually ARTICLE XVIII; the Instructional Council article is found at ARTICLE XIX.

Article XXIX, *Insurance Protection*

PERC has recently ruled that the choice of the insurance carrier is **not** a required topic for negotiations, as long as the level of benefits is substantially equivalent. **City of Newark,** PERC No. 82-5.

A. Full Health-Care Coverage

As of the beginning of the 19 - school year, the Board shall provide the health-care insurance protection designated below. The Board shall pay the full premium for each teacher and in cases where appropriate for family-plan insurance coverage.

1. Provisions of coverage

Provisions of the health-care insurance program shall be detailed in master policies and contracts agreed upon by the Board and the Association and shall include:

a. Hospital room and board and miscellaneous costs
b. Out-patient benefits
c. Laboratory fees, diagnostic expenses, and therapy treatments
d. Maternity costs
e. Surgical costs
f. Major-medical coverage

2. Carrier(s)

The health insurance carrier(s) shall be for the basic hospitalization and medical-surgical coverage, and for the major-medical coverage.

3. Special program(s) and carrier(s)

In addition to the above stated program, provision shall be made to provide the

More and more boards are negotiating on the cost of a benefit, rather than the benefit itself. For example, a board may agree to pay $50 per employee toward a prescription drug insurance plan; employees pay the rest of the insurance premium. This approach has numerous benefits:

- it prevents the board's automatic assumption of increases in insurance costs;
- it makes employees aware that

following health programs:

a. Prescription drug costs
b. Dental care
c. Optical care

The Board shall make full payment for the services listed above in this paragraph with a carrier(s) approved by the Association.

4. Complete annual coverage

For each teacher who remains in the employ of the Board for the full school year, the Board shall make payment of insurance premiums to provide insurance coverage for the full twelve (12) month period commencing September 1st and ending August 31st. When necessary, payment of premiums in behalf of the teacher shall be made retroactively or prospectively to assure uninterrupted participation and coverage.

B. Retirement Coverage

The Board shall provide for continuance of health-care insurance after retirement on the terms detailed in the master policies and contracts agreed upon by the Board and the Association.

C. Description to Teachers

The Board shall provide to each teacher a description of the health-care insurance coverage provided under this ARTICLE, no later than the beginning of the 19 - school year, which shall include a clear description of conditions and limits of coverage as listed above.

such benefits are substantial cost items;

- it may make the union interested in dropping a demand for a new insurance benefit;
- and, if the board agrees in subsequent negotiations to increase its share of the premium cost, it does so as a concession to the union, in exchange for which a concession should be obtained from the union.

D. Washington National Meetings

The superintendent shall permit representatives of the NJEA Washington National Income Protection Plan to meet with teachers for the purpose of enrolling new members and permitting present members to adjust their coverages at faculty meetings on a district or building level at the request of the Association. Requests for such meetings shall be made no more than once a year. It is agreed that the Washington National representative shall be permitted a minimum of twenty (20) minutes for the meeting.

If it is agreed that Washington National representatives may conduct meetings in the school, such meetings should not constitute one of the meetings provided elsewhere in the contract. There is no reason why it should constitute a "faculty meeting." Because Washington National is, in effect, a subsidiary of NEA, it is advisable to allow meetings only outside of the school day. Certainly, teachers should not be compensated for their voluntary attendance at this meeting.

Article XXX, *Personal and Academic Freedom*

A. Personal

The personal life of a teacher is not an appropriate concern or attention of the Board except as it may directly prevent the teacher from performing properly his assigned functions during the workday.

B. Citizenship

Teachers shall be entitled to full rights of citizenship, and no religious or political activities of any teacher or the lack thereof shall be grounds for any discipline or discrimination with respect to the professional employment of such teacher, providing said activities do not violate any local, state or federal law.

C. Academic

The Board and the Association agree that academic freedom is essential to the fulfillment of the purposes of the School District, and they acknowledge the fundamental need to protect teachers from any censorship or restraint which might interfere with their obligation to pursue truth in the performance of their teaching functions. Accordingly, they agree as follows:

While it should not be the board's intention to in any way deprive a teacher of any of the rights that an individual, or an individual in the capacity of a teacher, is provided as a matter of law, this type of clause in the contract would be an inappropriate matter for the purpose of collective negotiations.

It should be noted, however, that the provision of this demand contained in paragraph A, which states that the personal life of a teacher is not an appropriate concern of the board, is not a sufficiently clear statement. The board must have a definite interest in the personal life of a teacher as it might bear upon his or her suitability for teaching in the district.

1. Controversial material

Teachers shall be guaranteed full freedom in classroom presentations and discussions and may introduce politically, religiously or otherwise controversial material, provided only that said material is relevant to the course content.

2. Personal opinion

In performing their teaching functions, teachers shall be guaranteed full freedom in expressing their personal opinions on all matters relevant to the course content, provided, however, that when they do so they shall make every effort to indicate that they are speaking personally and not on behalf of the school, its administration, or the Board.

3. Censorship

Teachers shall not be censored or restrained in the performance of their teaching functions on the ground that the material discussed and/or opinions expressed are distasteful or embarrassing to those in authority in the school system or detrimental to school or school system public relations.

C.1. has been ruled to be a non-negotiable topic. **New Milford,** PERC No. 81-36. PERC did not address the constitutional questions that were raised. It is clear, however, that the constitutional freedoms of public employees can and have been protected outside the confines of the negotiated agreement.

In June, 1978, PERC ruled that teachers had no right to use students as messengers for union notices to parents. The decision would seem to apply to classroom discussion of the district labor disputes which are initiated by the teacher.

Article XXXI, *Books and Other Instructional Materials and Supplies*

A. Purpose

The Board shall allocate sufficient funds to provide for the purchase and/or replacement of textbooks, library books, instructional materials, supplies and equipment of sufficient quality and quantity to enable teachers to properly fulfill their teaching responsibilities. Specifically, the Board agrees that during the 19 - school year it shall provide the following allocations:

1. Per pupil costs

Funds for instructional materials and supplies shall be increased by not less than ($) dollar(s) per pupil for kindergarten through sixth grade and by not less than ($) dollar(s) per pupil for seventh grade through twelfth grade. Teachers purchasing materials and/or supplies with the advance approval of their principal or immediate superior shall be reimbursed upon submission of an appropriate receipt of purchase.

2. Home instruction

($) dollars per home instructor shall be used to purchase additional materials and supplies necessary in carrying out the instructional program. Such teachers shall be reimbursed up to said amount upon submission of an appropriate receipt of purchase.

3. Petty cash

A Petty Cash Fund shall be established in each building for use in purchasing incidental supplies for classroom instructional use. Expenditures from this fund shall be at the discretion of the teacher. The teacher shall be reimbursed upon presentation of a paid receipt for such expenditures to the principal, up to the following maximums.

a. Secondary schools— ($) dollars per teacher per month

b. Elementary schools— ($) dollars per teacher per month

A. Procedures for reimbursement for purchase of equipment and supplies are negotiable. But the decision as to how much money to make available for reimbursement, and what materials are needed to enable teachers to fulfill their responsibilities, is not negotiable.

B. Review and Evaluation of Books and Materials

1. Procedure

An improved procedure for reviewing and evaluating books and other instructional materials and supplies shall be instituted as soon as possible after the effective date of this Agreement. Said procedure shall provide, among other things, for the following:

a. A separate committee shall be established to make recommendations for each subject area;
b. School-based teachers shall constitute a majority of each such committee;
c. A subject supervisor shall not be able to override the recommendations of such committee;
d. The recommendations of each such committee shall be published and distributed to all schools; and
e. The distinction between books adopted for system-wide use and those for

B. It is not clear if PERC's ruling regarding Board-Teacher Liaison Committees will extend to such things as textbook selection committees. Certainly, B.1.c. is illegal; such committees cannot interfere whatsoever with management prerogatives.

which there is freedom for individual school and/or teacher choice shall clearly be defined.

2. Textbook Policy Committee

A Textbook Policy Committee (consisting of ( ) members appointed by the superintendent and ( ) members appointed by the Association) shall be established as soon as practicable to work out the mechanics of the aforesaid procedure so that it may be implemented by the beginning of the 19 - school year.

3. Pay and/or released time

Teachers serving on committees organized pursuant to this ARTICLE shall be provided with scheduled released time for this purpose and/or paid at the rate specfified in ARTICLE VII, Section A, paragraph 4 of this Agreement, for time spent in excess of the regularly scheduled in-school work year or workday.

C. Standards for Materials

C.1. The criteria for textbook selection listed here may be excellent but, because this clause does not relate to a term and condition of employment, it is a prohibited subject for negotiations.

1. Criteria

Instructional materials used in the School District shall reflect the multi-ethnic nature of our society and shall evidence a sensitivity to prejudice, to stereotypes, and to materials offensive to minority groups, as measured by the following criteria:

a. The suggestion, by omission or commission or by over- or under-emphasis that any racial, religious, or ethnic segment of the population is more or less capable or more or less important than any other in the mainstream of American life is to be avoided.

b. Opportunities for full, fair, accurate, and balanced treatment of minority groups should be utilized.

c. Recognition of minority groups by frequent placement in positions of leadership and centrality is necessary.

d. Both male and female members of minority groups should be depicted in situations which exhibit them as worthy examples of mature American citizens.

e. Attention should be given to the presentation of fully integrated human groupings and settings indicating equal status.

f. The group representation of individuals should be clearly apparent and the exclusive utilization of Caucasian facial features avoided in such representation where appropriate.

g. Broad-ranging, well-planned, and comprehensive materials which represent the contribution and achievements of minority groups in art, science, history, literature, and all other aspects of life and culture should be apparent in the design of materials.

h. Life in contemporary urban environments, as well as rural and suburban environments, should be pictured.

2. Materials Center

A materials center shall be maintained and charged with the responsibility of seeking multi-ethnic materials related to study units being taught. The center shall also develop and maintain a current list of resource centers and persons within and outside the community.

D. Testing

D. This is an illegal subject.

Achievement tests which are to be used by the School District for district, school, subject, or grade-wide purposes shall be approved in advance by the Instructional Council as heretofore established in ARTICLE XXIII of this Agreement. The Instructional Council shall consider the kind and type of test, the use to which a test is to be put, and the dissemination of the test results and any interpretation of those results.

Article XXXII, *Deduction from Salary*

A. is basically a restatement of law.

A. Association Payroll Dues Deduction

1. The Board agrees to deduct from the salaries of its teachers dues for the Association, the County Education Association, the New Jersey Education Association or the National Education Association, as said teachers individually and voluntarily authorize the Board to deduct. Such deductions shall be made in compliance with Chapter 233 N.J. Public Laws of 1969

(NJSA 52:14-15.9e) and under rules established by the State Department of Education. Said monies together with current records of any corrections shall be transmitted to such person as may from time to time be designated by the Association by the 15th of each month following the monthly pay period in which deductions were made. The person designated shall disburse such monies to the appropriate association or associations.

2. Each of the associations named above shall certify to the Board, in writing, the current rate of its membership dues. Any association which shall change the rate of its membership dues shall give the Board written notice prior to the effective date of such change.

B. Local, State and National Services

The Board agrees to deduct from teachers' salaries money for local, state and/or national association services and programs as said teachers individually and voluntarily authorize the Board to deduct and to transmit the monies promptly to such association or associations. Any teacher may have such deductions discontinued at any time upon sixty (60) days written notice to the Board and the appropriate association.

Article XXXIII, *Miscellaneous Provisions*

A. Nondiscrimination

The Board agrees that there shall be no discrimination, and that all practices, procedures, and policies of the school system shall clearly exemplify that there is no discrimination in the hiring, training, assignment, promotion, transfer, or discipline of teachers or in the application or administration of this Agreement on the basis of race, creed, color, religion, national origin, sex, domicile, marital status, age or sexual orientation.

A. The Appellate Division has held that grievances alleging racial discrimination are not arbitrable. **Teaneck** (June 28, 1982, docket number A-920-81T2). Such complaints may only be pursued through state or federal agencies.

B. Board Policy

This Agreement constitutes Board policy for the term of said Agreement, and the Board shall carry out the commitments contained herein and give them full force and effect as Board policy.

Paragraph B. is a superfluous paragraph that simply states that the board must carry out the commitments contained in the contract and gives them the effect of board policy. It is, of course, the intention of the board, as well as the association, to adhere to the provisions of the contract.

C. Savings Clause

Except as this agreement shall otherwise provide, all terms and conditions of employment applicable on the effective date of this Agreement to employees covered by this Agreement as established by the administrative procedures and practices in force on said date, shall continue to be so applicable during the terms of this agreement. Unless otherwise provided in this Agreement, nothing contained herein shall be interpreted and/or applied so as to eliminate, reduce, or otherwise detract from any teacher benefit existing prior to its effective date.

C. This is commonly called a "past practice" clause. Such a clause can be extremely detrimental to the board. If included in the contract, the result could be to freeze in place all existing "rights" and "benefits" provided anywhere in the district, whether through board policy, administrative regulation, district practice, or even the practices of individual administrators. The union seeking such a clause should be asked to specify which rights and benefits it seeks to guarantee by this clause. That question may result in a withdrawal of the demand, if the union is unable to describe any real concerns. On the other hand, the answer may convince the board of the danger of such a clause and result in a rejection of the proposal.

D. Separability

If any provision of this Agreement or any application of this Agreement to any employee or group of employees is held to be contrary to law, then such provision or application shall not be deemed valid and subsisting, except to the extent permitted by law, but all other provisions or applications shall continue in full force and effect.

D. This is a standard clause.

E. Compliance between Individual Contract and Master Agreement

Any individual contract or job description between the Board and an individual teacher, heretofore or hereafter executed, shall be subject to and consistent with the terms and conditions of this Agreement. If an individual contract or job description contains any language inconsistent with this Agreement, this Agreement shall be controlling.

This is a standard clause. The board has the authority to establish job descriptions unilaterally, but they must be in compliance with the terms of the negotiated agreement.

F. Printing Agreement

Copies of this Agreement shall be printed at the expense of the Board after agreement with the Association on format within thirty (30) days after the Agreement is signed. The Agreement shall be presented to all teachers now employed, hereafter employed, or considered for employment by the Board.

G. Notice

Whenever any notice is required to be given by either of the parties to this Agreement to the other, pursuant to the provision(s) of this Agreement, either party shall do so by telegram or registered letter at the following addresses:

1. If by Association, to Board at
   (address)
2. If by Board, to Association at
   (address)

Article XXXIV, *Duration of Agreement*

If the contract is going to exist for a particular period of time, but certain specific items, i.e., salaries, are to be negotiated during the course of the duration of the remainder of the contract, it should be specifically so stated in a reopener clause. There should be no vagueness whatsoever with respect to these matters. The Sample Agreement language on a reopener clause refers to "each annual **budget,**" which is totally inappropriate. If it stated "over salary" or "over economic benefits" it would be more acceptable. October 1 is too early for salary negotiations to occur in most districts.

A. Duration Period

This Agreement shall be effective as of **[Date of Implementation]** and shall continue in effect until **[Date of expiration]** ,

[NOTE—In Agreements which extend for more than one (1) year and negotiations over fiscal matters are to be conducted annually, insert the phrase:

subject to the Association's right to negotiate each annual budget with negotiations commencing no later than October 1 of each year, under procedures defined in ARTICLE II, and . . .]

subject to the Association's right to negotiate over a successor Agreement as provided in ARTICLE II. This Agreement shall not be extended orally, and it is expressly understood that it shall expire on the date indicated, unless it is extended in writing.

B. Status of Incorporation

Option 1 [For Incorporated Local Association]

In witness whereof the parties hereto have caused this Agreement to be signed by their respective presidents, attested by their respective secretaries, and their corporate seals to be placed hereon, all on the day and year first above written.

ASSOCIATION	BOARD OF EDUCATION
By	By
Its President	Its President
By	By
Its Secretary	Its Secretary

Option 2 [For Unincorporated Local Association]

In witness whereof the parties hereto have caused this Agreement to be signed by president and secretary and the Board has caused this Agreement to be signed by its president, attested by its secretary and its corporate seal to be placed hereon, all on the day and year first above written.

ASSOCIATION	BOARD OF EDUCATION
By	By
Its President	Its President
By	By
Its Secretary	Its Secretary

...., Representation Fee

A. Purpose of Fee

If an employee* does not become a member of the Association during any membership year (i.e., from September 1 to the following August 31), which is covered in whole or in part by this Agreement, said employee will be required to pay a representation fee to the Association for that membership year. The purpose of this fee will be to offset the employee's per capita cost of services rendered by the Association as majority representative.

*Use the appropriate term to designate all members included in the bargaining unit.

The first sentence suggests that, even if an agreement containing an agency shop provision were in effect for only a portion of the school year, a non-member employee would have to pay a representation fee for the entire school year.

In fact, use of the term "membership year", defined as September 1 to August 31, implies that a contract that is effective on July 1, 1982 and which contains an agency shop clause may be entitling the union to collect agency shop fees for the **previous school year.** Since the membership year extends to August 31, 1982, the contract with the agency shop clause covers that membership year "in part", and retroactive payment may be due.

To avoid this, boards should insist that representation fees be deducted **prospectively only,** beginning either with July 1 or September 1.

The second sentence describes the purpose of the fee, but also should cite, in the interests of thoroughness, those excluded union activities for which fee payment is not required, i.e., partisan, political activities or causes or ideological positions only incidentally related to terms and conditions of employment, and all benefits available only to members of the majority representative.

B. Amount of Fee

1. Notification

Prior to the beginning of each membership year, the Association will notify the Board, in writing, of the amount of the regular membership dues, initiation fees and assessments charged by the Association to its own members for that membership year. The representation fee to be paid by non-members will be equal to 85% of that amount.

PERC has determined that the size of the representation fee is a matter to be determined by the union, subject to appeal by the employee to the appropriate bodies (see below), and is therefore a non-negotiable topic. **Woodbridge,** PERC No. 81-131. The preferred language in the last sentence is "will not exceed 85% . . ." since the actual fee will vary among different unions according to what percent of their dues are used for collective bargaining purposes in any year covered by the representation fee clause.

The contract should also state: *The Association will certify to the Board prior to the start of each membership year that the amount of the representation fee to be assessed does not exceed 85% of dues, fees and assessments and does not include any amount of dues,*

fees and assessments that are expended 1) for partisan, political or ideological activities or causes that are only incidentally related to terms and conditions of employment or 2) applied toward the cost of benefits available only to members of the majority representative.

2. Legal Maximum

In order adequately to offset the per capita cost of services rendered by the Association as majority representative, the representation fee should be equal in amount to the regular membership dues, initiation fees and assessments charged by the Association to its own members, and the representation fee has been set at 85% of that amount solely because that is the maximum presently allowed by law. If the law is changed in this regard, the amount of the representation fee automatically will be increased to the maximum, said increase to become effective as of the beginning of the Association membership year immediately following the effective date of the change.

This clause contains a contingency provision, which would change the maximum amount of representation fee payment from 85% to some higher figure. It is recommended that school boards **not** agree to this language because it is based upon an anticipated change in the law. Such "if/then" clauses have been found to be illegal by PERC. **Hoboken**, PERC No. 82-7.

C. Deduction and Transmission of Fee

1. Notification

Once during each membership year covered in whole or in part by this agreement, the Association will submit to the Board a list of those employees who have not become members of the Association for the then current membership year. The Board will deduct from the salaries of such employees, (in accordance with paragraph 2 below), the full amount of the representation fee and promptly will transmit the amount so deducted to the Association.

C. 477, P.L. 1979, requires that no representation fee deduction can be made unless the majority representative first establishes a demand and return system. This system provides that a non-union member may appeal the amount of the representation fee assessed against him/her. The union must provide the non-member with a full and fair hearing, and has the burden of proof in justifying the amount of the fee. Non-members who are dissatisfied with the outcome of their appeal at the local level may appeal further to a three-member Tripartite State Board. Language should be negotiated requiring the majority representative to provide evidence of the existence of this system to the public employer and to all non-union members, before any deductions are made.

2. Payroll Deduction Schedule

The Board will deduct the representation fee in equal installments, as nearly as possible, from the paychecks paid to each employee on the aforesaid list during the remainder of the membership year in question. The deductions will begin with the first paycheck paid;

(a) 10 days after receipt of the aforesaid list by the Board; or

(b) 30 days after the employee begins his or her employment in a bargaining unit position, unless the employee previously served in a bargaining unit position and continued in the employ of the Board in a non-bargaining unit position or was on layoff, in which event the deductions will begin with the first paycheck paid 10 days after the resumption of the employee's employment in a bargaining unit position, whichever is later.

The law establishes a minimum period that must elapse before non-union employees who enter the bargaining unit for the first time or who re-enter the bargaining unit must pay a representation fee. School boards could seek to negotiate periods longer than the thirty and ten day minimum periods stated in this section.

3. Termination of Employment

If an employee who is required to pay a representation fee terminates his or her employment with the Board before the Association has received the full amount of the representation fee to which it is entitled under this Article, the Board will

This should be agreed to only if the board must deduct the unpaid portion of the union dues from the last paycheck paid to union members.

deduct the unpaid portion of the fee from the last paycheck paid to said employee during the membership year in question.

4. Mechanics

Except as otherwise provided in this Article, the mechanics for the deduction of representation fees and the transmission of such fees to the Association will, as nearly as possible, be the same as those used for the deduction and transmission of regular membership dues to the Association.

5. Changes

The Association will notify the Board in writing, of any changes in the list provided for in paragraph 1 above and/or the amount of the representation fee, and such changes will be reflected in any deductions made more than 10 days after the Board received said notice.

6. New Employees

On or about the last day of each month, beginning with the month this agreement becomes effective, the Board will submit to the Association, a list of all employees who began their employment in a bargaining unit position during the preceding 30 day period. The list will include names, job titles and dates of employment for all such employees.

D. Indemnification and Save Harmless Provision

1. Liability

The Association agrees to indemnify and hold the Board harmless against any liability which may arise by reason of any action taken by the Board in complying with the provisions of this Article, provided that:

(a) the Board gives the Association timely notice in writing of any claim, demand, suit or other form of liability in regard to which it will seek to implement this paragraph; and

(b) if the Association so requests in writing, the Board will surrender to it full responsibility for the defense of such claim, demand, suit or other form of liability and will cooperate fully with the Association in gathering evidence, securing witnesses, and in all other aspects of said defense.

2. Exception

It is expressly understood that paragraph 1 above will not apply to any claim, demand, suit or other form of liability which may arise as a result of any type of willful misconduct by the Board or the Board's imperfect execution of the obligations imposed upon it by this Article.

during the membership year in question.

This "Indemnification" language has been offered by teacher unions in some districts as an assurance that the board will not incur any cost if sued by an irate employee forced to pay a representation fee. The language, however, seems to lack the clarity the board should demand; e.g., the meaning of paragraph 2 is ambiguous enough to make the entire provision meaningless. Additionally, the clause asks the board to surrender all responsibility for its own defense to the association, a delegation that most boards would find unacceptable.

The board should insist that it be fully indemnified against financial liability arising out of, or by reason of, any action taken or not taken in conformance with an agency shop clause. Such a clause might read as follows:

The union shall indemnify and hold the employer harmless against any and all claims, demands, suits and other forms of liability, including liability for reasonable counsel fees and other legal costs and expenses, that may arise out of, or by reason of any action taken or not taken by the employer in conformance with this provision.

Ridgefield Park Education Association v. Ridgefield Park Board of Education

Docket No. A-138, August 2, 1978
Before Supreme Court of New Jersey

The opinion of the Court was delivered by PASHMAN, J.

At issue herein is whether the 1974 amendments to the New Jersey Employer-Employee Relations Act, *L.* 1968, *c.* 303, as amended by *L.* 1974, *c.* 123, *N.J.S.A.* 34:13A-1 *et seq.* (the Act), created a class of permissively negotiable matters which, while not qualifying as mandatorily negotiable terms and conditions of employment, are nevertheless negotiable on a voluntary basis. The Public Employment Relations Commission (PERC) has concluded that such a permissive category indeed exists. *See In re Bd. of Ed. of the Borough of Fair Lawn,* PERC No. 76-7, 1 *NJPER* 47, 48 n.9 (1975). PERC has also determined that disputes involving provisions of collectively negotiated agreements covering permissive matters may be resolved by binding arbitration if the matter is otherwise arbitrable, as is the case with those covering mandatorily negotiable matters. *In re Ridgefield Park Bd. of Ed.,* PERC No. 78-9, 3 *NJPER* 319, 320 (1977); *In re Bd. of Ed. of City of Trenton,* PERC No. 77-24, 2 *NJPER* 351, 352 (1976); *In re Bridgewater-Raritan Regional Bd. of Ed.,* PERC No. 77-21, 3 NJPER 23, 25 (1976). The public employer herein contends that with respect to the issue of negotiability there are but two types of subjects — those as to which collective negotiation is mandatory and those as to which it is unlawful. The former category is comprised of those subjects which pertain to the terms and conditions of public employment while the latter includes all other subjects. It claims that any provision of a negotiated agreement which concerns subjects in the latter category is *ultra vires* and thus unenforceable.

The facts of this case are not in dispute. The collective agreement between plaintiff Association, the majority representative of the Board's teaching employees, and the defendant Board, which ran until July 1, 1977, defined a grievance as follows:

> "The term, 'grievance,' means a complaint by an employee, group of employees, or the Association, that, as to him, there has been an inequitable, improper, or unjust application, interpretation, or violation of a policy, agreement, or administrative decision."

The contract provided for binding arbitration as the terminal step in the grievance process:

> "In the event the aggrieved party is dissatisfied with the determination of the Board he shall have the right to request arbitration pursuant to rules and regulations established by the Public Employment Relations Commission under the provisions of Chapter 303, Public Laws of 1968. The findings of the arbitrator shall be binding on all parties."

The collective agreement included a provision governing the subject of teacher transfers and reassignments.

ARTICLE XIV - Voluntary and Involuntary Transfers and Reassignments -

A. Employees who desire a change in grade and/or subject assignment or who desire to transfer to another building may file a written statement(s) of such desire with the superintendent. Such statement(s) shall include the grade and/or subject to which the employee desires to be assigned and the school or schools to which he desires to be transferred, in order of preference.

As soon as practicable, and in no case later than June 1, the superintendent shall post in each school and deliver to the Association a system-wide schedule showing the names of all employees who have been reassigned or transferred and the nature of such reassignment or transfer.

B. In the determination of requests for voluntary reassignments and/or transfers, the wishes of the individual employee shall be honored, upon the recommendation of the superintendent and approval of the Board, to the extent that the transfer or reassignment does not conflict with the instructional requirements and best interests of the school system.

C. Notice of an involuntary transfer or reassignment shall be given to the employee as far in advance as practicable. In the case of teachers, except in an emergency situation, notice shall be given not later than April 30.

During the 1975-1976 and 1976-1977 school years certain teachers were involuntarily reassigned to teach courses or grades which they did not wish to teach, were refused a desired transfer to a different school, or were involuntarily transferred to another school. The Association filed grievances on behalf of these teachers. The Board denied all of them. The Association then sought to have these grievances resolved by binding arbitration, pursuant to the contractual arbitration clause. See *ante* at (slip opinion at 3). The Board contended that the grievances pertained to matters outside the legal scope of negotiations, and hence were not arbitrable.

The Association instituted this action under *N.J.S.A.* 2A:24-1 and 3 seeking an order from the Chancery Division compelling the Board to submit the grievances involving transfers and reassignments to binding arbitration. The Board made a cross-application for an order enjoining the arbitrations. In the proceedings before the Chancery Judge, the Board admitted that it had a contractual duty to arbitrate the disputes herein, but submitted that the real issue was the legality of arbitrating these matters. The Board's request that the case be transferred to PERC for a decision on the negotiability of the issues involved in the grievances was denied. On March 4, 1977 the Chancery Division rendered an oral opinion adverse to the Board. On March 22, 1977 the Chancery judge issued a judgment and order that the parties proceed to arbitration.

On March 2, 1977 the Board had filed a Petition for Scope-of-Negotiations Determination with PERC pursuant to *N.J.S.A.* 34:13A-5.4(d). It sought an order from PERC enjoining arbitration on both an interim basis and on a permanent basis. The interim request was denied in an interlocutory decision on April 5, 1977. PERC No. 77-45, 3 *NJPER* 150. This denial was based on PERC's determination that its decisions in *In re Bridgewater-Raritan Regional Bd. of Ed., supra,* and *In re Bd. of Ed. of City of Trenton, supra,* mandated a conclusion that the matters in issue, though permissive and not mandatorily negotiable, would be arbitrable if otherwise within the contractual arbitration clause.

Meanwhile, the Board obtained a temporary stay of the enforcement of the Chancery judgment in order to enable it to apply for a stay from the Appellate Division. On April 20, 1977 a single judge of the Appellate Division denied the motion for a stay. However, arbitration had not commenced as of July 7, 1977, when a full panel of the Appellate Division granted the Board's motion for a stay.

PERC gave the matter a full hearing and issued its scope determination on August 17, 1977. PERC No. 78-9, 3 *NJPER* 319 (1977). PERC reaffirmed its earlier holding in *In re Bridgewater-Raritan Bd. of Ed., supra,* 3 *NJPER* at 25, that in enacting *L.* 1974, *c.* 123, the Legislature reacted to the restrictiveness of the standards enunciated by this Court in *Dunellen Bd. of Ed. v. Dunellen Ed. Ass'n.* 64 *NJ.* 17 (1973), concerning negotiability and arbitrability in the public sector. PERC observed that the critical factor in the Court's *Dunellen* nolding was the *L.* 1968, *c.* 303 version of *N.J.S.A.* 34:13A-8.1, which provided, in effect, that negotiated agreements could not "annul or modify any statute or

statutes of this State." Thus, great significance was ascribed to *L.* 1974, *c.* 123, §6, which amended that statute effectively to provide that no negotiated agreement could "annul or modify any *pension* statute or statutes of this State." PERC also cited pertinent language from the 1974 amendments to *N.J.S.A.* 34:13A-5.3, which established the primacy of the negotiated grievance procedures in dispute resolution:

"Notwithstanding any procedures for the resolution of disputes, controversies or grievances established by any other statute, grievance procedures established by agreement between the public employer and the representative organization *shall be utilized* for any dispute covered by the terms of such agreement." (emphasis added)

PERC concluded that one of the purposes of *L.* 1974, *c.* 123 was to expand the scope of arbitrable issues. So long as no specific statutes are violated and no overriding public policy contravened, PERC was of the opinion that both negotiation and arbitration of permissive matters are acceptable. In support of this view, PERC cited *In re Bd. of Ed. of City of Trenton, supra,* 2 *NJPER* at 352, where it had found that involuntary employee transfers were not precluded from negotiation by statute and were thus a permissible subject of negotiation, and *In re Bd. of Ed. of the Borough of Verona,* PERC No. 77-42, 3 *NJPER* 80 (1977), where it had found that a Board's decision to replace a teacher's non-teaching duty period with a classroom teaching period was also a permissibly negotiable subject. PERC held that the disputes herein were permissively negotiable and thus arbitrable if otherwise arbitrable under the agreement. 3 *NJPER* at 320-321.

The Board filed a motion for direct certification on July 18, 1977. On July 27, 1977 the Association appealed to this Court to vacate the interlocutory stay issued by the Appellate Division. In the alternative the Association requested direct certification. We directly certified this case while it was pending unheard in the Appellate Division, *N.J.* (1977), and consolidated it with the pending appeal in *Englewood Teachers Ass'n v. Englewood Bd. of Ed., N.J.* (1978).

I

Before we address the merits, some guidelines regarding proper procedure in these cases should be set. Under our existing legislative scheme it may be necessary to go to both PERC and the Superior Court in order to completely resolve a disagreement concerning the arbitrability of a particular dispute. When one party claims that a given dispute is arbitrable under the contract and the other party resists arbitration, the party desiring arbitration should seek an order from the Superior Court compelling arbitration. See *N.J.S.A.* 2A:24-1 *et seq.* Where the trial judge determines that the real controversy is not one of contractual arbitrability, but rather concerns the propriety of the parties negotiating and agreeing on the item in dispute, he should refrain from passing on the merits of that issue.

PERC has primary jurisdiction to make a determination on the merits of the question of whether the subject matter of a particular dispute is within the scope of collective negotiations. *N.J.S.A.* 34:13A-5.4(d). *See State v. State Supervisory Employees Ass'n, N.J.* (1978); *Bd. of Ed. of Plainfield v. Plainfield Ed. Ass'n,* 144 *N.J.Super.* 521, 524-526 (App.Div. 1976); *Newark Teachers Union v. Bd. of Ed. of Newark,* 149 *N.J.Super.* 367, 374-375 (Ch.Div. 1977). However, the reach of this decision is limited. PERC discussed this point in *In re Hillside Bd. of Ed.,* PERC No. 76-11, 1 *NJPER* 55, 57 (1975):

"The Commission is addressing the abstract issue: is the subject matter in dispute within the scope of collective negotiations. Whether that subject is within the arbitration clause of the agreement, whether the facts are as alleged by the grievant, whether the contract provides a defense for the employer's alleged action, or even whether there is a valid arbitration clause in the agreement, or any other question which might be raised is not to be determined by the Commission in a scope proceeding. Those are questions appropriate for determination by an arbitrator and/or the courts."

Of course, where the existence of a contractual obligation to arbitrate is not contested, the parties need only go to PERC for a ruling on whether the subject matter of the dispute whose grievability is contested is within the scope of collective negotiations. PERC can then afford complete relief. If PERC concludes that the dispute is within the legal scope of negotiability and agreement between the employer and employees, the matter may proceed to arbitration. Where PERC concludes that a particular dispute is not within the scope of collective negotiations, and thus not arbitrable, it must issue an injunction permanently restraining arbitration. *See Bd. of Ed. of Englewood v. Englewood Teachers,* 135 *N.J.Super.* 120, 124 (App. Div. 1975), 1 NJPER 34. Moreover, we agree with the decision in *Bd. of Ed. of Englewood v. Englewood Teachers, supra,* that PERC is empowered to order that arbitration proceedings be suspended during the pendency of a scope-of-negotiations proceeding. Where necessary, PERC may go to the Appellate Division to seek an appropriate order to compel compliance with its orders in scope proceedings. *N.J.S.A.* 34:13A-5.4(f). Where a party disagrees with PERC's determination on the scope question, an appeal to the Appellate Division is expressly authorized. *N.J.S.A.* 34:13A-5.4(d).

We agree with PERC that contract interpretation is a question for judicial resolution. Thus, where a party resists an attempt to have a dispute arbitrated, it may go to the Superior Court for a ruling on the issue of its contractual obligation to arbitrate. However, the issue of contractual arbitrability may not be reached if the threshold issue of whether the subject matter of the grievance is within the scope of collective negotiations is contested. In that event, a ruling on that issue must be obtained from PERC. Thus, the preferable procedure in the instant case would have been for PERC to have rendered its scope determination before the issue of contractual arbitrability was addressed. Where an item is within the scope of collective negotiations, and a court determines that the agreement contains a valid arbitration clause, the matter must proceed to arbitration.

The arbitrator's function is to comply with the authority the parties have given him in the agreement. Assuming that the item is a proper subject of arbitration under the agreement, the arbitrator will reach the merits and render an award. If the losing party is unwilling to abide by the award, the prevailing party may seek to have the award confirmed by the Superior Court. *See N.J.S.A.* 2A:24-7; *Amal. Transit Wkrs. Local 140 v. Mercer Cty. Impr. Authority, N.J.* (1978).

Thus, PERC, the Superior Court and the arbitrator have distinct functions under our present scheme. To avoid needless procedural delays, we commend these guidelines to the bar.

II

By way of preliminary observation, we note that PERC was correct in concluding that under the test set forth in *Dunellen Ed. Assn. v. Dunellen Bd. of Ed.,* 64 *N.J.* 17, 25 (1973) and *Englewood Teachers Ass'n v. Englewood Bd. of Ed.,* 64 *N.J.* 1, 7 (1973), and today reaffirmed in *State v. State Supervisory Employees Ass'n, supra, N.J.* at (slip opinion at 12), teacher transfers and reassignments are not mandatorily negotiable terms and conditions of employment. That test defined negotiable terms and conditions of employment as those matters which intimately and directly affect the work and welfare of public employees and on which negotiated agreement would not significantly interfere with the exercise of inherent management prerogatives pertaining to the determination of governmental policy. *State v. State Supervisory Employees Ass'n, supra, N.J.* at (slip opinion at 12). The selection of the school in which a teacher works or the grade and subjects which he teaches undoubtedly have an appreciable effect on his welfare. However, even assuming that this effect could be considered direct and intimate, we find that this aspect of the transfer decision is insignificant in comparison to its relationship to the Board's managerial duty to deploy personnel in the manner which it considers most likely to promote the overall goal of providing all students with a thorough and

efficient education. Thus, we find that the issue of teacher transfers is one on which negotiated agreement would significantly interfere with a public employer's discharge of inherent managerial responsibilities. Accordingly, it is not a matter as to which collective negotiation is mandatory.

III

To bolster its conclusion that *L.* 1974, *c.* 123 contemplated an expansion of negotiation into a permissive category of items, PERC makes several arguments. First, it points out that in passing *L.* 1974, *c.* 124, enacted on the same day as Chapter 123, which created a Public Employer-Employee Relations Study Commission, the Legislature implicity assumed that there were already three categories of negotiating subjects.[1/] That statute directs the Commission, *inter alia,* to study

"Whether or not it is necessary and desirable either to define the phrase "terms and conditions of employment" as used in section 7 of the 1968 act [*N.J.S.A.* 34:13A-5.3] *and, in so doing, specify what subjects are mandatory, voluntary or illegal within the scope of bargaining or of grievance arbitration,* or to require that procedural guidelines be established for determining the same."

[*L.* 1974, *c.* 124, §3(c) (emphasis added)]

We do not accord the great degree of significance to this legislative action that PERC does. The mandate of the Study Commission was not necessarily limited to examining the law as it existed. Moreover, it is abundantly clear that a proposal to study and suggest changes is not given the same close scrutiny by legislators as is one which has the force of law. Thus, even legislators vehemently opposed to permissive negotiations may have voted in favor of setting up the Study Commission. Finally, the Legislature was well aware of the fact that we had held in *Burlington Cty. Fac. Assoc. v. Bd. of Trustees, supra,* that no expansive view of negotiations would be implied from ambiguous legislation. We specifically required "clear and distinct phraseology" for a change of such magnitude.

PERC also alludes to *L.* 1977, *c.* 85, *N.J.S.A.* 34:13A-14 to 21, which provides for compulsory and binding "interest" arbitration of impasses in contract negotiations between local, county and state governments and policemen and firemen. This statute expressly contemplates a permissive category of negotiation:

"Factfindings shall be limited to those issues that are within the required scope of negotiations unless the parties to the factfinding agree to factfinding on permissive subjects of negotiation.

[*N.J.S.A.* 34:13A-16b]

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

[*N.J.S.A.* 34:13A-16f(4)]

Of course this enactment is not now before us. Neither is it of great importance to our interpretation of *L.* 1974, c. 123. It represents a specific decision on the part of the Legislature to authorize permissive negotiations with respect to police and firemen. Moreover, if it were so clear that *L.* 1974, *c.* 123 had created such a permissive area, we doubt that the Legislature would have had to provide carefully for a permissive category in *L.* 1977, *c.* 85. This recent statute covering a small percentage of all public employees may not be accorded dispositive effect in interpreting a more general statute passed three years earlier. We intimate no view as to the validity of the authorization for binding arbitration of "permissive subjects of negotiation" in *N.J.S.A.* 34:13A-16f(4).

PERC also cites federal precedents under the Labor Management Relations Act, 29 *U.S.C.* §141 *et seq.* Illustrative of these cases is *NLRB v. Wooster Div. of Borg-Warner Corp.,* 356 *U.S.* 342, 349, 78 *S.Ct.* 718, 2 *L.Ed.* 2d 823, 828 (1958), where the United States Supreme Court held that under 29 *U.S.C.* §158(a)(5) and §158(d), collective bargaining was mandatory only as to terms and conditions of employment. As to other matters, each party was "free to bargain or not to bargain, and to agree to or not to agree." Of course, *Borg-Warner* dealt with the private sphere, and is therefore inapposite here.[2/] In *Lullo v. Intern. Assoc. of Fire Fighters,* 55 *N.J.* 409, 436-441 (1970), we pointed out the significant differences between *N.J.S.A.* 34:13A-5.3 which grants a right to "collective negotiations" and 29 *U.S.C.* §157 which grants a right to "collective bargaining."

"It is crystal clear that in using the term 'collective negotiations' the Legislature intended to recognize inherent limitations on the bargaining power of public employer and employee.

* * *

"And undoubtedly they were conscious also that public agencies, departments, etc., cannot abdicate or bargain away their continuing legislative or executive obligations or discretion. Consequently, absent some further changes in pertinent statutes public employers may not be able to make binding contractual commitments relating to certain subjects.

* * *

"Finally, it signified an effort to make public employers and employees realize that the process of collective bargaining as understood in the private employment sector cannot be transplanted into the public service."

[55 *N.J.* at 440]

Thus, federal precedents concerning the scope of collective bargaining in the private sector are of little value in determining the permissible scope of negotiability in public employment labor relations in New Jersey.

It is also contended that *N.J.S.A.* 34:13A-5.3, as amended by *L.* 1974, *c.* 123, §4, see *ante* at (slip opinion at 7), which mandates that grievance procedures negotiated by the parties supersede any mechanisms for the resolution of disputes provided by any statute, indicates that a category of permissively negotiable matters is now contemplated by the Act. PERC placed particular emphasis on the fact that the Legislature used the words "disputes and controversies" in the amended version of *N.J.S.A.* 34:13A-5.3, since they are the very words found in *N.J.S.A.* 18A:6-9 which gives the Commissioner of Education jurisdiction to resolve disagreements arising under the education laws. PERC contends thta *Dunellen, supra,* 64 *N.J.* at 30-31, relied upon these words in *N.J.S.A.* 18A:6-9 to disfinguish those matters which could be arbitrated from those matters which could not. Thus, the 1974 amendment is viewed by PERC as modifying the narrow scope of arbitration permitted by the Act which we found in *Dunellen.*

PERC errs in two respects. First, standing alone, *N.J.S.A.* 34:13A-5.3 is ineffective as a vehicle for expanding the permissible scope of arbitration. To be arbitrable, a matter must qualify as one on which the parties may negotiate. A matter which is not legally negotiable in the first place cannot be arbitrable. We have today held that the scope of grievability mandated by *N.J.S.A.* 34:13A-5.3 is limited to matters which affect the terms and conditions of public employment as that concept has been defined in our cases. *Tp. of West Windsor v. PERC, N.J.* (1978). Thus, only insofar as *N.J.S.A.* 34:13A-8.1 is viewed as increasing the legal scope of collective negotiation may *N.J.S.A.* 34:13A-5.3 be viewed as expanding the permissible coverage of contractual procedures for the resolution of grievances. Second, PERC and the Association both err in concluding that the *Dunellen* Trilogy was wholly based on statutory considerations. While our decisions in *Dunellen* and its companion cases were primarily based on the statutory language of *L.* 1968, *c.* 303 and the legislative intent underlying that enactment, we were not oblivious to more fundamental, constitutionally-rooted considerations of policy. As we observed in *Dunellen*:

"[*T*]*he Legislature,* in adopting the very general terms of *L.* 1968, *c.* 303, *did not contemplate that the local boards of education would or could* abdicate their management

responsibilities for the local educational policies or that the State educational authorities would or could abdicate their management responsibilities for the State educational policies. *See Lullo v. Intern. Assoc. of Fire Fighters, supra,* 55 *N.J.* at 440; *Bd. of Ed., Tp. of Rockaway v. Rockaway Tp. Ed. Ass'n,* 120 *N.J. Super* 564, 569 (1972); *cf. Porcelli v. Titus,* 108 *N.J. Super.* 301, 312 (1969), certif. denied, 55 *N.J.* 310 (1970)."

[64 *N.J.* at 25 (emphasis added)]

Moreover, full application of PERC's view that everything which in any way affects the terms and conditions of public employment is negotiable at the option of the parties, unless such negotiation on a given topic is precluded by a specific statute, would be inconsistent with a successor statute in the education area. The Legislature has determined that community involvement in educational decisions, insuring some democratic control over such matters, is a significant part of a thorough and efficient system of education in this state. In passing the Public School Education Act of 1975, *L.* 1975, *c.* 212, now codified as *N.J.S.A.* 18A:7A-1 *et seq.*, it gave that assumption the force of law:

"(a) The Legislature finds and declares that:

* * *

"(5) In order to encourage citizen involvement in educational matters, New Jersey should provide for free public schools in a manner which guarantees and encourages local participation consistent with the goal of a thorough and efficient system serving all of the children of the State:

"(6) A thorough and efficient system of education includes local school districts in which decisions pertaining to the hiring and dismissal of personnel, the curriculum of the schools, the establishment of district budgets, and other essentially local questions are made democratically with a maximum of citizen involvement and self-determination and are consistent with Statewide goals, guidelines and standards;"

* * *

[*N.J.S.A.* 18A:7A-2]

Literal application of PERC's interpretation of *L.* 1974, *c.* 123 would result in the emasculation of the intent of this later act. There would be little room for community involvement if agreements concerning educational policy matter could be negotiated behind closed doors and disputes concerning that agreement settled by an arbitrator who lacks public accountability. We simply find insufficient evidence of a legislative intent to permit this result to justify interpreting *N.J.S.A.* 34:13A-5.3 and 8.1 in the manner suggested by PERC.

Our holding herein is that *L.* 1974, *c.* 123 did not clearly indicate a legislative intent to create a permissive category of negotiations. Thus, we reaffirm our holding in *Dunellen* that there are but two categories of subjects in public employment negotiation — mandatorily negotiable terms and conditions of employment and non-negotiable matters of governmental policy. Since the subject of teacher transfers is not within the scope of mandatory negotiability, the Board acted in excess of its authority in agreeing to a provision of its collective agreement with the Association which would limit its managerial prerogatives on the subject. Accordingly, the contractual provision purporting to do so is invalid and may not be enforced against the Board in any arbitration proceeding. While a policy such as that expressed in the relevant contractual provision may be a salutary one, adherence to that policy is not something to which the Board could obligate itself in a collective agreement providing for binding arbitration.

IV

We are hesitant to find the existence of a permissive category of negotiable matters in public employment labor relations to be implicit in the amended act because such a classification might create serious problems in our democratic system. These potential difficulties should be carefully considered by the Legislature before taking any action expressly to authorize permissive negotiability with respect to all public employees. It is quite clear from our reading of the legislative history of *L.* 1974, *c.* 123 that the lawmakers did not purport to sanction the delegation of governmental policy decisions on every matter in any way touching upon the terms and conditions of public employment to the sphere of collective negotiation. We deem it appropriate for this Court to comment on these difficult questions concerning the permissibility of delegating governmental powers to private groups or of entrusting the formulation of governmental policy to an arena where the democratic voice of the electorate cannot be heard.

In *Tp. of West Windsor v. PERC, N.J.* (1978), we indicated that public employees' special access to government applies only where the government is acting in the capacity of an employer, and not where it is acting in its capacity as public policymaker. A private employer may bargain away as much or as little of its managerial control as it likes. *Tp. of West Windsor, supra.* However, the very foundation of representative democracy would be endangered if decisions on significant matters of governmental policy were left to the process of collective negotiation, where citizen participation is precluded. This Court would be most reluctant to sanction collective agreement on matters which are essentially managerial in nature, because the true managers are the people. Our democratic system demands that governmental bodies retain their accountability to the citizenry.

Our concern is with the very function of government. Both state and federal doctrines of substantive due process prohibit delegations of governmental policy-making power to private groups where a serious potential for self-serving action is created thereby. *Washington ex rel. Seattle Title Trust Co. v. Roberge,* 278 *U.S.* 116, 121-122 (1938); *Humane Soc. of U.S. v. N.J. State Fish and Game Comm.,* 70 *N.J.*565, 578-579 (1976); *Group Health Insurance v. Howell,* 40 *N.J.* 436, 446-447 (1963), after remand 43 *N.J.* 104 (1964). *See also Ind. Elec. Ass'n of N.J. v. N.J. Bd. of Exam.,* 54 *N.J.* 466, 482-483 (1969). To be constitutionally suitable, a delegation must be narrowly limited, reasonable, and surrounded with stringent safeguards to protect against the possibility of arbitrary or self-serving action detrimental to third parties or the public good generally. *Amal. Transit Wkrs. Local 140 v. Mercer Cty. Impr. Authority, supra; Group Health Insurance v. Howell, supra,* 40 *N.J.* at 445; *N.J. Dept. of Trans. v. Brzoska,* 139 *N.J Super.* 510, 513 (App. Div. 1976).

In *Howell* this Court twice invalidated a statute which had the effect of requiring prior approval by the New Jersey Medical Society of any medical services corporation before it could be licensed by the Commissioner of Insurance. Not only was there a delegation of governmental policy-making power to private persons, but it was fraught with the opportunity of self-serving action since the only existing medical services corporation, Blue Cross and Blue Shield, had been organized by the Medical Society itself and were substantially under its control.

"We think that such a power to restrict, or indeed, to prohibit, competition in a field so vitally connected with the public welfare may not constitutionally be placed in the hands of a primate organization such as the Medical Society, which has an interest in promoting the welfare of the only existing medical service corporation in this State. Such delegation by the Legislature of its licensing power violates *N.J. Const.* 1947, *Art.* IV, §1, *par.* 1, which provides: The legislative power shall be vested in a Senate and General Assembly.

[40 *N.J.* at 447 (citation omitted)]

"The relationship of section 2 and section 3 in the statutory scheme and in practical effect is too close to be overlooked. When read together they show clearly an attempt to delegate to private persons the power to decide whether a

particular medical service corporation shall be authorized to transact business in any county. The delegation does not relate to competency of medical services to be rendered or to standards of medical performance. Rather, it is in effect a grant of power to approve or disapprove the services and fees which willing physicians and willing subscribers wish to agree to.

"For the above reasons we conclude that the challenged part of section 3 of the Medical Service Corporations Law (*N.J.S.A.* 17:48A-3) violates *Art.* I, *par.* 1, and *Art.* IV, §1, *par.* 1 of the New Jersey *Constitution* of 1947 and the Fourteenth Amendment of the Federal *Constitution.*"

[43 *N.J.* at 113]

Since teachers possess substantial expertise in the education area, negotiations between teachers' associations and boards of education present a situation where an agreement which effectively determines governmental policy on various issues is especially likely. The impropriety of permitting such educational policy matters to be determined in the forum of collective negotiation — just as if they pertained to the terms and conditions of employment — is every bit as strong as it is in other areas of public employment. The interests of teachers do not always coincide with the interests of the students on many important matters of educational policy. Teachers' associations, like any employee organizations, have as their primary responsibility the advancement of the interests of their members. Arbitrators, to whom the resolution of grievances under collective agreements is generally entrusted, are concerned primarily with contractual rights and remedies. Of the relevant actors at the local level, only school boards have a primary responsibility to the public at large, as they have been delegated the responsibility of ensuring 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. Moreover, a multi-year contract covering policy matters would freeze the *status quo* and prevent a school board from making a flexible, creative response to changed circumstances, which might well preclude its acting in the best interests of the students.

The Legislature is of course free to exercise its judgment in determining whether or not a permissive category of negotiation is sound policy. We wish merely to point out that careful consideration of the limits which our democratic system places on delegation of government powers is called for before any such action is taken.3/ On the other hand, we are in no way prejudging the constitutionality of the concept of permissive negotiation *per se.*

We hold that the enactment of *L.* 1974, *c.* 123, §§4 and 6, *N.J.S.A.* 34:13A-5.3 and 8.1, did not have the effect of creating a new category of negotiating subjects in public employment labor relations comprised of matters negotiable at the option of the parties even though primarily concerned with governmental policy. PERC's scope-of-negotiations determination requiring that the Ridgefield Park Board of Education submit the propriety of teacher transfers and reassignments to binding arbitration is disapproved. In view of the foregoing, the Chancery Division order that the parties proceed to arbitration is reversed and arbitration is permanently enjoined.

CONFORD, P.J.A.D. (t/a), concurring and dissenting.

I concur in the Court's judgment in this case that arbitration be permanently enjoined. But I do not reach that conclusion by the Court's rationale — *i.e.*, that there is no legal category of permissively negotiable items in public employment relations but only the mandatorily negotiable category of "terms and conditions" of employment. I agree with the Public Employment Relations Commission (PERC) that the Legislature has by *L.* 1974, *c.* 123 and *L.* 1977, *c.* 85 manifested its recognition of a class of permissive as well as of mandatory items for labor negotiation and with PERC's implementation by regulations of that understanding in the exercise of its scope-of-negotiations jurisdiction under *L.* 1974, *c.* 123 (*N.J.S.A.* 34:13A-5.4d.).

Practical recognition of negotiations in the permissive area has become a fact of life in the course of actual negotiations of collective agreements throughout the State in recent years and the validity thereof has been adjudicated in several leading jurisdictions beyond our borders. Today's holding by the Court is therefore a backward step in the heretofore progressive development of public sector labor law in this State which will not conduce toward the legislative policy of promoting peace and stability in public employment relations.

However, I enter one qualification to my agreement with PERC's view as to this matter, and this will explain my concurrence in the Court's injunction against arbitration of the dispute in this case. Although, for reasons I shall presently set forth, a public employer may at its option choose to negotiate a permissive item, *i.e.*, one which involves inherent managerial policy but also impacts appreciably upon the welfare of employees, it may not agree to binding arbitration of a dispute with respect to a negotiated item if so doing would transfer the making of an inherent managerial decision from a governmental official to an arbitrator.1/ Such a transfer would occur here if the contractual stipulation for binding arbitration of the employees' complaints with respect to transfers of teaching assignments were enforced.

There can be no doubt that the determination as to where in a school system a particular teacher can best serve is a matter of inherent managerial policy; and this whether *N.J.S.A.* 18A:25-1 is regarded as procedural or substantive.2/ Therefore, although the contract provisions provided for notice to affected employees of involuntary transfers and for acceding to wishes of employees for transfers if not in "conflict with the instructional requirements and best interests of the school system," and although I believe it was proper for the school board to negotiate these provisions with the union, there was no clear statutory authority for surrender by the school board to an arbitrator of the decision as to whether a transfer or refusal to transfer a teacher conflicted with instructional requirements or the best interests of the school system. In my judgment nothing less than explicit legislative authorization could warrant a court in holding an agreement for binding arbitration with such effect upon governmental decision-making to be valid.

It may possibly be that my position in this matter is not fundamentally different from that of PERC. The *amicus* brief of PERC in a related appeal before this Court (*Englewood Teachers Association v Englewood Board of Education*, A-137 Sept. Term 1977) concedes that its position is subject to the condition that the agreement of an employer to arbitrate with respect to a permissive area of negotiations does not "violate the prohibitions of other statutes or public policy." It appears clear to me that the bargaining away by a public employer of its duty of ultimate determination of a matter of inherent managerial policy, as in the present case, is contrary to public policy. However it may be that PERC does not share my view of public policy in this regard in the light of its having upheld agreements to arbitrate the merits of matters of managerial discretion in relation to a number of

contracts covering permissive areas of negotiation. See *e.g.*, *In re Bridgewater-Raritan Regl. Board of Education*, P.E.R.C. No. 77-21, 3 NJPER 23, October 26, 1976.

In any event, any difference of opinion I may have with PERC in the latter regard does not extend to its endorsement, not only in the *Bridgewater-Raritan* case, *supra*, but in a number of others decided by it within the last two years, of the principle of permissive negotiation of matters beyond the technical conflicts of "terms and conditions of employment" laid down in *Dunellen Bd. of Ed. v. Dunellen Ed. Ass'n*, 64 *N.J.* 17 (1973). That case held, in relation to school employers, that matters predominantly of educational policy with only remote or incidental effect on terms and conditions of employment were neither negotiable nor arbitrable. *Id.* at 29, 31. Even as to those matters which "intimately and directly affect the work and welfare of [the] employees," negotiation would be required only if possible "without any significant interference with management's educational responsibilities." *Id.* at 25. No recognition was accorded a possible category of permissive subjects of negotiation except for a hortatory expression of encouragement for employers voluntarily to discuss with teachers "fields" with which the teachers are significantly concerned though outside the fields of mandatory negotiation." *Id.* at 32.

Dunellen was influenced by two factors which were neutralized in the subsequent 1974 amendment of the act. These were (1) the previous statutory provision that the act should not "annul or modify any statute *** of this State" and (2) provisions in Title 18 of the Revised Statutes, dealing with education, for the Commissioner of Education to hear all controversies and disputes "arising under the school laws." See 64 *N.J.* 28-29 and 30. PERC has, and I think soundly, ascribed considerable significance to the changes affected in both of these respects by the 1974 amendments. As to the first factor, the statute was altered merely to prohibit any annulment or modification by the act of "any pension statute" of this State. *N.J.S.A.* 34:13A-8.1. In respect of the second factor, an amendment of *N.J.S.A.* 34:13A-5.3 declared that grievance procedures established by agreement of the parties should be utilized notwithstanding any procedures for the resolution of disputes, controversies or grievances established by any other statute (an obvious allusion to the jurisdiction of the Commissioner of Education over school controversies).

It seems universally conceded that these amendments were aimed at the restrictive holding in the *Dunellen* case as to the scope of valid employment negotiations although there is wide disagreement as to the precise effect which should be accorded the amendments. Insofar as concerns the specific question now before us, *i.e.*, an intent to broaden the area of valid negotiations to a permissive category not contemplated by *Dunellen*, the PERC thesis is strongly supported by the text of a provision incorporated into the 1974 amendment for the creation of a Study Commission to study the implementation and effectiveness of the act and propose any additional changes necessary. One of the specific questions the Commission was asked to address was:

"Whether or not it is necessary and desirable either to define the phrase "terms and conditions of employment" as used in section 7 of the 1968 act (C. 34:13A-5.3) *and, in so doing, specify what subjects are mandatory, voluntary or illegal within the scope of bargaining or of grievance arbitration*, or to require that procedural guidelines be established for determining the same. Section 3(e), *Chapter* 124, *P.L.* 1974." (emphasis added)

The phrasing of the question indicates that the Legislature took it for granted that in actual practice scope of negotiations was already divided into three categories, including a "voluntary" (*i.e.*, permissive) one.

Additional significant indication of current legislative cognizance of a permissive category of negotiations is afforded by the 1977 statute for binding arbitration of collective negotiation disputes concerning police and firemen. *L.* 1977, *c.* 85. See note 1, *supra*. This specifically classifies negotiations as between "required" and "permissive" without otherwise defining those terms. In view of the fact that well prior to the adoption of the 1977 police and firemen's statute PERC had begun to implement by decision and regulation the concept of permissive as distinguished from mandatory or required categories of negotiation, see *N.J.A.C.* 19:13-3.7, the use of those categories in the 1977 act is additional cogent indication of legislative approval of the concept. Moreover, we ought to attribute substantial weight to the interpretation and practical administration of the employment relations act by PERC as the responsible and expert administrative agency empowered by the act to determine scope of negotiations questions. *In re Application of Saddle River*, 71 *N.J.* 14, 21 (1976); *The Passaic Daily News v Blair*, 63 *N.J.* 474, 484 (1973).

The approach of PERC to the question under discussion has been mirrored by that of a number of courts in other states. See *Bd. of Ed. etc. v. Yonkers Fed. of Teachers*, 40 *N.Y.* 2d 263, 386 *N.Y.S.* 2d 657, 353 *N.E.* 2d 369 (1976); *Sch. Comm. of Boston v. Boston Tchrs. U., etc.*, 363 *N.E.* 2d 485 (Sup. Jud. Ct. Mass. 1977); *Springfield Bd. Ass'n v. Springfield Sch. Dist., No. 19*, 549 *P.* 2d 1141 (Oreg. Ct. App. 1976); *Scranton Sch. Bd. v Scranton Fed. of Teachers*, 27 *Pa. C.* 152, 365 *A.* 2d 1339 (Common W. Ct. Pa. 1976). While some of these cases go beyond my view in that they approve binding arbitration of matters of inherent managerial discretion, nevertheless to the extent that they recognize the concept of a permissive as distinguished from a mandatory or required category of negotiations in the public employment field, they represent the recent preponderant and enlightened judicial trend toward a more flexible range of negotiatng discretion by public employers — one which seems necessary to achieve the goal of peace and stability in public employment relations set forth in the employment relations act as first adopted. *N.J.S.A.* 34:13A-2. See also Edwards, "The Emerging Duty to Bargain in the Public Sector," 71 *Mich. L. Rev.* 885, 909 (1973) ("State courts and public employment relations boards have likewise frequently relied upon the mandatory-permissive-illegal distinction"); Clark, "The Scope of the Duty to Bargain Public Employment," in Knapp "Labor Relations Law in the Public Sector," at p. 83-84 (1977).

I regard it as unfortunate that by its decision in this case rejecting permissive negotiability the Court dismisses the now widely accepted approach and in effect undoes the salutary course of *quasi*-judicial and administrative progress being achieved by PERC and deprives it, as well as public employers generally of a most useful tool in this vital area of the public weal.

The fears expressed by the Court concerning delegation of public policy decisions to the process of collective negotiation "where voter participation is excluded" (slip opinion p. 22) do not seem to me realistic. Voters also do not participate where the public employer negotiates wages and hours of employment. In a sense, even decisions as to such matters by public employers are exercises of public policy decision-making. Thus it is obvious that legislation for promoting public sector labor relations contemplates very substantial inroads into what was once untrammeled unilateral determination of the circumstances of employment by public employers. It would be artificial and counterproductive of legislative goals in this area to continue absolutely to prohibit the process of negotiation on subjects which appreciably impact upon the welfare of employees merely because the subject matter of agreement also involves managerial or educational judgment and discretion. The public interest is fully protected by the condition recognized by PERC that the agreement not contravene any contrary specific statutory mandate and by my qualification that binding arbitration not be permitted if the arbitrator's decision would supplant an exercise of inherent managerial judgment and discretion by the employer.

In summary, the negotiation of the subject of transfer of teacher assignments in the instant contract was valid; the provision for binding arbitration of disputes over whether a particular teacher should or should not be transferred was invalid.

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STATEMENT OF GERALD L. DORF, Labor Relations Counsel to the New Jersey League of Municipalities concerning Assembly No. 585

I appreciate this opportunity to present this position statement. For your information, I have had twenty-five (25) years of labor relations experience representing management interests in both the private and public sectors, including municipalities, counties and school boards.

I am Labor Relations Counsel to the New Jersey State League of Municipalities and have represented the League in that position since 1973. In the interests of time, I will comment only briefly upon the major sections of the proposed legislation.

I. Introduction

The League represents 557 municipalities in the State of New Jersey. All of these municipalities, as public employers, are subject to the provisions of the New Jersey Employer-Employee Relations Act (Chapter 303 of the Public Laws of 1968 as amended by Chapter 123 of the Public Laws of 1974). The taxpayers must bear the possible diminished services and cost of agreements which are negotiated thereunder or which may be imposed under the provisions of Assembly Bill No. 585.

Since the enactment of the PERC statute in 1968, many municipalities experienced serious problems arising out of various insufficiencies of the Act. The League had been on record for several years requesting a comprehensive revision of the PERC law and suggested a number of specific amendments felt to be necessary to provide a fair and workable mechanism for collective bargaining and for the reconciliation of labor disputes. Many of these recommendations of the League were ultimately incorporated in S-1087 (Chapter 123 of the Public Laws of 1974).

The proposed legislation before the Assembly seeks to make additional changes in the existing law, many of which the League feels are either unwise, unwarranted, or both. The balance of this paper will deal with those areas.

II. Permissive Category of Negotiations

Since the passage of the New Jersey Employer-Employee Relations Act, the legislature and the Courts have sought to amend and interpret the Act, respectively, in order to strike a balance between the obligation of the public employer to service its constituents and the right of the public employee labor organizations to represent public employees in collective negotiations. Passage by the Legislature of Assembly No. 585 would reverse more than ten years of Legislative and Judicial labor relations policy, creating such a negotiations imbalance of power in favor of public employee labor organizations that the ability of the public employers to carry out their mission would be severely impaired.

Assembly No. 585 first seeks to establish and inject into the collective negotiations mainstream a "permissive" category of negotiations. In 1973, the Supreme Court in the so-called Dunellen trilogy (Dunellen Bd. of Ed. v. Dunellen Ed. Ass'n, supra; Englewood Bd. of Ed. v. Englewood Teachers, 64 N.J. 1 (1973); Burlington Cty. College Fac. Ass'n. v. Bd. of Trustees, 64 N.J. 10 (1973)) held that there were two types of subjects for collective negotiations. Matters of major educational policy which only indirectly affected working conditions were considered non-negotiable subjects of negotiations. Items which directly affected the personal and financial welfare of employees which did not predominately affect educational policies were considered negotiable subjects.

Although the New Jersey Employer-Employee Relations Act was amended in 1974 when the Governor signed Senate No. 1087, the Act was not amended so as to establish a permissive category of negotiations.

The Supreme Court reaffirmed the position it took in Dunellen in State v. State Supervisory Employees Association, 78 N.J. 54 (1978). In reviewing its determination regarding the scope of collective negotiations, the Court held:

> ... to the extent that it could fairly be accomplished without any significant interference with management's educational responsibilities, the local boards of education would have the statutory responsibility of negotiating in good faith with representatives of their employees with respect to those matters which intimately and directly affect the work and welfare of their employees.
>
> The Dunellen definition of the scope of mandatory negotiability was further defined in Bd. of Ed. of Englewood v. Englewood Teachers, 64 N.J. 1, 7 (1973), where we held that
>
> > ... major educational policies which indirectly affect the working conditions of the teachers remain exclusively with the Board and are not negotiable whereas items which are not predominatly educational policies and directly affect the financial and personal welfare of the teachers do not remain exclusively with the Board and are negotiable.
>
> Thus, negotiable terms and conditions of employment are those matters which intimately and directly affect the work and welfare of public employees and on which negotiated agreement would not significantly interfere with the exercise of inherent management

> prerogatives pertaining to the determination of governmental policy. See Burlington Cty. Col. Fac. Ass'n. v. Bd. of Trustees, 64 N.J. Fire Fighters, 55 N.J. 409, 440 (1970) supra at page 66-67.

Simultaneously with its issuance of the State decision, the Supreme Court issued its decision in Ridgefield Park Ed. Ass'n. v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978). In that decision, the Court specifically held that there is no permissive category of negotiations. The Court at least partially based its decision on the fact that the creation of a permissive category of negotiations might create serious problems by permitting public employee labor organizations to negotiate regarding items which would severely infringe upon management's ability to carry out its statutory mission.

The New Jersey State League of Municipalities wholly concurs with the decisions and rationale of the Supreme Court. The creation of a permissive category of negotiations would allow public employee labor organizations to negotiate over items which heretofore have been considered inherent managerial prerogatives necessary to the determination of governmental policy. This factor has apparently not been taken into consideration by the Legislature in proposing the amendments in question.

Assembly No. 585 would adopt language similar to that used in the National Labor Relations Act to demonstrate the Legislative intent that decisions of the National Labor Relations Board and the Courts in developing the system of collective

bargaining in the private sector would be followed in implementing and interpreting the New Jersey Employer-Employee Relations Act. There is, however, a fatal flaw in wholly accepting and adopting the private sector collective bargaining system in the public sector.

The private sector credo is solely financial. The private employer is almost solely concerned with the profit motive. The impact of negotiating permissive subjects in the private sector, subjects which are very different from those in the public sector, may not interfere with the private employer's pursuit of profit. In the public sector, profit is not the motive. The statutory mission is to provide services for the various constituencies. The establishment of a permissive category of negotiations in the public sector would severely infringe upon this service-oriented goal of public employers. Therefore, it is impractical and unrealistic to attempt to adopt the private sector collective negotiations scheme in the public sector. To do so would allow public employee labor organizations to impermissibly infringe upon public employer managerial prerogatives that are necessary to carry out its statutorily mandated governmental missions.

Furthermore, the potential need to deal with additional subjects of bargaining can only serve to further complicate and lengthen the negotiation process. Many of our municipalities, currently hard-pressed for funds, will find increasing amounts of their time and limited resources being consumed by additional bargaining obligations. While those who support the bill may claim a negligible financial impact, there can scarcely

be a subject of negotiation which will not, in one way or another, directly or indirectly, add to the cost of negotiations, contracts and their administration.

III. INCLUSION OF DISCIPLINE AS A MANDATORY SUBJECT OF NEGOTIATION

Assembly No. 585 also proposes to include "discipline" as a mandatory subject of negotiations. The bill seeks to set aside the decision of the Supreme Court in Jersey City, 89 N.J. 433, which held that disciplinary determinations were matters of inherent managerial prerogative. In actuality, public employees already are accorded significantly greater protection than their counterparts receive in private industry. For example, substantial disciplinary determinations are reviewable by the Civil Service Commission in Civil Service jurisdictions. Employees also possess statutory remedies for claims of proscribed employment related discrimination before PERC and other administrative agencies. Teachers are protected by tenure and receive additional protection through the various levels of appeal in the State Department of Education. Police officers are similarly guaranteed extensive due process rights by statute. Furthermore, in many cases public employees have initiated judicial actions in our courts to address alleged claims of infringement upon their constitutional rights. It is therefore apparent that public employees already have substantial recourse to counter allegations of improper discipline.

IV. ALLOWING EMPLOYEE NEGOTIATION REPRESENTATIVES TO REPRESENT SUPERVISORY EMPLOYEES AS WELL AS NON-SUPERVISORY EMPLOYEES

The law presently prohibits the inclusion of supervisory and non-supervisory employees in the same unit as well as the representation of supervisory employees by a bargaining representative which represents units of non-supervisory employees.

These proscriptions are designed to prevent obvious conflicts of interest where a supervisor must reconcile his status as an agent of management with his membership in the same unit as one of his subordinates. The rule also serves to avoid potential conflicts of interest where, in acting on behalf of unit employees, for example, the bargaining representative may be adversely affecting the interests of a group of supervisors which it might also represent.

I might add that in the private sector, supervisors are considered to be part of management and do not enjoy the statutory right of collective representation. In our public sector model, supervisors do have the right of representation. The only restraint is that they must be represented separate and apart from non-supervisory employees.

When the statute was first enacted, however, an exception to the rule was set forth so as not to upset certain well-established bargaining units which had already included supervisory as well as non-supervisory employees. While this exception served to minimize possible disruption of existing units, there is no reason to encourage this practice to become established where heretofore no such practice existed. In effect, this change simply opens up supervisory groups to the organizing

efforts of labor organizations which now represent non-supervisory employees, notwithstanding any potential conflict of interest which might arise out of these possible combinations. The change is designed simply for the financial benefit of the labor organizations while ignoring the potential disastrous effects on management in maintaining the proper loyalty of its supervisory staff. It is clear that this particular provision can result in substantial detriment to the cause of effective management in every community.

V. THE NULLIFICATION OF ADMINISTRATIVE RULES AND REGULATIONS

Assembly No. 585 also includes a provision which states that administrative rules or regulations shall not prevent or supercede collective negotiations. In effect, the proposed legislation seeks to nullify legislative intent and action which is promulgated through the expertise of administrative agencies. Administrative agencies are established by the legislature in order to exercise significant expertise in complex areas of regulation. The present proposal would require the legislature to act by statute each and every time it seeks to exercise any type of control over matters which may also be the subject of a collective negotiation agreement. In effect, the bill seeks to impose additional burdens on the legislature rather than allow the legislature to exercise its intent through the operations of an administrative agency. This particular provision is both unwise and inefficient as it seeks to nullify the particular expertise of administrative agencies.

VI. Conclusion

I respectfully urge that careful consideration be given to the position of the League which represents virtually all municipalities in the State. The Legislature must balance the right of public employee labor organizations to negotiate for public employees against the ability of the public employer to provide the services for its constituency that are mandated by statute. The amendments in Assembly No. 585, while expanding the ability of public employee labor organizations to negotiate for public employees, dangerously infringe upon the public employer's ability to make what decisions on its own which have heretofore been considered managerial prerogatives. The ability of the public employer to control and effectively manage the government and determine governmental policy must be considered paramount to granting the public employee labor organizations increased negotiating authority and leverage.

On behalf of the League, I sincerely appreciate the opportunity of presenting this statement. In addition, I will be pleased to respond to any additional questions or issues raised in the consideration of Assembly No. 585.

My sincere thanks for your attention.

Sincerely yours,

DORF and GLICKMAN, P.A.

Gerald L. Dorf
Labor Relations Counsel to New Jersey
State League of Municipalities

Good afternoon Mr. Chairman and committee members. My name is Aurora Bernard-Sallit. I am President of the Edison Township Education Association, a public school employee bargaining unit with approximately 850 members. I am here today to testify in favor of the passage of A-585, a Bill which will restore to public employees the rights which we and the legislature thought were won and settled in 1968.

Since 1978 and the New Jersey Supreme Court opinion in the Ridgefield Park case, we as public employees have seen a steady erosion in the number and types of subject matter which may be negotiated in the collective bargaining process. We have gone from a situation where a subject was considered negotiable unless specifically prohibited, to one whereby a subject is non-negotiable unless specifically authorized. The passage of A-585 would return to public sector collective bargaining an area of "permissively negotiable" subjects, apart from salary and benefits.

In the Ridgefield Park case our Supreme Court expanded the area of "Managerial Prerogative" or "Management Rights" based upon the State's constitutional obligation to provide a "thorough and efficient" education to our students. Along with this right, however, comes responsibility--that is responsibility of accountability for actions taken. Both the

public and the employees affected have the right to expect this accountability. They should be given adequate reasons as to the why and how any Board mandated changes serve the ends of T & E. Without such a process, "Managerial Prerogative" becomes little more than a convenient excuse for unilateral, arbitrary and capricious behavior on the part of a public employer. While such actions may be presumably valid in the eyes of the law, the cumulative effect can only be to undermine the authority, credibility and legitimacy of the public employer in the eyes of its employees and ultimately in the eyes of the public--and the results of such can be disasterous.

As one example of what can happen, I need only go back to this past Spring and what did happen in the Edison district regarding involuntary transfers.

Due to the closing of two elementary schools we knew that there would be a need to effect many transfers in order to absorb the staffs of these two schools into the remaining sixteen elementary schools. Accordingly, the staffs were involved in this process and were given the opportunity to indicate three choices for their placement. The Association understood and accepted the fact that these schools had to close due to economics and declining enrollment.

However, a shock came on May 24th when the Board, without warning, without consultation, and without any input from the employees involved, released a list of approximately

eighty secondary school transfers including the names of many Association activists. After lengthy consultations with the transferees, it became abundantly clear that the "abrupt and flimsy explanations" given were obviously from the same pre-recorded tape, eliminating any credibility the staff may have had about the possible need for such transfers.

The total disregard for any hint of reasonable, humane transfer procedures found teachers being notified over the loudspeakers or being called out of classes, out of lunch breaks and prep periods to be told by their principal or supervisor that they were to be transferred to another school effective September. When asked for reasons these were among the responses given to various teachers:

1. "There is no reason."
2. "You will enhance the program" (at the new school) - when the teacher asked how, no response was given.
3. "The person whose job you are getting doesn't get along with the building principal."
4. "To help an inexperienced teacher" - when the teacher asked whether or not that was the job of administrators and supervisors, no response was given.
5. "To allow a teacher to have a full-time position in one school" - while another teacher was told that his transfer was being made to allow a teacher to have one class in that building, thus splitting one full-time schedule among three teachers.

6. "Because of reduction in force" - while in fact that transfer actually consisted of a 'musical chairs' shuffling of personnel in four schools without any one job being removed or lost.
7. "Because of stagnation of the entire staff."
8. "Your turn this year."
9. "New Board policy."
10. The reason given to a teacher at School 1 "to beef up the program at School 2," while telling another teacher at School 2: "To beef up that same program back at School 1."
11. "Because you are an outstanding teacher."
12. "Because you are low man in seniority." Yet telling another teacher: "You've been in the building too long - your seniority is too high!"
13. "Maybe you'll like the change."
14. "For reasons too personal to discuss."
15. "No reasons will be given because reasons can be countered."
16. "Because nobody else is available."
17. "To fit into the 'big picture'" and so on and so on.

Some of the reasons given, as you can see, are not reasons at all. Others may be refreshingly honest as to the real causes for transfer. Few, if any of them, have anything to do with the T & E rationale used by our Supreme Court to justify expanding the area of "Managerial Prerogative."

The reaction to these transfers and the inhumane and unprofessional manner in which they were implemented was immediate and vigorous. More than 650 members attended a general meeting on June 3, 1982, and the galleries were filled with almost 1,000 people at the June 14, 1982 Board meeting. (Some went even further taking entitled leave days as a protest)--this happened at a time when our new contract was still being negotiated. In fact, our negotiations were then at impasse.

Whether the Board was sincerely trying to comply with T & E by these transfers or <u>was in fact</u> using this situation to demoralize our staff became irrelevant. The staff came to believe the latter.

I use this example to illustrate that the negotiating process is one which involves people. Where people are involved, and one side is given the power to make and implement policy to the exclusion of the other side, the side left out loses ownership in the decisions made, then the process loses legitimacy, and sooner or later, explosions will occur when the frustration level gets high enough. Such a situation is almost a definition of tyranny, no matter how benevolent in its origin. This certainly cannot have been the intent of the legislature when the collective bargaining law was passed.

Further, as we as public employees and you as our elected representatives are aware, general economic conditions are such that salary increases are becoming more and more difficult to fund. When a bargaining process becomes essentially limited to financial items, and when anticipated increases may not be available to fund, the frustration level is bound to rise with its forseeable consequences.

I therefore urge this committee to report favorably on A-585 and to work diligently for its passage. By doing so you will be returning democracy, sanity and fundamental fairness to the public sector collective bargaining process.

I thank you for this opportunity to appear.

CITY OF TRENTON, NEW JERSEY ARTHUR J. HOLLAND, MAYOR

DEPARTMENT OF ADMINISTRATION

December 27, 1982

Honorable Joseph D. Patero
Chairman, Assembly Labor Committee
22 Florence Court
P.O. Box 747
Manville, New Jersey 08835

Dear Mr. Patero:

Enclosed please find testimony regarding Assembly Bill 585. I request your permission to enter this testimony into the record for the consideration of the members of the Assembly Labor Committee. Thank you for your help in this regard.

Sincerely,

Richard J. Porth

Richard J. Porth
Assistant Business Administrator

RJP:kmz

Enclosure

cc: Ms. Laurine Purola
Aide to Assistant Commissioner for Labor
C/O New Jersey State House
Trenton, New Jersey 08625

TESTIMONY REGARDING ASSEMBLY BILL 585

PREPARED BY: RICHARD J. PORTH, ASSISTANT BUSINESS ADMINISTRATOR
CITY OF TRENTON, NEW JERSEY

DECEMBER 24, 1982

There is a hackneyed, but true saying which is particularly applicable to Assembly Bill 585: "IF IT WORKS, DON'T FIX IT." The proposed amendment to P.L. 1968, c.303 and P.L. 1974, c.123, would radically change the way in which public employers and their employees reach collective bargaining agreements and resolve differences. It does so by: (1) including disciplinary matters long considered to be an important management prerogative among the subjects ruled to be mandatory for collective negotiations; (2) making managerial decisions, which impact on "wages, hours, discipline and other terms and conditions of employment", subject to collective negotiation, thus taking those important managerial decisions out of the hands of the government's management; (3) expanding the scope of permissive subjects for collective negotiations by reversing the traditional interpretation of the law; and (4) giving the Public Employment Relations Commission authority to render a complete

determination as to whether a matter is arbitrable, thus divesting the Courts of their traditional role as overseer in such matters. Moreover, the premise for these radical changes - that the best way from a managerial standpoint to deal with most differences between employers and their employees is through collective bargaining - is totally false. In fact, in the public sector, employers must be very careful not to relinquish their responsibility to represent the citizens by allowing important managerial decisions to be decided over a negotiations table. To do so, could jeopardize our democratic system by allowing private interest groups (i.e. public employee unions) to participate in governmental policy-making decisions. This very real danger was the key factor in an opinion reached by the Supreme Court of New Jersey in 1978 - Ridgefield Park Educational Association vs. Ridgefield Park Board of Education. We firmly believe that it is senseless to risk this danger by changing a law which has worked well for years.

Assembly Bill 585 seeks to make disciplinary matters a mandatory subject for collective negotiations. The right and responsibility to administer discipline has long been one of the most basic managerial prerogatives. By making it mandatorily negotiable, this bill would emasculate management's right and responsibility to manage. There are currently safeguards against managerial abuse of discipline in most public employee contracts, including grievance procedures and grievance arbitration. These safeguards have proven to be more than adequate in the past.

The proposed bill would also make managerial decisions which impact on "wages, hours, discipline and terms and conditions of employment" subject to classification as a mandatory subject for collective negotiations. In other words, decisions involving issues such as service levels, manning and deployment, which are widely agreed to be the sole responsibility of a management which is answerable to the citizenry through the elective process, could be subject to collective negotiations if those decisions impact on those items which are felt to be negotiable. Taken to its extreme, this could result in almost all managerial decisions being subject to mandatory negotiations, because it is all but impossible to separate the impact of a decision from the decision itself. This, in turn, would constitute a serious breach of the democratic process by allowing special interest groups, which are not accountable to the public, to participate in policy decisions.

Assembly Bill 585 would also cause the scope of permissive subjects for collective negotiations to expand tremendously, further eroding management's right to manage. It would do so by defining permissive subjects as "all matters which are neither mandatory nor illegal subjects for negotiations." This language is a nearly complete reversal of the original intent of this law and the traditional interpretation of the current law in the courts. The courts have ruled that only those items which are specifically designated as being negotiable may be decided over the bargaining table. Assembly Bill 585, on the other hand, could allow that all but those items which are specifically

forbidden to be subjects of negotiation, be decided over the bargaining table. Once again, this major revision of a law which has worked very well to date poses a real danger to the democratic process by expanding the scope of negotiable items and thus taking policy-making power out of the hands of the people. The Supreme Court of New Jersey cited constitutional law in its opinion on Ridgefield Park Education Association vs. Ridgefield Park Board of Education to emphasize its belief that a category for permissive items could be detrimental to the democratic process.

> "To be constitutionally sustainable, delegations of governmental policy-making power must be narrowly limited, reasonable and surrounded with stringent safeguards to protect against possibility of arbitrary or self-serving action detrimental to third parties or public good generally." (point #14, synopsis)

Finally, the proposed legislation seeks to give the Public Employee Relations Commission sole jurisdiction in decisions regarding whether various issues are arbitrable. The existing law and case law provides a method for checks and balances (which is so central to our form of government) by allowing PERC decisions on arbitrability to be reviewed and where necessary reversed by superior court. It is our contention that it would be dangerous to eliminate this important safeguard that has worked to the public's advantage in the past. This responsibility should continue to be shared by PERC and the courts.

In summary, it is our strong recommendation that Assembly Bill 585 proceed no further. As we have attempted to demonstrate throughout this testimony, the proposed amendments could very

well result in a situation in which policy-making responsibilities are wrested from the representatives of the people to the detriment of the public good. Moreover, it just does not make sense to make major revisions to a law which has served the public so well over the years.

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