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

before

ASSEMBLY LABOR COMMITTEE

on

ASSEMBLY, NO. 553

(Extends to Public School Employees & Districts
The Use of Compulsory Binding Arbitration)

Held:
May 15, 1978
N. J. State Library
Archives Room
Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Assemblyman Joseph D. Patero (Chairman)
Assemblyman Thomas Cowan, Sr.
Assemblywoman Rosemarie Totaro
Assemblyman Robert E. Littell
Assemblyman William F. Dowd

ALSO:

Daniel L. Ben-Asher, Research Associate
Legislative Services Agency
Aide, Assembly Labor Committee

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I N D E X

I N D E X - Continued

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ASSEMBLY, No. 553

STATE OF NEW JERSEY

INTRODUCED JANUARY 30, 1978

By Assemblyman BURSTEIN and Assemblywoman KIERNAN

Referred to Committee on Labor

AN ACT to amend the title of "An act providing for compulsory arbitration of labor disputes in public fire and police departments; prescribing a procedure therefor, and the enforcement thereof, and supplementing the 'New Jersey Employer-Employee Relations Act,' approved April 30, 1941 (P. L. 1941, c. 100, C. 34:13A–1 et seq.), as said short title was amended by P. L. 1968, c. 303," approved May 10, 1977 (P. L. 1977, c. 85), so that the same shall read "An act providing for compulsory arbitration of labor disputes in public fire and police departments, and in public school employment; prescribing a procedure therefor, and the enforcement thereof, and supplementing the 'New Jersey Employer-Employee Relations Act,' approved April 30, 1941 (P. L. 1941, c. 100, C. 34:13A–1 et seq.), as said short title was amended by P. L. 1968, c. 303," and amending the body of said act.

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

1. The title of P. L. 1977, c. 85 is amended to read as follows:

An Act providing for compulsory arbitration of labor disputes in public fire and police departments *and in public school employment*; prescribing a procedure therefor, and the enforcement thereof, and supplementing the "New Jersey Employer-Employee Relations Act," approved April 30, 1941 (P. L. 1941, c. 100, C. 34:13A–1 et seq.), as said short title was amended by P. L. 1968, c. 303.

2. Section 1 of P. L. 1977, c. 85 (C. 34:13A–14) is amended to read as follows:

1. It is the public policy of this State that in public fire and police departments, where public employees do not enjoy the right to strike, it is requisite to the high morale of such employees and the efficient operation of such departments to afford an

alternate, expeditious, effective and binding procedure for the resolution of disputes, and to that end the provisions of this act, providing for compulsory arbitration, shall be liberally construed. *It is further the public policy of this State that in the public school system, where employees do not enjoy the right to strike, it is requisite to the high morale of such employees and the thorough and efficients operation of such a public school system to afford an alternate, expeditious, effective and binding procedure for the resolution of disputes, and to that end the provisions of this act, providing for compulsory arbitration, shall be liberally construed.*

3. Section 2 of P. L. 1977, c. 85 (C. 34:13A–15) is amended to read as follows:

2. *"Board" means a board of education of a local school district. "Local school district" means any school district comprising within its territorial boundaries the territory comprised in one or more municipalities, except a regional school district.*

"Public fire department" means any department of a municipality, county, fire district or the State or any agency thereof having employees engaged in firefighting provided that such firefighting employees are included in a negotiating unit exclusively comprised of firefighting employees.

"Public police department" means any police department or organization of a municipality, county or park, or the State, or any agency thereof having employees engaged in performing police services including but not necessarily limited to units composed of State troopers, police officers, detectives and investigators of counties, county parks and park commissions, grades of sheriff's officers and investigators; State motor vehicle officers, inspectors and investigators of the Alcoholic Beverage Commission, conservation officers in Fish, Game and Shell Fisheries, rangers in parks, marine patrolmen; correction officers, keepers, cottage officers, interstate escort officers, juvenile officers in the Department of Corrections and patrolmen of the Human Services and Corrections Departments; patrolmen of Capitol police and patrolmen of the Palisades Interstate Park Commission.

"Public school" means a school, under college grade, which derives its support entirely or in part from public funds.

4. Section 3 of P. L. 1977, c. 85 (C. 34:13A–16) is amended to read as follows:

3. a. Whenever negotiations between a public fire or police department and an exclusive representative, *or between the board of a local school district and an exclusive representative of a public school employees' bargaining unit,* concerning the terms and condi-

tions of employment shall reach an impasse, the commission, through the Division of Public Employment Relations shall, upon the request of either party, or upon its own motion take such steps including the assignment of a mediator as it may deem expedient to effect a voluntary resolution of the impasse. The cost of mediation shall be borne by the commission.

b. In the event of a failure to resolve the impasse by mediation, the Division of Public Employment Relations, at the request of either party, shall invoke factfinding with recommendation for settlement of all issues in dispute unless the parties reach a voluntary settlement prior to the issuance of the factfinders report and recommended terms of settlement. 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. The cost of factfinding shall be borne by the commission. In the event of a continuing failure to resolve an impasse by means of the procedure set forth above, and notwithstanding the fact that such procedures have not been exhausted, the parties shall notify the commission 60 days prior to the required budget submission date of the public employer as to whether or not they have agreed upon a terminal procedure for resolving the issues in dispute. Any terminal procedure mutually agreed upon by the parties shall be reduced to writing, provide for finality in resolving the issues in dispute, and shall be submitted to the commission for approval.

c. Terminal procedures that are approvable include, but shall not be limited to the following:

(1) Conventional arbitration of all unsettled items.

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

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

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

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

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

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

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

(2) Upon receipt of such notification from either party or on the commission's own motion, the procedure to provide finality for the resolution of issues in dispute shall be binding arbitration under which the award on the economic issues in dispute shall be confined to a choice between: (a) the last offer of the employer on such issues as a single package and (b) the employee representative's last offer, on such issues, as a single package; and, on the noneconomic issues in dispute, the award shall be confined to a choice between: (a) the last offer of the employer on each issue in dispute and (b) the employee representative's last offer on such issue.

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

f. (1) Prior to the arbitration proceedings, the parties shall submit to the arbitrator or tripartite panel of arbitrators, pursuant

to rules and procedures established by the commission, their final offers in two separate parts: (a) a single package containing all the economic issues in dispute and (b) the individual issues in dispute not included in the economic package, each set forth separately by issue.

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

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

(4) 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.

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

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

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

(1) The interests and welfare of the public.

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

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

(b) In comparable private employment.

(c) In public and private employment in general.

(3) The overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays,

excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received.

(4) Stipulations of the parties.

(5) The lawful authority of the employer.

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

(7) The cost of living.

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

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

5. This act shall take effect immediately.

STATEMENT

This bill is intended to provide for compulsory arbitration of disputes involving public school employees. The bill amends the statute providing for such compulsory arbitration for public fire and police departments to make that statute also applicable to public school employees.

ASSEMBLYWOMAN ROSEMARIE TOTARO (Acting Chairman): Good morning, ladies and gentlemen. I am Rosemarie Totaro. I am a member of the Committee. We are having some difficulty with the members and since today is a hearing - a public hearing - it is not necessary for us to have a quorum. We are rather limited in the amount of time that we can spend at the hearing because we are expected to go into session at 12:00 noon. So, we will start in with the testimony. I would appreciate it if you could limit your remarks to five minutes. At that rate, we will barely have enough time to cover all of the speakers.

Our Chairman is coming in right now. What we will do is go back to those who would like to present more facts at the close of the meeting. Many of you have traveled a distance and I think it is only fair to give you all some time to make a presentation.

Do we have Professor Lester here? (affirmative answer) Would you like to come to the microphone?

Professor Lester, this is the Chairman, Joseph Patero.

ASSEMBLYMAN PATERO: Good morning, Professor.

THE FOLLOWING STATEMENT, ALTHOUGH NOT PERSONALLY PRESENTED, WAS SUBMITTED BY THE COMMITTEE CHAIRMAN AS INTRODUCTORY COMMENT:

We have called this hearing largely in response to the history of strikes in recent years by public school employees in this State, which has brought about the jailing of teachers and the loss of many weeks of instructional time by school children.

As you know, this bill amends the current statute now providing for compulsory binding arbitration of interest disputes for police and firemen to include public school employees. Such legislation, it is felt by some, will lead to a more balanced distribution of bargaining power and a reduction in the number of disruptive school work stoppages. According to its proponents, the prospect of "final offer" arbitration is designed to encourage each negotiating party to present an eminently reasonable last offer at the bargaining table and, hopefully, to bring the parties to a mutual agreement without the need for an arbitrator's award at all. We are hopeful that today's testimony will provide us with some additional constructive input on the bill.

P R O F E S S O R R I C H A R D L E S T E R: Mr. Chairman, members of the Committee, I appreciate the opportunity to discuss with the members of this Committee the questions concerning the application of some system of final resolution of deadlocked negotiating disputes, including the possibility of spreading the system that applies to police and firefighters to other areas of public employment in the State.

I have with me - and he is here - William M. Weinberg, Professor of Industrial Relations at Rutgers University, who served as Executive Director of the Public Employer/Employee Relations Study Commission. After I have completed my statement, Professor Weinberg will present some figures with respect to strikes in the public sector of New Jersey and other states, which have implications for legislation in this area.

I examined Assembly Bills No. 2, 546, and 549, dealing with impasse disputes and some other items. I should like to begin my remarks with some brief comments concerning state legislation designed to provide ultimate settlement of an impasse in negotiations for a new agreement.

In the past five or six years, increasingly, states have been enacting legislation providing for arbitration of impasse disputes, often adopting some form of choice by the arbitrator, or arbitration panel, between the last offers of the two parties. Such legislation has applied mainly to police and firefighters in the states, but there has been a tendency in recent years to have coverage apply to other areas of public employment as well.

I would expect that tendency, or trend toward expansion of coverage, to continue over the next five or more years. The question then arises, whether here in New Jersey the arrangement for ultimate arbitration of police and firefighter impasses, or some similar system of finality, should be legislated at this time for other areas of public employment. Frankly, before such a system is legislated here for other areas of the state and local government and school districts, I would like to have the benefit of a longer period of experience with the police and firefighters law on which to base a decision whether and when to bring other areas under that kind of legislation.

While the experience so far with the Police and Fire Act seems to be good, our experience is still quite limited in time and circumstance and I would hope that -- Let me put it this way: It seems to me that it is too early for any firm conclusions. Also, I would like to have more experimentation under the act than we have had. One of the purposes of giving us a variety of possibilities for the method of determining final settlement of an impasse dispute was in the law, which embodies the recommendations of our study commission. There are six possibilities for settlement arrangements in the law and it is also wide open that the parties themselves could work out something that may suit their circumstances more satisfactorily.

Also, I would hope that there would be encouragement, perhaps by the State, for some objective research on the experience to provide a really good basis for judging the effects of various procedures and provisions of this legislation and the legislation in other states so that we would have really a more sound basis, in terms of research, with respect to the experience in this area. It is a relatively new area and methods are relatively new and it does seem to me, therefore, that we need to make sure that we have adaquate understanding of the effects of this kind of legislation and the various way in which it can operate and be used.

When the study commission was completing its report early in 1976, not only were the police and firefighters requesting legislation providing some form of arbitration of impasses, but other significant parts of organized labor and management had expressed, in public or in private to members of the commission, support for some form of impasse settlement for areas of public employment well beyond police and firefighters. That explains why the commission recommended full coverage of state, local and school district employees, despite some concerns among members of the study commission about proposing to move so quickly and so sweepingly without more preparation and experience to go on and more study of the experience.

I would like to say parenthetically that at the hearing after our report was put in, I was a little surprised and maybe a little amused at the changes in expression in the public of the attitude toward this kind of legislation in this area. Some people seemed to have made a rather significant change as a result of our report going in.

In legislating the area of labor relations, especially in the public sector, such factors as knowledge of experience, the timing in which any action is taken, the relative degree of acceptance, at least on the part of some elements in management, labor, and the general public, it seems to me, are important for successful application and administration of a program for settling impasse disputes. One of the reasons I think it has more possiblity, and did have more possibility in the case of firefighters and police, was because they were interested in having that system and, therefore, also had an interest in having it work successfully.

It is therefore desirable for the Legislature to hold hearings, as you are now doing, to review the lessons of experience to date in the State and somewhat the experience elsewhere, and to be prepared to act, if it is timely to do so, intelligently, when further legislation seems to be in the public interest.

Now, I will turn, briefly, to two or three other items. I am, of course, in favor of the provisions of Assembly No 2. That would put into effect other recommendations as well of the study commission's report. I refer particularly to first the provisions of A-2 with respect to arbitartion of unsettled grievances. I would hope that if there is legislation on impasse disputes, that consideration be given to the possible move on arbitration of unsettled grievances.

Also, we did recommend a change in the composition for the Public Employment Relations Commission - PERC - to three full-time members and also for a council of public employment relations, consisting of four employer and four union representatives - or labor representatives. For reasons presented in the Commission's report, I think it would be desirable to carry out those recommendations also.

Finally, there are seven clarifying or administrative amendments set forth in the study commission's report which I believe there is no real basic disagreement on and which in part are already being carried out. It would be desirable to have them included in any legislation, it seems to me, that is enacted in this area. Those seven clarifying and administrative amendments would certainly improve the effectiveness of the act and would, as I said, have general support.

Now, with those remarks, I would like to have Professor Weinberg present the material that he has with respect to strikes.

P R O F E S S O R W I L L I A M M. W E I N B E R G: I am Bill Weinberg. I am here in my former capacity -- really representing my former role as Executive Director of the study commission. I am going to cut my remarks down, I think, in the interest of time. I will submit some material to Mr. Ben-Asher.

I simply want to reiterate that I do hope that if there is legislation, it is based on experience. The experiment with police and firemen is interesting. We have committed ourselves to a law; hopefully it should work and we should analyze whatever experience we can gain from the police and fire negotiations and compulsory arbitration.

Unfortunately, the Legislature did not implement the research component to scrutinize and analyze what has been happening in police and fire disputes, not just in terms of avoiding strikes, but also perhaps some economic analysis of the type of settlements they are getting in the police and fire disputes and whether the police and fire experience is transferable to other occupational

groups. As for the present, it is my personal belief that perhaps we should await more experience before we experiment with new legislation.

That is just reinforcing what Dr. Lester has just said and we are available to answer questions if you have any. I don't think we want to take your time when we have representatives of interest groups who really need the opportunity to express their views.

ASSEMBLYWOMAN TOTARO: Mr. Chairman, the only thing I can say is that there seems to be this general consensus of those who have been monitoring PERC and the results of that, that it is too soon for us to use it as a basis of judgment. Yet, as you can see with the number of bills that are focusing on binding arbitration, I feel that the Legislature would be moving and that if you have some input as to some possible amendments this Committee should be considering on some of those bills from some of the experiences that you have, that you send it to us so that we can have it for consideration. Thank you.

ASSEMBLYMAN PATERO: Thank you very much.

Next we will have Mr. Jeffrey Tener, Chairman of the New Jersey Public Employment Relations Commission.

J E F F R E Y B. T E N E R: Mr. Chairman, members of the Committee, thank you. I think that everybody is interested in, or is concerned about strikes. The issue that you are confronted with, I guess, is how to reduce both their duration and the frequency of their occurrence. I don't believe that it is possible to totally eliminate strikes in our society, so it is really a question of improving the present situation.

When I spoke two weeks ago to you, I made several points and let me just extremely quickly go over those points again for you. I said I thought that there were too many units of government and too many bargining units within the different units of government and I provided some statistical material to you in that regard containing estimates as to the total number of bargaining units that there are in New Jersey. That information is pertinent because it has obvious administrative implications in the event that you extend binding arbitration to other units of government.

I indicated last time also that I believed the timetable is too rigid; that the 60-day period provided for in Chapter 85, the Police and Fire Arbitration Act, is written more rigidly than it needs to be. I happen to believe that it is helpful and it is important for the parties to have an opportunity to complete any arbitration procedures prior to a public employers required budget submission date, but I don't think that it is necessary to compel both parties to do that if neither party is interested in doing that. The wording of that could be made a little bit looser so that it could be applied more flexibly.

In the third part I indicated our experience, particularly under the Police and Fire Arbitration Act. It is true in other sectors as well, however, as the factfinding seems to be being used less and less frequently in the public sector.

The final point I made concerned the experience with the Police and Fire Arbitration Act. First of all, it is much too early to generalize meaningfully about that experience, it seems to me. However, to the extent that we do have any vibrations with respect to it, they are very good. Police groups, and fire groups have been very pleasantly pleased. I assume that they will testify

to that effect today. I see that Bill Kosakowski and Frank Ginesi from the FMBA and PBA are listed on your list of speakers and I would expect that they will be pleased and express pleasure with the legislation. But, it is very early and the one reason that I happen to think the legislation has been particularly effective for those groups of people is because those people wanted them and those unions have a stake in making that process work. As far as I can tell, neither the School Boards Association, the American Federation of Teachers nor the New Jersey Education Association endorses an extension of binding arbitration to their employees at this time and I can only suggest that I would not be very confident that imposing legislation on unwilling groups would be likely to have the same success and effectiveness as with the same legislation if it were desired by those groups of employees.

I gave, also, in response to a request from Assemblyman Littell last time, some information on strike statistics. The upshot of it, I think, is that there have been very few strikes in New Jersey in education or other sectors when one considers the total number of negotiations. Furthermore, the duration of those strikes, for the most part, has been short and only minimally disruptive,and to repeat the final statement, I guess, I am not certain that the passage of A-553, or any other law, would guarantee that there would not have been a strike in Matawan last year, or a strike in Willingboro last year. Those are problems that I am not certain binding arbitration - compulsory interest arbitration legislation - would be able to resolve.

Let me take no more time on a statement. If you happen to have any questions, I will be happy to answer them and if not, you can move on.

ASSEMBLYMAN PATERO: Don't you feel that maybe because of the severe penalties that can be put on the union, that is probably one of the reasons there aren't any more strikes than there are at the present time?

MR. TENER: Sure, that certainly serves to deter strikes, although at the present time it may be that there is an unwarranted feeling, perhaps, of security. The teachers in Matawan did not have to go to jail because of Governor Byrne's action. They had some sort of alternate service that was necessary.

I note that the School Boards Association - I believe I am correct in this - does not favor the jailing of teachers either. I think it is pretty widely recognized that that is an act almost of desperation and one also that probably doesn't serve as a particularly effective deterrent, or at least a guarantee against teacher's strikes. My guess is that a fine would be a more effective deterrent than a jail sentence.

ASSEMBLYWOMAN TOTARO: I have two questions. Do you have any ideas on how we can break down the units, as you indicated? There is a problem with the large number. Can they be classified, or grouped together, so that they would be some type of a regional structure?

MR. TENER: There would be no reason why that couldn't be done except that it would require the agreement of the parties to the process. Home rule is a very dear subject in this state,and many others, and few employers are voluntarily willing to give up control over aspects of their purse strings and educational discretion and so on.

ASSEMBLYWOMAN TOTARO: So, you really feel that there would be local opposition to doing that on the state level?

MR. TENER: My guess is that it would require some action by the Legislature. Inducements, perhaps, are a way that that could be done by aid being given in such a way as to make it enticing to those districts to consolidate. But, I would suggest that reducing the number of districts would be the more fruitful thing.

One thing that could also be done and this could be done more locally, in school districts there are sometimes units of teachers and then a separate unit of custodians, and a separate unit of bus drivers, and a separate unit of clerks and secretaries. There would be no necessary reason why the parties could not voluntarily agree to a consolidation of units within districts so that if you do have an arbitrator in a school district, there are only one or two bargaining units - maybe one of professional employees and one of non-professional employees - so there would be only two arbitration awards. In many districts, of course, professionals and non-professionals are in a single unit and as far as we can tell, that seems to work well and not to the detriment of anybody, although there may be certain sorts of psychological advantages in having separate units. And, of course, that assumes that there is only one employee organization that represents all of those and that is not, obviously, the case. A number of different unions represent units, particularly of non-professional employees.

ASSEMBLYWOMAN TOTARO: All right. One other question. From your experience, most strikes are caused by what? I mean, we have several bills. Some address the areas of negotiation and arbitration in very broad terms and some say it should be just based on salary or wages. What is your experience? Are strikes caused by other than wages?

ASSEMBLYMAN PATERO: If I may also, excuse me. Can you also explain what were the problems with the Matawan and Willingboro negotiations? Just what was the reason they went on strike?

MR. TENER: Okay. I would say that most strikes, to generalize, -- the root cause of the thing is probably some financial economic consideration - salary, fringe benefits, or something like that. On the other hand, most employee organizations are anxious not to get themselves into a position where it appears as though all they are striking over is money. That somehow seems a little less noble than some other kinds of causes and generally, at least the clever organization will normally be sure to reserve several other issues that it can tie into the interests of education in the community - if they are able to do so, class size, more specialists, and some of those kinds of things that are helpful educational type interests. And, I am not being totally cynical. I don't mean to suggest that they don't really adhere to those positions.

Another major cause of strikes is a situation when a public employer attempts to get back certain things that have been given away over the course of the years and unions, most strenuously, resist that. I guess the most dramatic examples of that were the couple of strikes in Newark in '70 and '71, when the efforts of the board appeared to be, for one thing, to eliminate binding arbitration from the contract, for instance. That is a predictable strike-causing action on the part of the public employer.

Matawan and Willingboro -- I guess that, before there can be a strike, there is normally a situation where the parties' relationship is not good over a period of time. There is a tremendous amount of stress and strain

between them. It can be a power struggle in the sense that in Matawan there were some dominant personalities. The teacher president, Marie Panos, and Jerald Dorf, the negotiator representing the board are two strong forces, each one of which was interested in emerging with maximum credibility and that led to a certain amount of struggle between those individuals, independent of the issues between the parties. However, I suspect that had the board offered to the teachers what the teachers ended up getting, that the strike would not have taken place, or it would have been a lot shorter and I could make a parallel on the other side too. It wasn't just the personalities. It wasn't just the money. It wasn't just the fact that the board attempted to take away some of the things that had been in the teachers' contract, although all of those were elements in it.

Willingboro -- mainly economics, I think. Contrary to what I may have said, there are some problems in the district, I guess, between the administrators and the teachers, some suspicions and mistrust. There was a big budget deficit that had to be made up, or apparently had to be made up - $600,000, or something like that that wasn't there. There were threats of layoffs in the background and reductions in force. That sort of thing breeds insecurity and instability and can lead to teacher strikes.

ASSEMBLYMAN PATERO: Okay. Are there any other questions?

ASSEMBLYMAN COWAN: Yes. In this relationship of bringing in -- you mentioned that interest groups here today would be testifying, such as the police and firemen, probably in favor of this. Yet, I am sure there are going to be the two outstanding groups here today testifying against it - the NJEA for one. Could you perhaps bring anything out to us in this regard? Why, at this point, do they seem to be opposed to it?

MR. TENER: I think the police and firemen recognize that they did not have a chance of getting the legal right to strike. So, to the extent that they made a tradeoff, they gave up nothing in order to get binding arbitration. They don't really have too much to lose.

The teacher groups still hope - and I am pretty certain that they understand that they are not going to get it this year - but they would prefer the right to strike as a means of resolving the dispute. So, they are not, at this point, prepared to give up that in return for any kind of interest arbitration.

The employer groups, the school boards -- I know that one of their constant laments is that they have an exceedingly difficult problem with board member turnover and so on. On the other hand, they are a more cohesive group than other employer groups in the State, it appears to me, and they recognize that once there is interest arbitration they, the public employer, lose unilateral control over establishing terms and conditions of employment.

In Willingboro, those teachers went back to school ultimately on terms that the board of education was willing to accept -- the same in Matawan. They could take the costs of the strike, if they chose to do so. They could concede, if they chose to do so. It was something that they, themselves, had control over.

If there is an interest arbitration law, then the arbitrator is going to dictate the terms under which teachers will be teaching and the board of education loses its unilateral control over that area. That is a significant loss of control and I think that is why public employers generally are concerned

about it. The League of Municipalities, you will recall, did not support Chapter 85, the Police and Fire Arbitration Act, Senator Maressa's bill. They were not in favor of that. I don't see them listed here today, but I would be surprised if they would embrace it to the same extent that I would expect the PBA, FMBA to support it, although I must say that our experience has been that the employer groups in municipalities and counties have not vociferously spoken against the law. Just last week, in the first test case of the Police and Fire Arbitration Act, Judge Lester in Bergen County did order a public employer to sign a contract that embodied the arbitrator's award, and ordered the employer - the borough - to adhere to the terms of that contract. So, in the first test, at least, it is being adhered to.

There have been several court cases, as I indicated - challenges to the Police and Fire Arbitration Act - and I suspect that that indicates, in part at least, dissatisfaction with the law itself, although my sort of behind-the-scenes information suggests that at least as much of it may be associated with the cap legislation and the concerns of the municipalities with coping with caps as with the interest arbitration law.

ASSEMBLYMAN PATERO: Are there any more questions? (no questions) Thank you very much.

Next we have the Majority Leader, who is the sponsor of the bill, A-553, Assemblyman Albert Burstein.

A S S E M B L Y M A N A L B E R T B U R S T E I N: Mr. Chairman, I think that this is about the sixth time that I can recall I have testified on this, or preceeding bills, on the same subject matter and I am sure the Committee, as well as others, are tired of hearing me on it.

In that light, let me perhaps, instead of going through the details of the bill itself - and I assume that the Committee is addressing only, at this point, A-553 - deal with some of the purported objections to the bill and attempt to approach it that way and then leave the rest for questioning.

Let me say at the outset that my preference - although that is something, obviously, left to Committee consideration - would be to have A-2, which is a more comprehensive approach to the matter of public employer/employee relationships, moved because that covers all state employees, encompassing teachers, which A-553 is directly addressing.

But, in addition to that, there are a number of other things to our present law of public employer/employee relationships, things that I think are beneficial and I would hope, at some point at least, the Committee would turn to, irrespective of the scope of the application of the binding arbitration concept, whether it would just go additionally now to teachers or whether all state employees should be covered. I think that the elements in A-2 that are important relate to the structure and operation of the commission, as well as a number of other items that are incorporated in that bill.

Addressing myself, first, to 553 and the reason for bringing teachers into the binding arbitration system, if you deal with the matter statistically, one could very easily say that there aren't that many strikes in New Jersey and that, as a result, teacher/board disputes ought to be allowed to remain exactly where they are under the present system. I find a coupls of problems with that. To begin with, the strikes have been significant strikes, those that have occurred in the past - significant in terms of numbers, among other things. But, the real

problem arises from the fact that everytime there is such a strike and there is a court proceeding and teachers end up in jail, there is an immediate and dramatic problem confronting those in the public sector who don't want to see that kind of thing happen. You don't like to see people who are professionals, such as teachers, or anybody for that matter, going to jail in the context of this kind of a dispute - a labor dispute. And, yet, they are constrained to do so, they feel - and I can understand their feeling - simply because they are not able to arrive at some kind of amicable resolution of their impasse differences. That is exactly what this bill is designed to do, to allow some type of outlet that does not encompass that type of punative action on the part of the courts. And, the courts are compelled to do it because once there is a restraint issued and that restraint is violated, they have no recourse but to do something punative.

The fine approach, which I heard Jeff Tener mention, may be okay, except that what will happen is that the unions that are bargaining will make sure to keep their exchequers in low condition so that the fine means nothing to them. In other words, the fine system may not be - in the ultimate sense - be punative at all once they get used to the idea that,"yes, we can get away with this and the fines that will be applied to us are simply not going to work because we are not going to have any money available to pay it." I think that it is not a sensible approach, in any event, to what we are dealing with, namely, "What are we doing in situations of impasse?"

With respect to the argument that has been made by both sides in this picture - that is to say the interest groups, the NJEA, and the School Boards Association - against the bill because they feel that they tend to lose control over their ability to govern the course of negotiations, again, I think is not a complete answer. It is a superficial sort of argument. They have ultimate control over what they do; obviously the arbitrator has the final say, but it is a final say which is encompassed within the scope of what has been going on between the parties up to the point that the arbitrator comes into the picture.

The bill is designed to make sure that the things that the arbitrator has before him with respect to the issue still open, be they economic or non-economic in nature, are things that have been presented to him by the contending parties. He is not doing it in a whimsical way. He is not going outside the scope of what the negotiations have been. He has before him, at final stage, the last offer of both sides and what the design of the bill is, is to make sure, by means of that process, that that final offer is something within reason. In other words, it is a stimulus toward reasonable conclusion of negotiations.

Now, I think that one of the effects of the bill will be to bring about voluntary solutions to a far greater extent than has been the case, and much more expeditiously than before. Because one of the things that I think is omitted in the consideration, or analysis, of these bills is that although you may not have, in a statistical way, too many strikes in this State arising out of teacher/board confrontations, what you do have instead of strikes is a stretch-out of the bargaining process going, in some cases, over a couple of years of time. I know that to be the fact in my own town of Tenafly, where that has occurred only recently. There was a contract finally agreed to after about two solid years of negotiations and during that intervening period what happened was, although no strikes nor job actions were taken, the extra-curricular activities that are normally associated with teacher function, the kinds of time

that a teacher will devote to the duties that go somewhat beyond the normal scope of classroom activity - those kinds of things were absent during this period of time and that is what happens when you don't have resolution of impasses and resolution of grievances. That is when you have dissatisfactions and those dissatisfactions, if they are not terminated within reasonable periods of time, can ultimately lead to the types of confrontations that we have had which led to the strikes. Teachers generally don't want to strike. None of the public employees that I know, recognizing the fact that the strikes are illegal, want to strike. But, we create, by means of the present system of not providing for an outlet for grievances, that kind of tension which over the years can build up to the point where, from time to time, you are going to get strikes. I think that that is harmful. It is harmful from the standpoint of teachers having to break the law, not wanting to; harmful from the standpoint of a bad example that is set for those with whom they have the immediate relationship, namely the children in the classroom for whom they are supposed to be models of behavior; and I think it is harmful to the public good.

So, I think there are strong arguments to be made for the creation of an impasse system that takes into consideration these unspoken factors, the things that are not on the surface and in the public eye in the statistical sense, but, nevertheless, are things that had a harmful impact upon the relationship of teachers to students and teachers to administrators. And, the longer that goes on, the worse it becomes. Any problem unresolved, festers and you create a bad personal situation. The design of the bill is to have a reasonable end to those kinds of impasses and I do think it will create that kind of a system.

ASSEMBLYMAN PATERO: One of the questions that came up was that they felt that this arbitrator that would be coming in was not familiar with the area and aren't we giving him a little too much power in making a determination as to what is a fair and final offer?

ASSEMBLYMAN BURSTEIN: Well, we are not really giving him too much power; we are giving power within the confines of the law, which, in effect, asks the parties themselves to dictate to the arbitrator the confines of his choice. So, I think that the power argument really falls of its own weight because the arbitrator is not given unblemished power. If you had an arbitrator who could make his own decision, irrespective of what the prior negotiations between the parties may have been, I would agree with the criticism. But, that is not the way the law is structured. As a matter of fact, what the law serves to do - what the bill serves to do - is to give to the parties themselves a choice of about five different systems of final arbitration and they can include within those systems either their own final offer, which is the ultimate way in which we go if they can't agree, or it can also include an intermediate finding of a fact-finder as an example. That can be one of the elements that goes into the consideration of the arbitrator. Or, he can consider going,as a single package,to all the issues between the parties instead of breaking it out between economic and non-economic issues, as we do in the final analysis.

So, there are a variety of voluntary choices that can be made by selection between the parties, if they can agree. So, you don't have a completely open system insofar as the arbitrator is concerned when he comes to make his decision. If the parties agree upon a particular method, that is the method the arbitrator will follow. If they can agree on no final method, then the law

prescribes what that method shall be, but within the confines of what the parties have been negotiating about.

The other aspect of it relates to the skill of the arbitrators. We probably, at this point, do not have sufficiently skilled arbitrators that work in the field in New Jersey. One of the things about A-2 is that it calls for additional training on the part of Rutgers and whatever other institutions may be available, but particularly Rutgers School of Industrial Relations, to enhance our ability to have people in the field who will do this kind of a job. But, I think that what will happen is, that many of the people who have been working and live in New Jersey - and I know quite a number of them - who work as skilled arbitrators within other states - live in New Jersey and work in other states, because New York, as an example, has a highly developed field of impasse arbitration and you have many of the professional arbitrators working over there - will be attracted into this state were we to adopt a law of this kind.

ASSEMBLYWOMAN TOTARO: Assemblyman Burstein, you touched an area that I am quite concerned about. One is the implementation of this legislation. Looking at the fact sheets that were provided to us, there are an estimated 1,500 bargaining units to deal with and your legislation is so broad and encompassing which means that any aspect of employment can be covered under binding arbitration. You are not limiting it to one general area. I just cannot see-- As you first stated, there is a problem with the manpower, or the expertise, and then the time factor. Is there a possibility that you have a plan to group the units, as had been suggested? How can this possibly be accomplished to cover all aspects of employment for 1,500 units when you have a limited number of experts?

ASSEMBLYMAN BURSTEIN: I don't believe that you are going to -- You can't look at the 1,500 units. I don't know where the figure came from. Maybe Mr. Tener provided it to you. But, whatever the number of units, you are not going to have to have 1,500 units availing themselves of an arbitrators activity. Most units continue to resolve their disputes between themselves, either at the initial bargaining stage or with a factfinder coming in to assist. If they don't get anyplace at that point, then, of course, the arbitrator comes into play. But, that, I dare say, is going to be in the minority of cases. I think that to use that as the reason not to pass the bill, would be misdirected.

If you find in your deliberations that the objective of the bill is a good one - in other words, that there ought to be a way of resolving impasses - then, as far as developing a body of individuals who can sit and judge as arbitrators, that comes along with it. It is a chicken/egg sort of argument. Eventually, that will happen if it is not there now. I think it can be cured very quickly. I think we can develop the body of people who will sit as arbitrators very quickly.

ASSEMBLYWOMAN TOTARO: On page 5 -- Someplace in there, it indicated that the commission would pick up the cost?

ASSEMBLYMAN BURSTEIN: Yes.

ASSEMBLYWOMAN TOTARO: That is what I am saying. You might not have 1,500 units now who will go to any type of negotiation or be even strongly involved in some minor differences. They will resolve it. But, I think when the cost is going to be picked up by the commission and you have such a broad area for them to be coming to binding arbitration on -- I mean, you are bringing in, again, the sizes of the classroom, whether they are going to be there during the lunch time

break. You know, there are several other areas they could possibly bring into it. I think this is almost an inducement for all people to be involved in stronger negotiations, then previously.

ASSEMBLYMAN BURSTEIN: Well, I am not sure that I agree with you, Assemblywoman. First off, if you are talking in terms of the cost of the arbitration when it says, "The parties should bear the cost of the arbitration subject to a fee schedule to be approved by the Commission..." - that is in subsection 6 of Article F.

ASSEMBLYMAN COWAN: Which is normal practice with arbitration.

ASSEMBLYMAN BURSTEIN: Yes. Subsection 6, line 117, on page 5. But, I really don't believe that you are going to induce more in way of disputes - impasse disputes - than you have now. My belief is that you are going to have a stimulus toward--

ASSEMBLYWOMAN TOTARO: The mediation is picked up by the commission.

ASSEMBLYMAN BURSTEIN: Right. I think you are going to have a stimulus by adoption of this bill toward resolution of more disputes before they ever get to the stage of impasse.

MR. BEN-ASHER: Mr. Burstein, in light of the Chairman's concern for extending the power of arbitrators in impasse settlement, do you see any value in requiring arbitrators both for police and fire and now possibly teacher disputes, to specify in the award what weight has been given to each of the criteria upon which the award is intended to rest and why, so that the parties will have some idea as to what the award is based on?

ASSEMBLYMAN BURSTEIN: I think that may be a useful provision. The only thing about it that would cause concern is that it may provide additional openings to the aggrieved party - the losing party, that is to say - to use some defect of reasoning, or what appears to be a defect of reasoning, to say this was the product of whimsy and they then go into court. It may stimulate litigation. Now, I am all for stimulating litigation. Lawyers are in trouble these days, particularly after Carter's attack upon them. But, I think it has a two-edge sword effect. It will be good for the parties to know the basis upon which and the way supported by the arbitrator to the various elements that we set out in the law as guidelines to the arbitrator, and yet it opens the door in a way that has to be weighed very carefully.

ASSEMBLYMAN PATERO: Are there any further questions? (no questions) If not, thank you very much, Mr. Burstein.

ASSEMBLYMAN BURSTEIN: Thank you, Mr. Chairman.

ASSEMBLYMAN PATERO: Mr. Charlie Marciante, who is the President of the New Jersey State AFL/CIO, said that he would not testify in front of the Committee today but he will submit testimony to the Committee.

Next we will go to Mr. Frank Totten, President of the New Jersey Education Association.

F R A N K T O T T E N: Good morning, Mr. Chairman. Good morning, members of the Committee.

ASSEMBLYMAN PATERO: You know we have set a time limit on this. There will be one group who requested more time and we told them we would allow them to but they will be held to the later part of the meeting when everyone else has testified.

MR. TOTTEN: I will try to get this within the time frame, as close as

possible.

I am Frank Totten and I am President of the NJEA. We have 110,000 members, some retired, but most active. With me is Jack Bertolino, our Director of Field Service.

We telieve that A-553 grafts public school employees onto the fire and police department compulsory arbitration law enacted in May, 1977. That law was specifically designed to help settle fire and police department disputes. It had the support of the major employee organizations representing police and firemen. And, as was anticipated, we do oppose that bill -- being included in it.

School employees do not wish to be included in this bill. We heard PERC Chairman, Jeff Tener, state in his testimony before this Committee that he doubted that compulsory interest arbitration would work as well if the procedure were imposed on an unreceptive group, and we couldn't agree more.

Neither A-553 nor any other compulsory interest arbitration bill can succeed if the measure is opposed by those it was supposedly designed to help - regardless of whether that opposition comes from the employer or the employee group.

Here are some reasons that we oppose it: Compulsory interest arbitration does little to compel or to force compromise. In fact, it provides the parties with opportunities to procrastinate, to avoid real issues and to blunt compromise.

Compulsory interest arbitration encourages the parties to expend their energies preparing presentations for an arbitrator, rather than concentrating on free and open collective bargaining aimed at reaching a voluntary settlement.

Compulsory interest arbitration imposes settlements that are temporary truces. This is so because the parties do not participate in a true exchange of ideas and proposals directed toward compromise and agreement. When an arbitrator picks a winner and a loser, he or she guarantees little stability or acceptance. Rather, an arbitrator's award can force a loser to save face by whatever means are available, including immediate litigation and an attempt to modify or vacate the award. The loser's predictable response would delay implementation of the contract and aggravate the positive bargaining relationships and the principle of finality which the arbitration procedure is supposedly devised to promote.

Now, this has already been the case with the police and fire arbitration law. Last month in Jersey City the municipality's corporation counsel went into court to seek an injunction to halt arbitration with the police and fire unions - before the arbitrator even issued an award. Such blocking litigation drags out negotiations, while differences become even more hardened.

In addition, lawyers for the three Bergen County municipalities of Cresskill, Maywood, and Garfield have gone before Superior Court. Why? They seek to vacate interest arbitration decisions awarded to resolve negotiation disputes with their police employee organizations.

Now, teacher organizations have had similar problems with school boards in grievance arbitration disputes. Arbitrators rule, but employers remain defiant. A number of school boards have refused to accept grievance arbitration awards despite the fact that they had negotiated such provisions in their contracts. As a result, NJEA and its affiliates have been forced to

expend tens of thousands of dollars to seek court orders to require boards to live up to provisions included in contracts with teacher associations.

Compulsory interest arbitration undermines the effectiveness of mediation and of fact-finding. We believe this is so because the parties tend to posture to refrain from making concessions. They wait, hoping for the best possible decision from an eventual arbitrator.

The compulsory interest arbitration process requires the expenditure of an enormous amount of time, money and effort by the employee and employer groups and to the State. We believe this bill is no exception.

Already under the police and fire arbitration act, PERC has received 187 notices requesting arbitration. Imagine, if you will, the impact which could be felt should the over 1100 teacher and other school employee bargaining units opt to engage in the interest arbitration process.

Compulsory interest arbitration does not solve a problem in a way both sides can say was "acceptable." Imposing a settlement can lead to the hostility and resentment of either or both parties.

Also, an imposed settlement lacks true employer/employee ownership, an ingredient essential to maintaining positive working relationships long after an arbitrator's decision has been awarded.

Under A-553, interest arbitration is limited only to those subjects which are within the required scope of negotiations. Permissive subjects could be submitted only upon agreement of the employer and employee groups. This would mean that unless the employer agreed, no permissive subjects could even be considered by an arbitrator. That's not bargaining.

Proponents of compulsory interest arbitration often argue that the process is a panacea which will prevent strikes. It cannot. In a free and open society, government cannot impose its will upon employees and employers and force settlements of disputes, particularly with respect to situations in which recalcitrant employers refuse to bargain in good faith.

In order to avoid any misunderstanding regarding our position, I would like to emphasize that our Association does not oppose voluntary interest arbitration as a method for resolving disputes. Any form of arbitration which is mutually acceptable to the parties can and should be utilized. This is already permitted under State law.

We vigorously oppose the imposition of any type of compulsory interest arbitration which purports to mandate finality to the bargaining process.

We believe that true collective bargaining cannot occur without at least the limited right to strike. Providing such balance can expedite fair settlements. So, we would like to oppose and we ask you to oppose A-553 and support A-455.

ASSEMBLYMAN PATERO: Frank, what are the problems with the present system that we have right now?

MR. TOTTEN: The present system? Under the present system we have boards of education - I think Jeff Tener said this - where there has been a build-up of bad situations over a period of time so at one point you end up with a strike. There were two bad strikes this year. There were a number of others that were settled in two or three days. Everything goes on as normal there and that provided finality to the bargaining process and worked well.

These two bad strikes of longer duration - Willingboro and Matawan - there has been a build-up there for some time, as Jeff stated, and I am not sure you can solve that kind of a problem with this bill or any kind of compulsory interest arbitration because legislation and a way to provide an end to a bargaining process is not going to solve the ill feelings, the harassment, the various kinds of things that go on. So, some kind of explosion takes place, and that is what occurred in these two districts.

Now, when the explosion takes place, both sides realize what has happened and if you look at Matawan today, there is a new superintendent and I think if you talk to the teachers' group and to the administration and possibly to the board, I think you will find that things, even though healing slowly, are more positive after the strike then they were prior to it.

ASSEMBLYMAN PATERO: Now, Frank, I know you just took over in January but I see you have your staff here and I was wondering if they might know; do you know how many school districts have gone more than one year without a contract?

MR. BERTOLINO: More than one year?

ASSEMBLYMAN PATERO: Yes. We have cases where they have gone into two years before they signed the contract of a year ago.

MR. BERTOLINO: I would say that there are probably not more than between five and ten that actually had that kind of a situation.

Now, this past year - I am saying going into two years - last September when schools opened, there were about 120 districts that had not yet settled. In other words, they started school without a full agreement. As the year wore on, that number diminished until at the present time - and it is important that this Committee note this - there are about five or six districts, mostly smaller districts, that have not yet settled. In a couple of those cases, the districts are negotiating their first comprehensive agreements. But, we anticipate that this coming year there will be -- we will probably open school with at least an equal number of districts that have not yet settled in September.

I might make another comment, if I may, Mr. Chairman. I think, in response to what Frank said initially about whether this law is working, we say that by and large this law is working. As Mr. Tener pointed out, the great majority of districts have settled peacefully and amicably. The question arises, however, where there is a dispute, what happens if a school board recognizes that public employees - or in this case teachers - do not have the right to withhold their services? That is the reason that we support Assemblyman Jackman's bill, because the school boards can use the courts and the injunctive process as a bargaining tool in negotiations.

So, when it comes right down to it, without the limited right to -- some right to withhold services, we believe that in many cases it prolongs negotiations and settlements cannot be reached for that reason. It is, of course, for that reason that we would want this Committee to support A-455, which would give public employees a limited right to withhold services -- that is, that an injunction could not be issued without at least giving the employees the opportunity to present their side of the story.

ASSEMBLYWOMAN TOTARO: Mr. Chairman, would the NJEA be agreeable or acceptable to some type of strike penalty being incorporated in the legislation, such as other states are using? One is fines for the number of days that they are

on strike - an unauthorized strike - and the other is the guarantee that even though a school district goes on strike, that they would have to put in the days that are required and that there would be a salary penalty on it. There are methods that are used in other states.

MR. TOTTEN: Well, we don't agree with that because this is not done in private employment, nor is there any onus or penalty on the board. In other words, assuming that both sides are equally guilty for a strike to take place - and I think I am being generous on that one - to deprive people of their income is one thing, and the fact that they are not working-- That is one instance where if I don't go to work and I am on strike, well, certainly, I don't get paid.

If, however, I have to do that same work later in the year, then I should get paid for it then. But, to put a fine on me and not to put a fine on the board collectively, or the board members individually, that is unjust and totally unfair.

ASSEMBLYWOMAN TOTARO: It was suggested by representatives of some of the trade unions to me, personally, that they felt that there is a lot more jeopardy involved when they enter into a strike because they do definitely have a loss of salary, where the teachers, in their profession, are always reimbursed for the time that they do lose.

MR. TOTTEN: No, that is not correct. The Matawan strike, for example -- 'x' number of days were lost. All the members of the Matawan Teachers Association lost pay.

ASSEMBLYWOMAN TOTARO: That school remained open during that strike that was the reason why they were not reimbursed.

MR. TOTTEN: That's right. So, they lost their pay and they will never see that pay. On the other hand, another school district may close schools for certain days of a strike. Not all. Some. It depends. Then those teachers would be paid for the days that work is done. So, if you work you get paid, if you don't work, you don't get paid is a kind of general rule. Therefore, I don't think that it is analogous to the one thing you said. But, certainly in private industry if people don't work they don't get paid and we are not asking for anything different than that.

ASSEMBLYMAN PATERO: Thank you very much, Frank.

MR. TOTTEN: Thank you.

ASSEMBLYMAN PATERO: Next we have the President of the American Federation of Teachers, Mr. James Auerbach.

J A M E S A U E R B A C H: Good morning, Mr. Chairman. I am Jim Auerbach, President of the American Federation of Teachers. I will keep my remarks very brief, as there are other AFT speakers scheduled as well this morning.

I just want to make clear at the outset that the AFT has always been opposed to compulsory arbitration. We prefer that it be called compulsory arbitration rather than binding arbitration because of the confusion that results between compulsory arbitration in the settlement of contract disputes and binding arbitration of grievances. So, we have always distinguished this form of interest arbitration by calling it compulsory arbitration. I was very glad to see that the Legislative Index was finally referring to it as compulsory arbitration as well.

We are in support of Chris Jackman's A-455, which would provide due

process in the case of strikes when they occur. It is not really a right-to-strike bill. It is merely a bill that allows people to have their day in court before injunctions are issued by a judge. We stand strongly in support of that kind of legislation. We stand very strongly opposed to bills, such as A-553, which would include public school employees within a system of compulsory arbitration, such as police and firemen are now included in.

I would like to say, as others have said before me, that it is much too early to judge success or failure of that type of legislation for police and firemen, but already there are problems occurring, as has been pointed out by previous speakers.

I would just like to read something, a very brief partial statement that was in a column in a recent publication, that is published in New Jersey. I will give credit where credit is due at the end. I think it speaks very well to the issue of compulsory arbitration.

"We have had about 6,000 negotiated contracts in public education since 1968, 5,900 were reached without a strike." I think that is worth repeating. "Five thousand nine hundred were reached without a strike. Let's look at the two cases where a strike occurred, Matawan and Willingboro. Proponents of arbitration claim that there would have been no strike in either district if there was arbitration. Matawan and Willingboro accounted for 94% of all lost student days in New Jersey's nine struck districts this school year. Given the fact that less than 1 1/2% of our negotiations result in strikes, most of them less than three days, and given the fact that a proven mechanism to avoid strikes has been ignored in many longer strikes, shouldn't the passage of arbitration at least pose no great danger? But it does. Outside neutrals, no matter how objective, can make decisions vital to the directions of a school district and detrimental to employees and management alike.

"Such forced contracts can ignore the desires of the governed and the well-being of those served - young people in our case. Final 'settlements' under arbitration can't rest on one person's feelings of whether something looks good on paper or whether he or she will ever be chosen to work again by the unions." I would add, also by management. "This is no substitute for informed bargaining. There are things we can do now that positively affect school labor relations. Let's use mediation and factfinding to their best advantage. PERC must continue its attempts to add qualified neutrals to its roster to aid parties to reach their own agreements. Labor and management must exhibit a new sophistication in bargaining. One indicator of that may be to start negotiations in April or May, before a contract expiration, not the previous October. Such unreasonably lengthy negotiations can very well increase disputes rather than resolve them.

"We should monitor bargaining closely, especially the brand new Police, Fire Arbitration Law in New Jersey. For a change, why don't we see if a solution works before applying it to other situations. It is not necessarily true that the headline-grabbing proposals of strike legislation and arbitration legislation are our only alternatives. To some, they provide seemingly easy answers to an annual problem. Both may, in fact, prove to be far more destructive than our current state of affairs."

This is not a statement made by a labor representative. This is a statement made by Bruce Taylor, Director of Labor Relations of the School Boards Association.

What you have apparently is a situation where virtually all those affected directly are opposed to compulsory arbitration - management, labor, and employee groups that directly represent public school employees. Nearly all those that are affected directly are opposed to compulsory arbitration, which raises some very real questions in our mind as to why this bill is being given such serious consideration.

One could say, perhaps, that there is a higher interest here - the public's interest. Well, I would remind many that we too are part of the public and, further, that this bill is very unlikely to resolve the kinds of problems it purports to solve.

It will be noted, I think, by other speakers after me that in states where strikes are directly prohibited, you have a higher percentage of strikes than in a state like New Jersey. And, this is something we have to consider very seriously.

Also, in response to something that Assemblywoman Totaro said before about fines for employees, we would be very strongly opposed to that. Once again, the approach is always, "What can be done in a punative way against employees?" This ignores the very real situation of management-provoked strikes. They do occur. They are very real and something which you, as legislators, are going to have to deal with eventually. You have had examples of that many times in the past and you have had many other situations which were barely averted strikes that were management provoked.

When a board says that it will simply strip away, unilaterally, several hard-won provisions of a contract, treating contracts as some temporary, ephemeral thing where you can simply decide, "this year we simply will not have certain very important, basic provisions in this contract because we decided they are no longer to be in a subsequent contract," you have a situation which can only be called "management provoked strike." And, if strikes result from that kind of a situation, I think that the blame has to be fairly put where it belongs. When employees have spent years and years developing contracts and still feel they have a great deal to go in developing an equitable agreement, and a board takes that kind of a position, the employee group finds itself in a situation where it really has no choice but to do whatever seems necessary to protect its contract as it exists up to that point, and to do what it has to to improve that contract and to develop equitable wages and professional working conditions. It is not a situation that anyone likes to find himself in, but sometimes it is a situation which one finds himself in, whether one likes it or not.

So, I would say to you that prohibiting strikes legislatively, or imposing heavy fines, will never prevent strikes; only fair bargaining at the table will eliminate strikes - what few we have had, and there have been very few of them so far. Thank you for the opportunity to speak with you today.

ASSEMBLYWOMAN TOTARO: One thing - I don't believe that the fines are used as a punitive measure against employees, but basically as a deterrent for long-range strikes. And that was what had been given to me as to why the amendments were included in legislation in other states. I think when we take it into consideration, strikes benefit no one. They certainly do not benefit the teachers, the school systems, or our students. So, everyone loses. And, if we can prevent strikes, I think that is the purpose of the legislation.

MR. AUERBACH: I think we are all in agreement that no one wants

a strike. Reality is that when you impose heavy fines on an employee group and take no action against the board, you are just bludgeoning that group into submission, and that does not resolve the problems.

ASSEMBLYMAN PATERO: Okay. Thank you very much.

Next, we have Mr. James Moran, Executive Director of the New Jersey Association of School Administrators.

J A M E S A. M O R A N: Mr. Patero, in the interest of time, I am going to summarize, basically, the position of the School Administrators Association.

ASSEMBLYMAN PATERO: Proceed.

MR. MORAN: Let me start off by saying what we do represent. The School Administrators Association represents a limited form of finality to bargaining. It is our belief that the scope issue subject to finality should be limited to salary and commonly negotiated fringe benefit issues. Mr. Tener, earlier today, identified these basically as the root causes of strikes and the areas and the bottom line which are the causation of most strikes.

We believe all of the other areas that may properly be subject to bargaining, whether mandatory or permissible, ought to either be worked out between the parties in the current impasse proceedings, up to and including factfinding, or ought to, if the Legislature in its wisdom finds them necessary, be worked out in other ways - to be worked out legislatively. We do not believe these areas of important public policy should be delegated to perhaps ill trained arbiters. We believe the 120 arbiters of the State Legislature should determine the public policy of this State in these areas.

In addition, there is a question of the artificial condition existing - namely, the artificial establishment of caps - which were placed into place several years ago and must be considered in any legislation dealing with even the economic consequences which arbitrators will be ruling upon. I am not suggesting that these should peg settlements. I am simply suggesting that unless they are eliminated, they must be a consideration in any arbitration proceeding.

Looking at the heavy matters of public policy, it would seem to me, as I suggest, that neither PERC nor any single arbitrator, accountable to no one, should be the individual that determines and develops what the public policy for the schools of this state will be. I think this is a proper subject and should be properly limited to you.

The salary and economic consequences can be adjudicated by any number of standards and probably do suggest the possiblity of some form, preferably, of final selection arbitration - probably gross package arbitration - in this particular area. In other words, a total economic package.

By way of background, in addition to being Director, I have had over 10 years in a representative function, representing teacher groups. I have had over 10 years in a representative function, representing school boards and representing municipalities as a bargaining specialist throughout the State of New Jersey.

I have had enumerable labor relations contracts behind me and I don't speak lightly of this issue. I think finality to bargaining will ultimately destroy the bargaining relationship in most areas. People responsible to their constituencies will not be prepared to go forward towards settlement, but will maintain extremely reserved positions and force the issue to the arbiter for final conclusions. Unless they find this process to be a scurge, they will

continue to do this, thereby eliminating bargaining. If they find the process a scurge, perhaps we will return to the rational type of bargaining, which provides for settlement. Settlement comes out of intelligent, diminishing of expectancies on the part of people. It does not come out of some super-imposed condition. And, further, we would categorically oppose even the limited right to strike and we would oppose any form of finality to bargaining, which extends beyond the issues of salary and commonly negotiated fringes.

I think that basically summarizes our position. If you have any questions, please feel free to ask.

ASSEMBLYMAN PATERO: Yes, just one question. Your members consist of superintendents, principals--?

MR. MORAN: Our members consist primarily, yes they do, of both categories, but primarily of the chief school officers, central office personnel, and school administration - basically, those people responsible for the leadership function of the schools of this State.

ASSEMBLYMAN PATERO: Thank you. Are there any questions? (no questions)

MR. MORAN'S FULL STATEMENT ON PAGE 1X)

Next, we have the Executive Director of the New Jersey State Employees Association, Mr. Edward Sammon. (no response)

Is Professor James Begin here? Professor Begin is Professor and Chairman of the Department of Research, Rutgers Institute of Management and Labor Relations.

P R O F E S S O R J A M E S B E G I N: My comments to the Committee this morning are meant neither to support or not support interest arbitration. I thought I would review some of the research we have available, very briefly, on the operation of interest arbitration in other states and other countries. I want to look at three questions. Obviously, there are many more questions but three of the most important questions, I think, are, does interest arbitration undermine free collective bargaining while leading to its overuse; does it actually lead to the elimination of strikes, as it is designed to do theoretically; and, third, does it lead to inflation - that is, are settlements larger than they might have been otherwise, thus creating inflation in our society?

Unfortunately, as other people have indicated, we don't have any data on the New Jersey act as yet to permit us to answer these questions. But, there is research available in other states which will give us some guidelines. Unfortunately, most of that research derives from the police and fire context. Where we can apply these findings to other groups of employees, like teachers, is unknown as this point.

In terms of the first question, as to whether interest arbitration undermines free collective bargaining, I think based on the evidence to date, we can conclude that arbitration has not caused the demise of collective bargaining by public employees in the states that have been studied thus far. There has been some increase in the use of impasse procedures that by and large the researchers - and the studies have been done in states like Massachusetts, Michigan, Wisconsin, Pennsylvania - primarly indicate that the vast majority of negotiations still are continued by the parties themselves without any recourse to third party assistance, and that of course includes arbitration.

I should add a caveat though: We are still in relatively young, early stages of development. Most arbitration acts are less than five or less than

ten years old and we really don't know what is going to happen in the long run, as to whether this pattern will continue. If we look at experience in other countries - and who knows whether that experience can be extended to our own political/economic system - such as Australia and Jamaica, researchers there concluded that, in fact, arbitration has undermined the collective bargaining system and that the parties are unable to reach agreement without recourse to third party assistance. As I say, that experience has not been developed in this country as yet, in the public sector - that is in states where that has occurred.

ASSEMBLYMAN PATERO: Professor Begin, if I may, there are two questions that you have some reports on that you said you have checked out. These are two questions I would like to ask: Does the arbitration procedure more successfully deter strikes or other forms of job actions than did the factfinding procedure?

PROFESSOR BEGIN: The information so far says yes, but I think there is a limitation to the data. It comes from police and fire experiences. As you know, police and firemen don't strike a lot even without arbitration, so we don't really know whether teachers, who do strike, will strike after arbitration. There is just no evidence.

ASSEMBLYMAN PATERO: Well, we do know that firemen and policemen strike and if you look at the State of New Jersey, the teachers do not strike that much. I think last year there were only about four or five.

The next question I have is, did compulsory arbitration increase or decrease the level of wages, fringe benefits, and other terms of employment than was the case under the factfinding procedures?

PROFESSOR BEGIN: The evidence so far indicates that there is a catch-up here in the first two or three years of the act. There are those police and fire units that were below average and it took two or three years to catch up. They had faster salary increases than did the pattern-setters. The evidence indicates the pattern-setters, which usually are the large, urban police and fire units, do not, in fact, get larger increases under arbitration than they would have otherwise.

In some of the States, like Michigan and Wisconsin and Massachusetts, there is some slight positive one to two or three percent increase for those who go under arbitration over those who have not, but it is not statistically significant.

ASSEMBLYMAN PATERO: Okay, thank you.

PROFESSOR BEGIN: Just one final comment. You have really touched the other two questions that I was going to take a look at. One of the impressions that I had, in reviewing the various studies that have been done - and there are quite a few; those that Mr. Ben-Asher doesn't have, I would be glad to get hold of for him, although I think probably he has most of them - one impression I get in going through those studies, which really confirms what has been said this morning, is that for a system to work, it requires the cooperation of the parties to negotiations. For example, in Great Britain, where there was not such cooperation, the system has gone out of operation.

I think it really requires a very careful recognition by government legislative bodies of the right moment to intercede with the use of interest arbitration. When is this? Well, I am not sure I have the answer to that question but I think one indication of that is the interested parties. If one party or the

other, or both, are against the sytem for the most part, then I think we must be careful about imposing such a system on the parties since it does represent the regulation of a very important aspect of our socio-economic relationships. I think a regulation is accepted by society only as long as the needs of those regulated are met.

ASSEMBLYMAN PATERO: Are there any questions? (no questions) Thank you very much, Professor.

I see Mr. Sammon has come back in again.

E D W A R D S A M M O N: We are in favor of binding arbitration. We have publicized our stand as far as binding arbitration is concerned, but A-553 is not in a true sense binding arbitration. It is compulsory arbitration.

What we are seeking is a bill that would give us an avenue to pursue. For example, we reached an impasse in our negotiations - and we have on many occasions - and we had no avenue to pursue and we went to federal mediation, we went the mediation route, we went to factfinding, which is not compulsory, it is not binding, and we had several problems in that direction and the final outcome was we reached impasses and we had no real determining factor to be able to resolve our impasses. We are seeking arbitration - binding arbitration - not 553. We can't see how we can live with that bill. We can't see how the teachers can live with that bill. We can't see any public employees, or any employees per se, living with a bill such as that.

We are looking for some binding avenue to take, such as binding arbitration,where we can possibly agree to go that direction and once we have agreed to go that direction, if we don't succeed, if we are not satisfied with the arbitrator's award, we must have the right to strike. That is the position we take and that is the position we feel is going to benefit the public employees. That is our prime position - the right to strike. It is not that for one minute we map out the binding arbitration aspect. We have publicized it. We are in support of binding arbitration. We want to be included in any real binding arbitration bill. But, we do not want a compulsory bill.

ASSEMBLYMAN PATERO: Okay, what you are saying - if I heard correctly - is that you want the binding arbitration but also the right to strike.

MR. SAMMON: Yes. Primarily, we favor the right to strike. We always have. But, if we cannot get that type of legislation at this time, we are willing to settle for binding arbitration. But, we do not want compulsory arbitration. We don't want anything to be forced upon us. We don't want to pursue an avenue that we are forced to pursue. We are behind in a wood age right now and I think it is about high time we did do some catching up with industry and that we did move in the direction that is going to be beneficial to the people we represent. We represent approximately twenty eight to thirty thousand state employees.

MR. BEN-ASHER: Mr. Sammon, how would you feel if the arbitration scheme were designed in such a way that either party could request arbitration but it wouldn't be an automatically invoked procedure for you? Would you consider that compulsory?

MR. SAMMON: If either party requested arbitration and the other party would be compelled to go that route? I think it should be agreed to by both parties. It should be agreed to by both parties. That is the proper way.

ASSEMBLYMAN PATERO: Thank you very much, Mr. Sammon.

MR. SAMMON: Thank you.

ASSEMBLYMAN PATERO: Next we will have representing the County Colleges, Mr. James Cottingham.

J A M E S C O T T I N G H A M: Mr. Patero and members of the Assembly Labor Committee, I am Jim Cottingham and I am Assistant Director of Development at Burlington County College. The Council of County Colleges, a statutorily created body, has asked to be associated with my remarks today.

The County Colleges do not believe that compulsory interest abritration will be beneficial to local taxpayers or our students. Accordingly, we do not wish to be included under compulsory interest arbitration at this time.

From reading the bill and listening to the sponsor's remarks earlier this morning, I do not believe that it was his intention to include the County Colleges under A-553. However, because of a provision in Title 18a, some county college bargaining units will be covered if A-553 is enacted in its current form. Title 18a:64a-13 provides, "The teaching staff employees and administrative officers other than the president of the county college are hereby held to possess all of the rights and privileges of teachers employed by local boards of education." It is our understanding, based upon previous rulings and court decisions,that this provision would extend A-553 to include some county college employees.

The county colleges prefer to be treated as other colleges in this State and respectfully ask that they be excluded from the proposed bill if you decide to release it from Committee.

ASSEMBLYMAN PATERO: I see we have a class that just walked in. I would like to explain to you that what we are doing is, this is the Assembly Labor Committee public hearing on binding arbitration, which pertains to schools, and also the possibilities on the right to strike. I am glad to see you here and I welcome you here and hope you have an enjoyable day.

All right, Jim, continue.

MR. COTTINGHAM: Last year, when the Legislature was working developing a bill to guarantee a minimum of three observations for each non-tenured teacher in the public schools, they developed an amendment that read as follows to exclude the county colleges from that: "Notwithstanding the provisions of New Jersey's statutes 18a: 64a-13, the provisions of the act hereby supplemented shall be inapplicable to teaching staff employees and administrative officers of the county colleges." I will give the wording of that amendment to the staff member of the Committee.

We respectfully request that this amendment or a similar amendment be added to A-553, if you are going to release it from the Committee because we don't think it would be good to include some of the county college units and not other ones and especially to separate us from other colleges in the state.

Thank you. I would be open to any questions you have.

ASSEMBLYMAN PATERO: Yes, Jim, what has been the experience on the county college level with respect to negotiations?

MR. COTTINGHAM: We have had a couple of strikes, but, fortunately, not many. At our own college we had a situation a couple of years ago where we were at impasse and went two months into the school year without a contract but we were able to reach a settlement without the faculty members resorting to

a strike. We think that as long as all parties are interested in reaching a settlement, we will continue to be able to reach settlements without people resorting to strikes.

ASSEMBLYMAN PATERO: Okay. This is unusual when we have someone from the county here, but are the colleges, to your knowledge, under one bargaining unit or are they under a group of bargaining units?

MR. COTTINGHAM: There are generally three to six units within each college. Do you mean the representatives of faculty members?

ASSEMBLYMAN PATERO: Yes, do the faculty members have their own union?

MR. COTTINGHAM: Yes, we have a - at Burlington - unit for faculty members, a unit for the supportive staff, and a unit for the police force. At some colleges, they have separate units for their maintenance and clerical staff, so they would go to four at that point. In some cases,they have an administrative unit.

Now, as I understand 18a:64a-13, it would be the administrative units and faculty units that would come under compulsory interest arbitration if A-553 is enacted. So, it wouldn't even include all of that unit. But, that could be even worse for us,to have some units covered by interest arbitration and some units excluded from it.

ASSEMBLYMAN PATERO: Okay. Thank you very much.

MR. COTTINGHAM: Thank you.

ASSEMBLYMAN PATERO: Next we have Michael Porcello from the Newark Teachers Union.

M I C H A E L A. P O R C E L L O: My name is Michael A. Procello. I live at 10 Ashwood Place in Parsippany. I am an organizer with the Newark Teachers Union.

I am going to just speak briefly and in general on the conflict of compulsory arbitration. The Newark Teachers Union is categorically opposed to the concept of fair and final offer and compulsory arbitration as a means of settlement of disputes. We have always supported the collective bargaining process for public employees. This is the same concept that is enjoyed by employees in the private sector.

History shows these very same arguments being used in opposition to worker's rights in the private sector. This took place about one hundred-fifty years ago. These arguments were without merit then and they are without merit now.

After years of struggling, public employees have managed to gain certain rights governing the collective bargaining process. The Legislature, in its wisdom, saw the need to create an agency that would oversee this process in the public sector. Since that time, PERC has been basically ineffective due to the courts saying that the law is ambiguous. Is it now the wisdom of this Legislature to render PERC totally ineffective? Is it the Legislature's intent to abolish PERC? That's exactly what this bill will do.

I cannot see public employees and public employers supporting this bill. Initially some may favor it. However, both parties will eventually become unhappy with compulsory arbitration.

Collective bargaining is a process where two sides demand, argue, debate, and finally agree. Neither side may get everything they want, but it is

a settlement, and it is a mutual agreement. Public employees do not want someone else making decisions for them and I am sure that public employers feel the same.

The Newark Teachers Union is one of the most active public employee organizations in the State. In the past, we have been in strikes, not as revolutionaries, but as responsible and dedicated employees. We have also reached settlement without the tragedy of a strike. We did what had to be done and we will continue to do so.

The Legislature should consider strengthening PERC. Allow them full power to govern public employee disputes.

This bill, or any other for that matter, which forces compulsory arbitration on public employees is regressive in nature. The Newark Teachers Union cannot and will not accept the abolition of collective bargaining. The Newark Teachers Union cannot and will not accept the concept of compulsory arbitration.

Thank you. If you have any questions, I would pleased to answer them.

ASSEMBLYMAN PATERO: There are no questions. Thank you very much.

Mr. William Hoyer, Executive Director of the New Jersey Civil Service Association.

As I said before, I see a class here again. I would like you to know that this is the Assembly Labor Committee holding a public hearing on Bill A-553, which pertains to binding arbitration. The other bill that goes along with it is the right to strike. I would like to welcome you here and I do hope that you pick up something by coming here today.

W I L L I A M H O Y E R: Mr. Chairman, on behalf of the New Jersey Civil Service Association I want to thank you for this opportunity to speak before you and the Committee this morning.

The New Jersey Civil Service Association, which represents State, county and municipal employees in several bargaining units - supervisory, white collar and blue collar units - is opposed to Bill A-553. They are opposed to it for several reasons, two of the most principal ones are, one, in that it deals with compulsory arbitration, not binding arbitration, which in a sense connotes a voluntary-type situation. They are also opposed to it in the sense that it is discriminatory in that it deals with public employees only as teachers. If a binding arbitration bill is to proceed, we would like to see encompassed in it all levels of public employment, especially those that we represent - as I said, the State, county, and municipal employees.

The present situation is one in which the Association finds itself hamstrung in support of this particular bill. I have nothing else to report. Thank you very much.

ASSEMBLYMAN PATERO: Okay. Thank you.

Next is Mr. Edward Kiess, Executive Director of the New Jersey Elementary School Administrators.

E M O R Y J. K I E S S, J R.: Good morning. I will try to be very brief and read my statement into the record. I would like to preface it, though, by saying that I think the voice that you hear this morning is going to be a voice you may not have heard from before. You hear from the thousands of teachers

of the State of New Jersey. You hear from the chief school administrators of the State of New Jersey. Rarely, if ever before, have you heard from the people caught in the middle, the managers, or principals and supervisors of all individual school buildings of the State of New Jersey, who have an opinion and a feeling regarding the impact of 553 as well. We do feel that you cannot talk about A-553 without also referring to A-455.

So, I am Ed Kiess, the Executive Director of the New Jersey Association of Elementary School Administrators, which is an organization that represents approximately 75% of the elementary school principals and supervisors of the State of New Jersey.

We wish to go on record as being strongly opposed to A-455. I won't speak to that for a few moments so that you can see why we take the position we do on A-553. Strikes for any reason in the public school sector can have long-term negative effects upon educational programs. Far beyond the immediate interruption of the educational program caused by the strike, problems will remain in terms of long-lasting disruptions in the positive rapport between teachers and children, between teachers and principals, between the school and the community.

If I may interrupt my written testimony, I would like to insert that a number of the building administrators in the State of New Jersey that were involved in the Matawan situation, inolved in the South Brunswick situation of a about 18 months ago, and involved in the North Hanover situation could have come here with me today and testify to the kinds of problems that they had to put up with during the course of those strikes in terms of the human relation aspects of operating an individual school building and they could testify to the long-lasting negative effects of trying to put the pieces back together. And, I think that is something that the Committee should very seriously consider, in terms of the appropriateness or inappropriateness of strikes in the public school sector.

Now, our members must live with these long-lasting human relations wounds long after teachers return to the classroom. Positive leadership relationships between building principals and their faculties are very strained. Our members, the people in the middle, are put to the test of demonstrating loyalties to their faculty versus loyalties to the board of education. As agents of the board, principals and supervisors cannot take sides and are many times directed by the boards to carry out functions which teachers may interpret negatively. This then interrupts our ability to function successfully after the strike. Strikes cause teachers to demonstrate behaviors which children witness, such behaviors that we feel are very poor teaching examples.

Therefore, in light of that, we are opposed to A-553, in its present form. Though we are also beneficiaries of the provisions of this bill, we feel that the extension of binding arbitration to matters beyond salaries and commonly bargained fringe benefits would injure our ability to function as school managers and agents of the board of education in a management role. Further, we fear that A-553, as currently written, would cause a severe impact upon principals and supervisors in that we would continually be preoccupied with management of an unmanageable labor contract and consequently be less able to devote our time to the management of the instructional program.

I sincerely thank you for this brief opportunity to present our views.

ASSEMBLYMAN PATERO: Thank you very much.

Next we will go to Mr. Roman Rice, the Legislative Director of the Public

Service Research Council.

R O M A N K. R I C E, III: Mr. Chairman, members of this distinguished Committee, I am Roman Rice, State Legislative Director of the Public Service Research Council, the nation's largest citizens' lobby, concerned exclusively with public sector labor policy.

Our New Jersey membership numbers some 34,000 persons, including over 16,500 financial contributors.

On behalf of our New Jersey membership, I also rise to testify in opposition to Assembly Bill 553 and, indeed, to any further expansion of public sector binding arbitration in the State of New Jersey.

ASSEMBLYMAN PATERO: Excuse me, Mr. Rice, she is going to type everything that you have submitted to her, so if you would care to, would you give a brief synopsis rather than read the whole thing?

MR. RICE: I am not going to read the whole thing, sir.

ASSEMBLYMAN PATERO: Oh, okay.

MR. RICE: This is about a three-page thing.

ASSEMBLYMAN PATERO: Yes, we will put your five pages in the transcript.

MR. RICE: At this point I would just simply like to summarize a few pertinent points, all of which are amplified in the statement I filed with the Committee.

We oppose expansion of binding arbitration in the public sector for many reasons. The overriding reason is that the concept totally violates the right of the people through their elected representatives to control both vital government policy decisions and the cost of providing government services.

Because our organization has taken a firm position in opposition to all compulsory binding arbitration and right-to-strike legislation, as well as to collective bargaining legislation in those states without comprehensive bargaining, our opposition might well be characterized by some as irrelevant or anachronistic. Let me assure you, however, that the opposition to the concept of compulsory binding arbitration is not limited to conservatives or to those who oppose labor unions generally.

In June of 1977, Governor Michael Dukakis, the liberal Democrat, duly elected Governor of the Commonwealth of Massachusetts, wrote in his message vetoing the reenactment of municipal binding arbitration, "By imposing binding arbitration in all communities...the law has made normal collective bargaining irrelevant. It has taken the responsibility of determining the financial future...from the local elected officials and given that responsibility to an unelected arbitrator who may not even live in the community. I do not believe that this broad delegation of local fiscal powers is consistent with any reasonable notion of home rule...."

Perhaps the most well-organized and effective attack on the concept of "required binding arbitration" - that is his term - is that delivered by the well respected public sector labor expert, New Jersey's own Sam Zagoria. In the April 19, 1977, Labor-Management Service Newsletter, Zagoria identifies ten distinct things he considers wrong with compulsory binding arbitration in the public sector:

1. It discourages honest good faith collective bargaining....
2. It places far-reaching power in the hands of a person not elected

and not accountable to elected officials....

3. The arbitrator is an ad hoc appointee with no continuing responsibility to make an award that is workable as well as just....

4. It is probably impossible to make an award for one group of workers without affecting other groups of...workers, yet an arbitrator has neither the authority nor responsibility to examine their situation....

5. Contracts are not negotiated in isolation from past or future arrangements. It is difficult to make an award for one contract without dealing with how it generally fits into long-term labor relations....

6. The process is unbalanced, since it makes a low-risk, or no-risk, step available to a union or employee organization....

7. Arbitrators (where it is possible)...tend to provide something for each side in their award regardless of the actual merits....

8. Arbitration is...expensive....

9. It is a time-consuming process.... The Massachusetts League of Cities and Towns found the average length of time consumed in the arbitration phase... was more than a full year....

10. There are serious questions of constitutionality....

Zagoria concludes his article by stating: "The basic question proposed by compulsory interest arbitration is who can best represent the public interest in a bargaining impasse - the mayor chosen by the people, accountable to the people, and whose concerns take in the entire city work force as well as the long-range needs of the entire community, or an arbitrator who has been given the assignment of doing equity by a limited group of workers, and in so doing may be affecting the 70% or more of the city's budget involving personnel services as well as forcing drastic changes in the level of services and the tax system of the municipality."

This is exactly what this bill would do, since it would take one group of workers - teachers - and give them a special privilege that other workers are not given. So, I hope that you will take the research we have done on this issue into consideration when you mark up this bill. Thank you very much.

ASSEMBLYMAN PATERO: Thank you very much. (Mr. Rice's full statement on p. 19x)

Next, we will have Mr. Mark Neimeiser, American Federation of State, County and Municipal Employees, AFL/CIO.

M A R K N E I M E I S E R: Mr. Chairman, I was already asked by your staff not to make one of my impassioned speaches about the right to strike concerning public employees. Let it be said that our union feels that every citizen who works for a living has the right to strike. Public employees are not second class citizens in that matter.

The document that I have just given you is one which describes in detail the kinds of laws that are in effect throughout this country. It also provides at the end of that description the kind of legislation which is currently in effect concerning a limited right to strike, as it appears in eight states. And, finally, there are four graphs, which in effect develop the statistics as to strikes as they occur in states with no bargaining laws, states with bargaining laws with a prohibition against the right to strike, and states which have the right to strike.

You will see from the statistics, at least concerning local government,

the amount of strikes in the public sector where there is no collective bargaining law are in excess of those where employees have the right to strike.

Concerning A-553, the union is opposed to this bill. I think it is noteworthy to cite for you an experience in Australia. Professor Charles Morris of Southern Methodist University spent a year in Australia and wrote a book called, "The Future of Labor Arbitration in America." He reports that in 75 years of compulsory arbitration in Australia, there is, nonetheless, a high rate of strike activity, currently greater than that of any in the United States and a higher rate of inflation. He says that the Australian observers note a chilling effect on union bargaining because concessions would be used against them if the matter went to arbitration.

Another note -- strikes in breach of an award, or to protest the inadequacy of an award, whether or not the union initiated it - have posed problems that have defied solutions. Strike penalties have become unenforceable. We can further apply that to some instances around this country - in Memphis in 1968 and in New York in the '70's and in 1968. Although there were strict prohibitions against the right to strike, employees who felt they were wronged, or felt some injustice, still went out, survived those penalties, and what we did, in effect, was jail innocent people.

Mr. Chairman and Committee, I appeal to you to reject this bill and consider A-455, which at the very least provides for due process for public employees. Thank you. (Mr. Neimeiser's full statement on page 25x)

ASSEMBLYMAN PATERO: Mark, I want you and the Committee to know that the statistics that you have provided to us will be copied and every member will have a copy of them. Thank you very much.

Next, we will have Mr. Martin Pachman.

M A R T I N P A C H M A N: Mr. Chairman, members of the Committee, inasmuch as there is no tagline alongside my name, let me say that I am an attorney serving as special labor counsel to an excess of 24 school boards throughout the State of New Jersey and a number of municipalities as well. Our firm has been in this business for an excess of five years.

I am here this morning to attempt to share with you some of the experiences that we have had with respect to the interest arbitration bill, as it currently exists with respect to police and firemen, from a very practical practitioner's point of view. I think there are two major things that have to be said.

One is, the juxtaposition of the concept of interest arbitration with the timetable for negotiations has been and unmitigated disaster. I can cite for you instances of arbitrators appearing on the scene with respect to negotiations for 1978 before the 1977 contracts were settled - with no authority, incidentally, to deal backwards to resolve the on-going dispute. So, we were placed in a position of having to deal with a 1978 and forward contract with no base for those negotiations.

The second aspect that raised grave concern is the view of interest arbitration by public employees, generally, as a panacea, as a substitute for the need to collectively bargain. While theoretically last best offer kinds of arbitration are supposed to foster collective bargaining and compromise prior to the reaching of the arbitration process, I can tell you that it is our experience that that just doesn't happen - that in the majority of cases we are

finding ourselves moving to arbitration in the police-fire arena with many more issues than had ever before gone to mediation and/or factfinding, simply because the kinds of compromises that normally were made during the collective bargaining process prior to the arrival of the arbitrator on the scene, just has not been taking place, on either side, frankly. Both sides feel that the arrival of "the man from Trenton" will solve the problems and inasmuch as both sides, in making a proposal, feel that truth and justice are on their side, by and large, they hold to those positions.

When the arbitrator arrives, he then must function as mediator, factfinder, and arbitrator in an attempt to compress collective bargaining into a very, very short period of time in his presence. Sometimes that works. Our experience has been that as often, it does not.

With that said, I would like to indicate one area of grave concern on behalf of our school board clients and that is the impact that interest arbitration would have with respect to the mandates of the thorough and efficient legislation, which already exists. One of the major concerns in collective bargaining among public education in this State is what is negotiable and what is arbitrable? To a very large degree, because of the existence of case law that already requires grievances - the grievance procedure - to cover managerial prerogatives, including such things, I might add, as evaluation, the imposition of interest arbitration and the ability of that arbitrator to make determinations regarding what will be reviewable for the next ensuing contract period, to us is a design for great disaster in terms of attempting to implement the mandates of thorough and efficient. We raise this for you this way at this time, mainly because of the shortness of time in which to present it, however, we would ask,if there is time to do so, to present a written statement expanding that contradiction,as we see,it to the Committee. Thank you very much.

ASSEMBLYMAN PATERO: Thank you. I would like to say, you can always submit that to legislative staff because it will be a while before we act on this bill.

MR. PACHMAN: Very good. Thank you.

ASSEMBLYMAN PATERO: Thank you very much for coming.

Next, we will have Mr. Jack Farrell, Board member and negotiator, Sterling Regional School District.

J A C K F A R R E L L: Mr. Chairman, ladies and gentlemen of the Committee, good morning. I am here to support the testimony that has been given, or will be given, by the New Jersey School Boards Association.

ASSEMBLYMAN PATERO: You frightened me. I thought you said you were going to support the bill. (laughter) I wanted to make sure I heard right.

MR. FARRELL: I think the stenographer - hopefully, at least - has taken it in the proper context.

However, we at Sterling High School believe it is much more important than to just, by written word, support the actions of our New Jersey School Board Association. Consequently, I am here today. Beside being a Board member, I have been, in the private sector, and am presently on the Board of Education, a negotiator. So, I have been in the negotiation process for the last 10 years.

I would like to question the concept of binding arbitration. It is

just unthinkable. We are talking in terms of taking away from the individuals in the community the right to have their say. As you will note in the written testimony that I have given you, there are two very distinct packages - or at least in terms of the legislature, two items that will come before them. One is the smoking that the State Board of Health promulgated - the non-smoking ban. You will note that even the legislators are concerned about taking away the individual right of the citizens regarding smoking.

The second thing, of course, is the report to the Governor and the Legislature from the Task Force on Business Efficiency of the Public Schools.

There have been samplings taken throughout the State with respect to one controversial part of that report, which is the one dealing with the elimination of budget approval. It is, without a doubt, one of the most controversial areas of that report and one that, to date, finds the overwhelming majority of people totally opposed to.

We, from Sterling, really believe that we have provided the necessary negotiated processes to both the teachers and the board. We believe that we have been able to substantiate that negotiating process and we see no reason whatsoever to take away from the people, really, that right to agree or disagree with the processes that the teachers and the school boards have impacted.

In the one case last year - a year or two ago, I'm sorry, it was 1977 - the Cherry Hill School District was on strike. At that time the community decided that in the best interest of the students and in the best interest of the school district, binding arbitration would be the best approach.

We heartedly concur with that. But, that was the will of the people of that particular school district, not the will of an outsider. We firmly believe that in the interest of justice the Committee will find the same reason will hold true. Thank you, Mr. Chairman. (full statement on page 34x)

ASSEMBLYMAN PATERO: Thank you very much.

Before the School Boards get here, we have two other speakers that would like to address the Committee. The first of the two will be Tony Marino, staff representative, Council of New Jersey State College Locals.

T O N Y M A R I N O: Thank you, Mr. Chairman, to be very, very brief, Marco Lacatena, the President of our union, was to be here today but, unfortunately, could not make it.

Given all of the prior testimony, just allow me to add our union's voice to those groups that are opposed to A-553. We are State employees and, thus, would not be covered by the provisons of this bill, at least as written. However, we do oppose the concept and, consequently, would like to just strongly voice our objections to the entire concept of compulsory arbitration and to add, on a positive note, we are, however, very much in favor of the right to strike. Thank you very much.

ASSEMBLYMAN PATERO: Okay, thank you.

The last speaker before the School Boards is, Mr. Raymond Peterson, of the Woodbridge Township Federation of Teachers.

R A Y M O N D P E T E R S O N: Members of the Committee, thank you for the opportunity to speak with you today. I am sure you will be pleased to note that I have my notes on the back of an envelope and that is probably the only similarity to Lincoln's Gettysburg Address.

I wholeheartedly agree with all of the opponents of this bill. I think it is a bad bill. I am the President of an organization that is one of seven groups that must deal with the Woodbridge School Board. I have to handle three of those contracts.

In looking at the bill - I just received it Saturday and that is why I have written on the back of an envelope - I note there is no fiscal note attached to it. I think the author of the bill made a mistake there. This could, and most likely will, bring additional cost to the State. That is the least critical item on my list.

I think it would create a log jam in the 600 school districts. I agree with the speaker who said that the time limits in the past were an unmitigated disaster. I agree with the speaker who said that this would not guarantee that there would be no strikes. I agree with the people who said in general PERC has worked well. It is not a perfect law, but it has reduced tension in many cases. It has produced mediators and factfinders who have helped resolve many disputes.

But, I think the most important criticism I have of this is that it would create a distortion of the collective bargaining process. As it is now, both parties work - perhaps gradually, but they work - toward an agreement that they can both live with. I believe, as other speakers have stated,that this would lead to jockeying for position, insincere efforts and posturing. I think it will lead to labor courts. And, I agree with the sponsor of the bill who said that it would stimulate litigation. On my notes, before he said that it would create more work for lawyers and he said it himself - it would stimulate litigation.

So, I think it is a bad bill for many reasons and I would just like to take issue with the informants that Mrs.Totaro had who said that the teachers do not pay a penalty. I lost 13 days pay in 1967 because the schools were open. I know a lot of other people did too.

Now, I think that is about it. I ought to conclude. You have been patient and you have heard everything there is. Everyone involved in this, almost unanimously, has said it is a bad bill and that is all I can say. Does anyone have any questions? (no questions)

ASSEMBLYMAN PATERO: Thank you very much. I also should commend the speakers who came before our Committee for staying within their time limit.

Now, we will have our last two witnesses. We will start off first with Mr. Jacob Green.

J A C O B G R E E N: Good morning, Mr. Chairman, members of the Committee. Let me state first that I am an attorney specializaing in labor relations, at this point I represent management and have done do since 1968. We have well over 30 boards and cities in the office and in our opinion the system does work.

Now, I am not going to repeat all of the statements that were made this morning by the other speakers. I think the appearences this morning have been significant in the fact that there is such a unanimity of opposition to this bill. But, I believe that you should have some specific items to consider before you make your determination.

First of all, the collective bargaining process works when both parties, in good faith, seek to achieve a settlement. It breaks down for various

reasons. Jeff Tener stated them very clearly.

In all of the instances that I am familiar with, the near strike, or the strike - and I must say that in my 10 years of practice, we have had two one-day strikes, that is the totality of it - in every instance it has really been money. It is true that in the process the Association, or the Federation, has set up non-monetary items, but they have mainly been brought forth for the purpose of getting teacher support. Because I think it is a credit to the teaching staff of this State that money itself frequently will not create the strike process and I don't think it is primarily because if a teacher does strike, that teacher will go to jail. I have too much respect for the teaching staff generally in that regard.

Let me answer perhaps what are the motivating factors for this bill. In the fist case, as I say, money is the main issue. Why do we now have, subjected to compulsory abritration, to a ruling by an arbitrator who may be very able and wise in the ability to see where the money should go-- Why do we submit to him all of those non-economic areas, those items of day-to-day personal grievances and complaints that are cleared up only as the result, in many cases, of discussion and argument at the bargaining table?

I have to agree with Mr. Pachman; my experience with compulsory arbitration in the police and fire area - which, by the way, I think is a completely different area in motivation and need than the school area - has been that the parties have waited to give to the arbitrator, as a mediator, their positions and that is why to this date we have had perhaps only six or seven awards in contested arbitration situations in the police and fire area.

But, my concern with this bill is that because it submits to arbitration a host of non-economic items, we will find ourselves in a situation where the school managerial process will be seriously impeded. And, in addition to that - and I would request your legislative inquiry group to look into this - PERC, in its wisdom, has carved out from the collective negotiating process in the mandatory sense, a host of managerial areas, such as class size, reduction in force, evaluation standards, etc. It has, however, created a doctrine that the impact of those areas are negotiable. In other words, if you reduce class size, you can do that without negotiating. But, the impact of doing that is negotiable. So, if a teacher, or a group of teachers, gets two or three more students, that impact must be negotiated.

Now, if you look at the bill in its present form, I believe that it could be construed - I don't say it should be, I say it could be - to give to the arbitrator the power to determine, and the duty to determine what the amount of the impact will be, and if this is so, then, in effect, all managerial decisions in the ultimate have been submitted to arbitration because if you cannot reduce size without paying for it, if you cannot reduce the number of your teachers without paying for it, if you cannot increase class size without paying for it, then why do it in the first place?

Now, Mr. Burstein - and I do respect him - stated that strikes have been significant in that we have had teachers put in jail. Let us say that I don't think anyone in the process wants to see this happen. You do have before you various alternates to that.

Insofar as the reason for the delay in the process, I think we should

all look to where the reasons lie. We should look to the fact that in the last several years, we have had a great deal of uncertainty in state funding of aid. We have had a great deal of uncertainty arising out of the caps. It is these factors which have created in a high degree to the lengthening of negotiations. And, to castigate the negotiating process for these reasons, I think, would be unfair and also will result in what will be a bill which, it seems to me, I have heard nobody this morning really speak in favor of.

Now, I am not going to take much of your time. You have been very patient with all of the speakers this morning. I will supplement what I have to say with a statement.

ASSEMBLYMAN PATERO: Okay. Thank you.

Next, we will have the President of the New Jersey School Boards Association, Mr. Lawrence Schwartz.

L A W R E N C E S. S C H W A R T Z: Mr. Chairman, members of the Committee, I am not used to all this company. Usually, we stand somewhat alone with a lot of these bills and I am very pleased to see that people feel the same way we do.

As President of the New Jersey School Boards Association, also a local Board member who has taken part in many hours of negotiations, and also as a commissioner of PERC, I am pleased to be able to address you today on behalf of New Jersey's 5,000 School Board members and on behalf of the communities they serve, and most important - something we should not overlook - the children of our schools.

First, let me thank you, Mr. Chairman and the members of the Committee, for the opportunity to testify on this important issue.

Several bills before the Legislature and this Committee address the issue of compulsory interest arbitration. It is my intention this morning to address all of them generally and to avoid a bill-by-bill analysis. We take that approach because we believe interest arbitration itself is an unworkable solution to an overstated problem.

The concern over school bargaining evidenced by the Legislature appears to have risen significantly after two strikes against school districts last Fall received a great deal of publicity. The New Jersey School Boards Association is deeply concerned about strikes by public employees. We have long opposed a legislative grant of the right to strike to those public employees. But, we are troubled by the apparent assumption that many, or even a significant number of bargaining situations in the public schools, end in work stoppages, because the facts are exactly the reverse.

Each year, New Jersey School Boards negotiate about 1,000 contracts with majority representatives. Since the passage of Chapter 303 in 1968, we have negotiated over 4,000 contracts with teacher union representatives alone. Yet, we have experienced only 84 teacher strikes in ten years, which comes to 2% of all negotiations. And, of these 84 strikes, 48% lasted two days or less. We contend that this record of settlement is remarkable. As I stated before, legislative concern over this issue may have been generated by two particularly difficult situations. One occurred in the Matawan School District, the other in the Willingboro School District. In Matawan, a number of teachers were sentenced to jail terms as a result of contempt of a judge's back-to-work order. We are

acutely aware of the emotional impact such jailings have upon school employees, school boards and our communities. But, this concern can be addressed by this Legislature without endangering the highly stable bargaining relationships established under Chapters 303 and 123. I will address that topic later.

I would like now to turn to a review of the goals of these bills. The first claim that proponents, including Assemblyman Burstein who testified this morning, make for this legislation is that it would put an end to the work stoppages we have experienced. Unfortunately, this claim is without foundation and has been proven incorrect by our experience under the Police and Fire Arbitration law. We would agree with Chairman Tener's conclusion that he repeated this morning, that some strikes would be eliminated by this legislation and we agree with him that it would probably be the shorter less disruptive strikes which would no longer occur. But, it is not the shorter strikes which have spurred interest in compulsory arbitration. That interest arises because of a very few strikes of a longer duration in larger school districts. Yet, these strikes would occur even under such a compulsory arbitration system.

The second claim in support of the proposed legislation is that our current bargaining process lacks finality. In fact, we have negotiated thousands of labor agreements and that is the true measure of finality. Many contracts are reached without even using the mediation and factfinding procedures built into the law. Less than 60 of our 1,000 negotiating units last year required a written factfinding report. Ninety-three percent of our units settled without such a report and less than 2% of our units, as I mentioned before, struck. Do we truly want to subject the 98% of units which normally reach a peaceful, voluntary agreement to a potentially disastrous process simply to end a handful of one or two day job actions?

Thus, interest arbitration will not eliminate the worst strikes and it will provide finality to negotiations in relatively few situations each year that would otherwise have ended in a strike. In addition to these limitations, there are grave problems with compulsory arbitration.

First, the arbitration systems contained in these bills have the very real chance of pushing the collective bargaining process backwards in this State. Such a result is so obvious that the major unions representing our employees, the NJEA and the American Federation of Teachers, also oppose compulsory interest arbitration.

All labor relations experts, and you have heard two today - if not more - recognize that mutual agreements are the best agreements because both parties feel that it is their contract and that they did the best they could for their respective sides. But, the passage of an arbitration law will, in our estimation, result in more than 125 arbitration awards in its first year. Other experts have estimated that arbitrators will dictate more than 150 settlement. Imagine: Only 60 units in 1976-'77 felt the need to use the voluntary process of factfinding, yet under this legislation at least twice that number of contracts will be determined by an individual who will not be forced to live with the agreement. In our view, such a development will be a step backwards for the goal of mutual collective bargaining in this State.

In addition to the danger it poses to the process itself, arbitration poses other obvious perils to our communities. We are concerned, as we are sure you are, with empowering non-elected, largely unaccountable neutrals with the power

to make decisions which will determine the levels and kinds of educational services to be offered to our children.

Such a problem becomes particularly troublesome when we relate such legislation to the cap law. The Legislature, in an attempt to put a lid on governmental growth and resultant property tax increases, subjects schools - and I know you are aware of this - to a budget cap. In the 1979-'80 school year, the first year under which these arbitration bills would be in effect, the cap on the average school district will be approximately 4.4%. Arbitrators,who are not obligated to protect the public, may very well ignore the caps that you, yourselves, have placed on school districts. Awards above the cap, together with the pressure those awards put on other boards to settle far in excess of their own caps, will have the practical effect of undermining the budget cap effort. And, if it does not undermine the budget cap effort, we will certainly see a diminution of services offered to our children.

One other point about all of this legislation disturbes us. We now have the opportunity to monitor interest arbitration in New Jersey to determine whether it works or not. The police/fire arbitration law is less than five months old. We believe it would be a mistake to extend this procedure to other governmental bodies before we discover what its effects are on municipalities and public safety units. Premature coverage of other groups may do far more harm to the cause of peaceful labor relations than do the strikes this legislation seeks to end.

One factor which may have been overlooked is that school boards and employee unions already have the ability to mutually submit their contract impasses to interest arbitration. If there are benefits to arbitration, school boards and unions may take advantage of them without enacting legislation forcing the disadvantages of the system upon those parties who do not need nor want the procedure.

The New Jersey School Boards Association is interested in continually improving our current process of negotiating terms and conditions of employment with our employees' representatives. We are also interested in maintaining as much harmony and stability as possible between school boards, employees, and the communities we serve. For that reason we ask you to consider the following recommendations:

1. In order to put an end to the turmoil which occurs in those few situations in which public school employees have been jailed because of their participation in a strike, we urge passage of S-1151, sponsored by Senator Dodd and entered on May 8th.

The incarceration of striking teachers and other public school employees is an extreme step for which there is little public support. Jail sentences have been imposed infrequently and their effect has often been to exacerbate, rather than diffuse, the labor dispute which gave rise to the strike. S-1151 would end such jailings and provide us with the ability to restore labor peace in the most stressful situations.

2. The Legislature should monitor closely the experience under the police/fire arbitration law so that we can make valid assessments of its benefits and disadvantages before applying it to other situations.

3. The Legislature and the Public Employment Relations Commission should urge a fuller use of the established procedures of mediation and factfinding.

Most people are unaware, for example, that factfinding was not used in either the Matawan or Willingboro disputes.

4. The Legislature should require that the State employ more and better trained neutrals. The increasingly complex environment in which we deliver public services must be understood by those who help us resolve our negotiations difficulties.

In turn, the New Jersey School Boards Association will continue to step up its efforts to train school boards and their representatives so that they may follow practices designed to reach good faith agreements with unions and at the same time protect the interests of the public which school boards represent.

We know that on the surface these bills appear to hold out easy solutions for difficult problems. They will not, however, even correct the primary definiency they seek to correct: They will not put an end to public school strikes.

We are precluded by time from reviewing in detail other serious weaknesses in the legislation. Chief among these flaws are: 1) That an over-worked, underfunded PERC cannot administer the requirements of the bills; 2) That in many cases, the legislation will lengthen, rather than shorten, bargaining; and, 3) That the timetable built into several versions has already proven a failure right here in New Jersey and was abandoned by the Public Employment Relations Commission.

Such concerns, combined with the dangers the legislation poses to the collective bargaining process, to the system of elected responsible governance of our public schools and to the integrity of the budget cap system are more than sufficient, we believe, for you to join us in concluding that this is legislation whose time has not come and may never come.

I thank you. I will answer any questions. Also, as part of the statement, you have "Teacher Strike Activity, 1968 through 1978." These are statistics that back up our statement. (see page 36x)

ASSEMBLYMAN PATERO: There is one question from Mr. Ben-Asher.

MR. BEN-ASHER: Dr. Schwartz, on point number two, where you state that the bill would lengthen rather than shorten bargaining, can you envision a situation where factfinding will be used considerably less, as it appears that in the police and fire negotiations that the shorting out of that particular procedure will make up for any extension in the process?

MR. SCHWARTZ: I think that after a factfinder's award -- First, I would like to know where the State is going to find all the factfinders and arbitrators necessary to implement this bill. I think it is impossible and right now, although we try very hard to have the proper manpower, it is going to be most difficult.

Second of all, it is 60 days prior to the budget submission, I believe, that it would have to go to compulsory interest arbitration. Those 60 days, I think, would extend closer to the actual budget submission, so the budget still will be submitted without an agreement.

Then, of course, you still have the aspect of going to court. I think you will find a lot more of these decisions going to court because if a decision is shoved down the throat - to use the vernacular - of either side,

you are going to see a lot more court action than you get when you see a bargained-for agreement, which then becomes acceptable to both sides. Maybe both sides are unhappy with it, but it is acceptable.

MR. BEN-ASHER: Thank you.

ASSEMBLYMAN PATERO: Assemblyman Littell.

ASSEMBLYMAN LITTELL: Dr. Schwartz, you point out that most of the strikes were only for one or two days. Is that because the school boards took legal action to stop the strikes?

MR. SCHWARTZ: No, absolutely not. I think in most cases the school boards did not take any legal action to stop the strikes. But, the strikes put pressure on both sides to bring it to a speedy conclusion. I am not saying I agree with the right to strike, nor a limited right to strike, but I think I pointed this out to show that the system has worked by itself.

When we talk about less than one day strikes, or even two-day strikes, we are talking sometimes of schools remaining open. In most cases, I believe they did remain open to allow the process of education to go on and, yet, as soon as possible the bargaining units were continually bargaining during this process and reached a fair and equitable agreement to both sides.

ASSEMBLYMAN LITTELL: One other question: What do you do, as an Association, to make your school board members that are the negotiating team aware of good practices of negotiating in good faith?

MR. SCHWARTZ: Well, through our Labor Relations Department - I should have introduced Bruce Taylor to you before, who is the Director of the Labor Relations Department - which I think is probably the finest in the State, we attempt to offer between five to seven seminars a year, including seminars in Atlantic City during our workshop, where the board members who are members of a negotiating team are told - are given facts - which would make them better bargainers, to bargain in good faith, and to know what it is to bargain. Especially if they are lay people with very little expertise in the area, they certainly are given a great deal of information from these seminars and workshops. We will continue to do this, if not step up the procedure.

ASSEMBLYMAN LITTELL: Is there any indication, from your knowledge of that kind of educational process, that the problems that you run into are in areas where school board members are not fully knowledgeable and completely trained in the area, or is it in an area of school boards that are particularly well trained and become hard-nosed in the process of public employee negotiations?

MR. SCHWARTZ: I really can't answer that because I don't know. I don't think there are any statistics, either way, which will show that. I think there have been situations where there has been - as you called them - "hard noses" and experiences which have led to some work stoppages and the reverse is true also. There have been situations where they have been very inexperienced and that has led to work stoppages. So, I don't think you can say which way it would go; I think it depends upon the situation and the problems on both sides that would lead to any type of work action.

ASSEMBLYMAN LITTELL: Are you satisfied that we have a pretty good public employees negotiation system in New Jersey?

MR. SCHWARTZ: Yes, I am. I think that it is working. I think there are problems with it that, hopefully, time will iron out. But, I think that it

is working. When you look at the amount of contracts which are negotiated each year in the school districts for teachers and other school employees and the very small - and I mean very small - number of work stoppages, or strikes that we have, I think that one must conclude that the system is working. It can be improved and, hopefully, we will improve it in the future. But, I don't think it will be improved by this bill. I know it would not be improved by this bill. It would set us back ten years, if not longer, into chaos with the passage of this bill.

ASSEMBLYMAN LITTELL: Thank you.

ASSEMBLYMAN PATERO: Thank you very much.

MR. SCHWARTZ: Thank you.

ASSEMBLYMAN PATERO: I will call the public portion of this hearing closed. Will anyone make a motion?

ASSEMBLYMAN LITTELL: I make a motion that we close the public portion of this public hearing.

ASSEMBLYMAN PATERO: Second?

ASSEMBLYMAN DOWD: Second.

ASSEMBLYMAN PATERO: All those in favor, say Ay. (at which time, all committee members say Ay)

The motion is carried and we will close this public hearing.

(hearing concluded)

NJASA

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STATEMENT OF JAMES A. MORAN, EXECUTIVE DIRECTOR

NEW JERSEY ASSOCIATION OF SCHOOL ADMINISTRATORS

ASSEMBLY LABOR COMMITTEE

May 15, 1978

I am James A. Moran, Executive Director of the New Jersey Association of School Administrators. NJASA appreciates the opportunity to appear before you today.

As school administrators, we are very concerned with the expeditious resolution of disputes concerning collective negotiations, because we feel that lingering impasses result in poor management-labor relations and harm the educational process. The goal of our schools is to provide a thorough and efficient education. To that end, we are interested in seeing a system that promotes stability and finality in the labor relations process so that we can spend more time with children and less on administering the contract. Also, as administrators, we are the people charged with administering the day to day provisions of the contract and from that aspect, we are concerned that contracts not contain provisions that limit or restrict those functions that are within the duties of management and the administration.

Now, to address some of the issues before you. NJASA vigorously opposes A-455, which would permit strikes by public employees. A strike disrupts a school system far beyond the duration of the strike. The fallout of a strike can permeate a district for months, even years, and lead to a management-labor climate that is not conducive to the efficient operation of a school system.

We sincerely believe that strikes would impede the thorough and efficient operation of the schools and have a harmful impact on the education of children. We believe that if this bill is passed, the number of strikes would rise dramatically. Under this bill, an injunction restraining the strike could issue only after a finding that the commencement or continuation of a strike poses a clear and

present danger to the public health and safety. This is most restrictive language and it is unlikely that an injunction would be issued because, unlike policemen and firemen, teachers generally are not thought to be engaged in an endeavor that would actually harm public health and safety if interrupted.

We feel, however, that strikes would greatly harm the welfare of the students because of the interruption of the learning process and the bad feelings generated between management, staff, the community, and students. Therefore, we find this an unacceptable mechanism for resolving an impasse and urge that you reject this alternative. Other less drastic alternatives are available to resolve persistent disputes.

One such alternative may be a system of binding arbitration. Binding arbitration, as a terminal step, could encourage or result in the earlier resolution of disputes. This would be healthy for the system. This is not to say that most school districts are reaching impasse, for we believe that the present law is working well in most instances.

However, in those cases where final resolutions have not come about by a certain date before the budget date, binding arbitration would provide a mechanism for the final and presumably fair resolution of disputes. Therefore, we believe that binding arbitration should be the terminal step in disputes dealing solely with salaries and commonly negotiated fringe benefits and other clearly economic issues. We suggest, however, that the legislation clearly indicate that the arbitrator use, as one criteria, the district's CAP, as long as these restrictive CAPS remain in force in New Jersey. While A-553 does include language that the impact on the financial condition of the district should be considered, it does not specifically refer to CAPS which do have a quite significant impact on negotiations.

We hesitate, however, at extending to a third party the right to determine non-economic issues. This is because these non-economic issues are often nebulous and do not lend themselves to the kind of objective analysis that economic issues do. Non-economic issues, unlike salaries and fringe benefits, do not easily lend themselves to comparisons with the experiences of other districts or to other objective criteria. They are rather subjective and often run a thin line between non-economic issues that are not management functions and those non-economic issues that are the functions of management.

As administrators, we are very concerned that the rights, duties, and responsibilities of management and the administrator are not subject to negotiations and arbitration. These responsibilities include setting the goals and priorities of the school district, determining the methods used to attain these goals, the utilization of resources and personnel to accomplish the goals, including the power to hire, assign, and terminate personnel, determining the budget, curriculum and organization of the district and the general policy for the district. These are management functions and must not be negotiated.

NJASA asks that this Committee include in A-553, the extension of the police and fire arbitration law, language that clearly indicates an intent that matters of intrinsic managerial policy be excluded from the provisions of the act. This legislative body should not delegate its responsibility of determining the scope of arbitration or what are required subjects of negotiations to PERC. You should include a clear statement that management functions, such as I have described, are excluded from the bill and that any finality to bargain provision be limited solely to salary and commonly negotiated fringe benefits.

In summary, the New Jersey Association of School Administrators (1) opposes the right to strike as disruptive of the educational process, and (2) supports as an alternative, binding arbitration as a terminal procedure on salaries and fringe benefits only.

We are wary, however, of any dilution of the rights of the elected representatives and the school administrator to determine and implement school policy and urge the inclusion of clear and unambiguous language that excludes the negotiation and arbitration of management functions.

Thank you once again for giving me the opportunity to speak and for considering the views of NJASA.

PROPOSED AMENDMENT TO A-553

Page 5 4(f) add:

Public employers shall not be required to negotiate collectively any term or condition of employment concerning matters of intrinsic managerial policy or function such as, but not limited to, setting the goals and priorities of the district, determining the methods used to attain these goals, the utilization of resources and personnel to accomplish the goals, including the power to hire, assign, and terminate personnel, determining the budget, curriculum and organization of the district and the general policy for the district.

ARTICLE

MAINTENANCE OF CLASSROOM CONTROL AND DISCIPLINE

A. Special Assistance

When in the judgment of an employee, a student requires the attention of the principal, assistant principal, counselor, psychologist, or other specialist, the employee shall inform the principal or his designee.

The principal or his designee shall arrange (within 24 hours) for a conference among the appropriate parties to discuss the problem and to decide upon appropriate steps for its resolution.

B. Disruptive Students

1. An employee may remove from his class or wherever disruptive behavior occurs, a student whose misbehavior or disruptive effect make the continued presence of the student in the classroom intolerable or detrimental to the other students.
2. A student excluded from a class shall not be returned to that class until the problem has been resolved to the satisfaction of the employee.
3. The employee shall furnish the principal full particulars in writing within 24 hours of the exclusion.
4. The employee and the principal shall take appropriate action to solve the problem. The employee, student and parents shall be notified in writing of any conditions for readmission of the student to class.
5. If in the judgment of the employee, a conference is necessary, the principal or his designee will arrange a meeting within three (3) days after the incident has been reported. This conference may include, as required, the employee, the parents,

the student, appropriate specialists, and such other persons as may contribute to the resolution of the problem.

C. Suspension of pupils

1. Students shall be suspended from school for a limited and stated period of time for any of the following, but not limited to, reasons:

   a. opposition to school authority

   b. bad conduct and example tending to the injury of other students

   c. conduct prejudicial to good order and discipline

   d. fighting

2. In addition to suspension, the following, but not limited to offenses shall require the principal to notify the police and the Board:

   a. Assault of an employee

   b. Theft

   c. Vandalism

   d. Possession, use, and/or sale of drugs or alcoholic beverages

   e. Possession, use, and/or sale of any type of weapon

   f. Arson

   g. False reports of fire and/or bombs

   H. Extortion of money or articles

D. The Association and the Board will urge employees to sign complaints when they are witnesses to such behavior which requires the notification of the police. The Board shall provide, in addition to released time necessitated by such action, full legal assistance, and shall pay any costs incurred by the employee as a result of the complaint.

7x

MAINTENANCE OF CLASSROOM CONTROL & DISCIPLINE (cont'd)

E. If a student is suspended for the second time in any one school year, his record shall be referred to the Board for further action.

F. Principals shall report all cases of assault suffered by an employee in connection with his employment to the Board and the Association president.

G. A written copy of any reports, along with the resolution, resulting from Sections A, B, and C of this Article shall be placed in the student's file and shall be cumulative.

H. A standardized form developed by the Association and the Board shall be used for the reporting of disciplinary cases.

I. In September, 1978, the Association and the Board shall establish a committee consisting of:

ten (10) employees and one principal representing high schools
ten (10) employees and one principal representing middle schools
ten (10) employees and one principal representing elementary schools

to develop guidelines for student attendance and behavior and any other areas deemed necessary by this Committee. The Board shall provide released time for this Committee.

ARTICLE
TRANSFERS AND PROMOTIONS

A. POSTING OF ALL PROFESSIONAL VACANCIES

1. The Board shall publish a written notice of any professional opening in the district.
2. The written notice shall be sent to the president of the Association and copies shall be posted in every faculty room of each school building.
3. All positions shall have been posted for at least fifteen (15) working days before the final date on which applications are due.
4. The written description of a vacancy shall contain, but not be limited to:
   a. Type of vacancy (federally funded, temporary or permanent contract)
   b. Grade level or subject(s) to be taught
   c. Building
   d. Approximate size of class (elementary) or number of classes and subjects (secondary)
   e. Starting date
   f. Qualifications
   g. Salary
   h. Supportive services and specialist personnel available
5. The job description set forth for a particular position shall not be changed after posting.

B. VOLUNTARY TRANSFERS

1. Employees may apply for a transfer to a specified or unspecified location or assignment at any time during the year.

Transfers and Promotions (cont'd)

2. Employees desiring a transfer shall submit a written request to the Superintendent stating the specific assignment or nature of the assignment and school or schools preferred, if any. Such requests shall be acknowledged promptly in writing.
3. Names of applicants shall be placed on a transfer list.
4. In filling vacancies, preference shall be given to employees voluntarily requesting transfers under this Article, and no involuntary transfers or assignments of new employees shall be made until all transfer requests have been acted upon. The provisions of this clause shall apply to those vacancies occurring between the end of one school year and the beginning of the following school year.
5. In the event that more than one employee applies for the same vacancy and each is properly certified, preference shall be given to the employee with longer service.
6. All applicants shall be notified in writing as soon as such vacancy has been filled.
7. No request for transfer will be denied for discriminatory or capricious reasons.
8. If an employee is denied a transfer, written reasons will be given.
9. All applications shall remain on active file for a period of one year from the date of the application.

C. INVOLUNTARY TRANSFER AND/OR REASSIGNMENTS

Although the Board and the Association recognize that frequent transfer of employees is disruptive to the educational process, they also recognize that some involuntary transfers or reassignment of employees from one school ot another are sometimes necessary to fill a vacancy and that, in making assignments, in the District, the interests and aspirations of employees must be considered. Therefore, they agree to the following:

1. Involuntary transfer or reassignment shall take place only after all other ways of filling the vacancy have been exhausted.
2. An employee shall not be assigned to a position outside his area of certification. Employees transferred involuntarily or reassigned shall be transferred only to a comparable position.
3. Employees with the least seniority in the area of certification shall be transferred or reassigned first.
4. a. Notice of proposed involuntary transfers or reassignment shall be given to the employee involved immediately upon knowledge of such transfer or reassignment.
   b. Such notice shall include a systemwide list of all vacant positions.
   c. Such employees shall be given adequate time off, without loss of pay, for the purpose of visiting schools at which openings exist and shall be reimbursed for automobile use in visiting such schools at the state approved rate per mile.

5. Involuntary transfer or reassignment shall be made only after a meeting between the employee involved and the Superintendent (or his designee), at which time the employee shall be notified in writing of the reasons for the transfer.
6. An involuntarily transferred or reassigned employee shall have the right of return to his original assignment when a vacancy occurs.
7. In the event an involuntary transfer or reassignment becomes a matter of grievance, such transfer or reassignment shall not take effect until after the grievance and arbitration procedures have been completed.

E. PROMOTION

1. Promotion is the appointment of a person to an intern, administrative, or supervisory position.
2. In filling such vacancies, preference shall be given to qualified employees of the District. When all other factors are substantially equal, length of service in the District shall be the deciding factor.
3. The Association shall assist the Board in the development and establishment of the criteria of and qualifications for such positions.

Transfers and Promotions (cont'd)

4. Any employee possessing the necessary qualifications may apply for a promotional vacancy. All applications shall be in writing and shall promptly be acknowledged by the Superintendent.

5. 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 eight (8) persons, five (5) appointed by the Association and three (3) appointed by the Superintendent.

   b. A record of the interview shall be filed with the application.

   c. Interview ratings for each applicant shall be prepared independently by each member of the committee. These ratings shall be used for hiring purposes only and shall not be made a part of the applicant's permanent file.

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

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

   f. 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.

Transfers and Promotions (cont'd)

F. Employees for a promotional position shall be notified of the final decision in writing within one (1) week of the Board's decision.

G. If an employee is denied promotion, written reasons shall be given.

ARTICLE

TEACHING HOURS AND TEACHING LOAD

A. Work Day

1. Employees shall not be required to "clock in or out" or "sign in our out" at the beginning or ending of the work day.
2. Employees shall have a duty-free one-half (1/2) hour lunch period in addition to planning time.
3. Any employee who is required to work beyond the regular, in-school year or beyond the total in-school workday shall be compensated at the same rate as the employee's regularly scheduled salary.
4. The total in-school work day shall not exceed six (6) hours and forty-five (45) minutes.
5. The employee may leave the building during unscheduled time.

B. Work Year

1. The in-school work year for employees employed on a ten (10) month basis shall not exceed one-hundred-eighty-five (185) days.
2. The in-school work year of employees employed on an eleven (11) month basis shall not exceed two-hundred and four (204) days.
3. The in-school work year for employees employed on a twelve (12) month basis shall not exceed two-hundred-twenty-two (222) days.

C. Teaching Load

1. Each employee shall be entitled to at least four-hundred (400) minutes per week of preparation time. This time shall

be scheduled in periods of not less than thirty (30) minutes within the pupil day during which they shall not be assigned any other duties.

2. Employees on teaching teams shall be assigned the same preparation periods.
3. Middle and high school teachers shall not be required to teach more than two (2) subject areas no more than a total of two teaching preparations.
4. Teachers in the middle and high school shall not be required to change subject area teaching stations more than two (2) times during the school day.
5. Teachers shall not be required to remain in their classrooms when another staff member is conducting an activity (ex: art, guidance, etc.).
6. The District shall employ a substitute when any employee, including specialists (art, music, librarian, etc.) is absent. No employee shall lose their preparation time or released time as a result of another employee's absence.

D. Extra Assignments

1. Any employee presently performing paid extra-curricular duties or assignments at his present position shall be afforded an opportunity to continue in the same capacity in the new District or in lieu thereof shall be reimbursed for any monetary loss sustained as a result of deployment for the 1978-79 school year.
2. Employee participation in extra-curricular activities which extend beyond the regularly scheduled school day shall be

voluntary. Employees of the building shall be given first opportunity to fill vacant extra duty positions. If a position is not filled from within the building, it will then be opened to all employees of the district. The employee shall be paid at the rate as listed in the attached extra duty salary scale.

3. Participation in per event/session activities (i.e. chaperones gate keeper, etc.) shall also be voluntary. Employees volunteering to assist at these events shall be paid at an hourly rate based on his regulary scheduled salary.

4. To relieve employees of duties which do not require certification including but not limited to: cafeteria patrol, playground duty, collecting money, bus duty, smoking court duty and study hall, the Board agrees to hire an adequate number of aides per school building for this purpose.

E. Faculty Meetings

1. All faculty meetings (including department meetings, district committee meetings, etc.) shall be conducted during the pupil day.

2. A proposed agenda for all meetings shall be given to the employees involved at least two (2) days prior to the meeting. Employees shall have an opportunity to place items on the agenda.

F. Delay or Cancellation of School

1. All notices to delay or cancel school openings shall be announced over radio stations no later than 6 a.m.

2. Delayed openings shall apply to employees as well as pupils.

3. Building principals shall establish a telephone tree to notify employees of cancellations, late openings or any other emergencies.

G. Student Teachers

Supervision by an employee of a student teacher shall be voluntary The employee shall receive the stipend paid by the University of Delaware for performing this service.

PUBLIC SERVICE RESEARCH COUNCIL

LEGISLATIVE ANALYSIS

May, 1978

ANALYSIS OF PROPOSED LEGISLATION RELATING TO COMPULSORY BINDING ARBITRATION FOR THE SETTLEMENT OF PUBLIC EDUCATION NEGOTIATION IMPASSES

Prepared For

The Committee on Labor of the New Jersey State Assembly In Regard to Testimony On Assembly Bill 553

By

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Mr. Chairman, members of this distinguished committee, I am Roman Rice, State Legislative Director of the Public Service Research Council, the nation's largest citizens' lobby and educational research organization concerned exclusively with public sector labor policy.

Our New Jersey membership numbers some 34,858 persons, including over 16,895 financial contributors.

On behalf of our New Jersey membership, I am writing in opposition to Assembly Bill 553 and, indeed, to all compulsory public sector binding arbitration legislation.

This bill is implicitly predicated on the unwarranted assumption that an unelected third party is the appropriate, ultimate decision-maker in a system of employer-employee relations in the public sector, and that this arrangement is in the public interest. Aside from any analysis of the merits and demerits of this particular proposal, it is important to show that any form of compulsory binding arbitration is inappropriate in the public sector and is contrary to the public interest. The overriding reason why compulsory binding arbitration in the public sector is not in the public interest is because it totally violates the right of the people through their elected representatives to control both vital government policy decisions and the cost of providing government services.

Now, it is the considered opinion of Public Service Research Council, after undertaking a substantial number of studies on the effect of collective bargaining in the public sector on various aspects of public sector labor policy (including, for example, the incidence of strikes and the continuation of a meaningful civil service merit system) that compulsory public sector collective bargaining itself is not in the public interest. New Jersey, along with approximately half the states in the Union, has decided to go down the road toward across-the-board collective bargaining in the public sector. We think that this is a serious mistake, and, if a legislator were to introduce a proposed statute to repeal this system, we would be glad to support such a proposal.

I will not belabor this particular point at this time, however, except to say that if bargaining is wrong because it forces government to share its sovereign power with unions, the only thing that could be more destructive of citizen-taxpayer control is to give an outsider with no elected responsibility complete control of important public policy decisions. This is exactly what arbitration does. In states where this dubious scheme has been tried, many public officials have concluded that they would rather have strikes than arbitration. It is particularly interesting that some members of the state legislature here in New Jersey seek to impose binding arbitration and collective bargaining on local school boards, even though such a process is not in effect for the state government itself.

Let me assure you that opposition to the concept of compulsory binding arbitration in the public sector is not limited to conservatives or those who oppose labor organization generally. In June of 1977 Governor Michael S. Dukakis, the liberal Democrat duly elected governor of the Commonwealth of Massachusetts, wrote in a message vetoing the re-enactment of municipal compulsory binding arbitation in his state (and I quote):

> "By imposing binding arbitration on all communities -- no matter how willing and able the given city or town has been to negotiate in good faith with its employees -- the law has made normal collective bargaining irrelevant. It has taken the responsibility of determining the financial future of the city or town, at least insofar as the cost of public safety services affect that financial future, from the local elected officials and given that responsibility to an unelected arbitrator who may not even live in the community. I do not believe that this broad delegation of local fiscal powers is consistent with any reasonable notion of home rule . . . .
>
> Our recent settlement with the majority of the state employees was achieved without resort to either final and binding arbitration or work stoppages. It demonstrates that an unfettered collective bargaining process can produce an agreement that is equitable for both sides without resort to extraordinary means of impasse resolution. If ordinary collective bargaining can resolve the complex issues that arise for thirty-eight thousand state employees, I am convinced that it can work as well on the city and town level in almost every case."

". . . . Your leadership in both branches and a great many members have expressed deep concern in recent months over the cost to local communities of state-mandated programs. I hope they will demonstrate their concern by letting this particular state mandate expire, since they have not been willing to limit the law's application to those cases in which it is most needed or to reimburse the cities and towns for the incremental cost of state-mandated arbitration awards.

It also seems to me rather inconsistent to direct the cities and towns to arbitrate their difference with their . . . employees, when you have not placed the same requirement on the state itself."

We also think that you should consider the comments of City Councilor Rhonda Thomas of Columbia, Missouri, who said that a proposed public sector binding arbitration scheme "is counter to the representative form of government. The reason is that it transfers the power to make decisions from the city council to another body." Asked the Columbia Daily Tribune in commenting on the hearings:

"How can the council and city manager effectively govern without the power to make decisions affecting city employment? Suppose the arbitration panel decided to pay a group of employees more money than the city has for the purpose? The power to spend money must be reserved for the duly elected legislature. That's such a basic tenet of government it is hard to imagine how it can be abrogated. . . .

There is no way around it. The only way to successfully operate an organization, particularly a public organization, is for the managers to have the power to manage. It is perfectly proper for the employees to maximize their leverage through any legal means, and this includes collective bargaining. But the council and manager in a city government must have the ultimate decision-making power. It cannot be successfully transferred elsewhere."

Perhaps the most well organized and effective attack on the concept of "required, binding arbitration" is that delivered by the well respected public sector labor expert, New Jersey's own Sam Zagoria, in the April 19, 1977, Labor-Management Service Newsletter of the U.S. Conference of Mayors. Zagoria identifies ten distinct things he considers wrong with compulsory binding arbitration in the public sector:

(1) It discourages honest good faith collective bargaining. . . .

(2) It places far reaching power in the hands of a person not elected, not accountable to elected officials and not necessarily a resident of the community or even of the state involved. . . .

(3) The arbitrator is an ad hoc appointee with no continuing responsibility to make an award that is workable as well as just . . . .

(4) It is probably impossible to make an award for one group of workers without affecting other groups of municipal workers, yet an arbitrator has neither the authority nor responsibility to examine their situation. . . .

(5) Contracts are not negotiated in isolation from past or future arrangements. It is difficult to make an award for one contract without dealing with how it generally fits into long-term labor relations. . . not yet formulated or expressed. . . .

(6) The process is unbalanced, since it makes a low-risk or no-risk step available to a union or employee organization. . . .

(7) Arbitrators (where this is possible) . . . tend to provide something for each side in their award regardless of the actual merits involved. . . .

(8) Arbitration is. . . expensive. . . . There are the steadily rising fees of arbitrators and now a growing use of economic consultants to prepare a case. . . .

(9) It is a time consuming process. . . . The Massachusetts League of Cities and Towns found the average length of time consumed in the arbitration phase. . . was more than a full year. . . .

(10) There are serious questions of constitutionality (in) 12 cases (which have) reached decision by State Supreme Courts - 9 found the arbitration laws constitutional, 2 divided evenly and 3 recent verdicts found them unconstitutional. One of the three, the Colorado Supreme Court, noted last year that "a contrary holding in our view would seriously conflict with basic tenets of representative government. Fundamental among these tenets is the precept that officials engaged in governmental decision making must be accountable to the citizens they represent. Binding arbitration removes these decisions from the aegis of elected representatives, placing them in the hands of an outside person who has no accountability to the public. . . ."

Zagoria concludes his article by stating, "The basic question proposed by compulsory interest arbitration is who can best represent the public interest in a bargaining impasse - the mayor chosen by the people, accountable to the people, and whose concerns take in the entire city work force as well as the long range needs of the entire community, or an arbitrator, who has been given the assignment of doing equity by a limited group of workers, and in so doing may be affecting the 70% or more of the city's budget involving personnel services as well as forcing drastic changes in the level of services and the tax system of the municipality."

* * * * * * * * * * *

In summary, Public Service Research Council strongly urges this committee and the legislature of the State of New Jersey to reject this bill and any bill mandating public sector binding arbitration on the communities of this state. Such a system is fiscally unsound, philosophically undemocratic and morally wrong, in that it grants special access to the governmental process to a private organization, namely the public employee union. Passage of this bill cannot be justified in terms of labor peace; it can only be justified for what it is - shameless, special interest legislation designed to increase the power and privileges of public sector labor unions at the expense of the citizen-taxpayers' rights, privileges and prerogatives.

SUMMARY OF STATE COLLECTIVE BARGAINING LAWS

The last several years evidenced some small progress by state legislatures in recognizing the right of public employees to bargain collectively. Some new laws were enacted, and a few existing laws were strengthened. Despite this slow progress, the maze of statutes still illustrates the need for Federal legislation. Many states offer no protection at all to public employees.

THE MAJOR LAWS

- Nineteen states (Alaska, Connecticut, Florida, Hawaii, Iowa, Maine, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, New Hampshire, New York, Oregon, Pennsylvania, Rhode Island, South Dakota, Vermont and Wisconsin) have comprehensive laws mandating broad scope collective bargaining on wages, hours and conditions of employment for state and local government employees.

- Four states (Delaware, Michigan, Nevada and Washington) have mandatory, comprehensive full scope bargaining laws for local government employees. In Delaware, however, local jurisdictions determine whether to opt for coverage. Two of these states (Delaware and Washington) have a limited form of collective bargaining for state employees which excludes wages and fringe benefits from the scope of bargaining.

- California has a meet-and-confer law covering all state employees and a collective bargaining statute covering school district employees. Other local government employees are covered by a meet-and-confer law which may be supplemented by local jurisdictions.

- Two states (Kansas and Missouri) have mandatory meet-and-confer laws covering state and local government employees. The Kansas law is relatively comprehensive, whereas the Missouri law is not.

In addition to the laws of general application listed above, a number of states have laws for selected groups such as school employees or teachers, fire, police and nurses.

UNION SECURITY

The record shows slow but continued growth of legislative provisions for union security. Sixteen states authorize negotiation of union and/or agency shop. Ten of these (Alaska, Hawaii, Massachusetts, Michigan, Minnesota, Montana, New York, Oregon, Washington and Wisconsin) cover state and local government employees. Connecticut and Rhode Island laws apply only to state employees, while Vermont covers only local government employees. The Kentucky law applies only to firefighters, while California's applies to all school employees and Maine's to university employees only.

Of particular significance are the Connecticut, Hawaii, Rhode Island and Vermont laws, because in these states agency shop automatically goes into effect for the exclusive representative. Similarly, the New York law is automatic for state government employees.

In Connecticut it has been held that the local government statute, which has no express provision on union security, nonetheless permits it. Union security is also permitted in Delaware, although the law does not expressly permit it.

ARBITRATION OF BARGAINING IMPASSES

A recent trend has been the enactment of arbitration laws. Nine states have compulsory, binding arbitration laws for some state or local government employees: Alaska, Connecticut, Maine, Minnesota, Nebraska, Nevada, Oregon, Pennsylvania and Rhode Island. Additionally, seven states have such laws applicable only to fire and police: Massachusetts, Michigan, New York, New Jersey, Washington, Wisconsin and Wyoming. In addition, New York City and a handful of small cities in California and Oregon have adopted compulsory, binding arbitration ordinances for municipal employees. The San Francisco ordinance calls for binding arbitration of impasses involving vital public services or affecting the public health, safety and welfare.

Fourteen states authorize voluntary binding arbitration which can be initiated by the parties jointly or by petition of either party: Hawaii, Iowa, Kansas, Maine, Massachusetts, Montana, New Jersey, New York, Oklahoma, Pennsylvania, Vermont and Wisconsin, as well as South Dakota and Texas for fire and police.

The Iowa law for state and local government employees, the Connecticut law for local government employees, and several fire and police laws (Massachusetts, Michigan and Wisconsin) have a special form of binding arbitration called final offer selection. This requires the negotiating parties to submit their final offer to the arbitrator who must select one

of the offers as his final award. Many labor practitioners fear that "either-or" final offer selection will injure the flexibility and viability of the arbitration process.

STRIKES

A limited legal right-to-strike exists in eight states:

Alaska -- Essential employees prohibited; limited right-to-strike for semi-essential employees; non-essential employees permitted to strike.

Hawaii -- Limited right-to-strike for all employees; strikes found to create an imminent or present danger to public health and safety may be found unlawful and enjoined.

Minnesota -- Generally prohibited; but very limited right-to-strike in special circumstances, such as if state rejects arbitration.

Montana -- The law is silent, but courts have said that strikes are legal.

Oregon -- Strikes by police, fire and guards prohibited; other employees allowed to strike, but strikes endangering public health, safety and welfare may be enjoined.

Pennsylvania -- Strikes by guards and court employees prohibited; other employees may strike unless a court finds that the strike endangers the public health, safety or welfare. Another law prohibits police and fire strikes.

Vermont -- Strikes endangering public health, safety or welfare are prohibited.

Wisconsin -- Limited right-to-strike for municipal employees (except fire and police); strikes endangering public health and safety may be enjoined (effective January 1, 1978).

January 1978

1975 PUBLIC SECTOR WORK STOPPAGES IN STATES WITH THE RIGHT TO STRIKE

STATE	NUMBER OF BARGAINING UNITS		NUMBER OF WORK STOPPAGES		PERCENTAGE	
	STATE	LOCAL	STATE	LOCAL	STATE	LOCAL
Alaska	12	62	2	2	16.6%	3.2%
Hawaii	12	31	0	1	0	3.2
Montana	80	141	1	8	1.3	5.7
Oregon	65	518	2	1	3.1	.2
Pennsylvania	29	1513	5	100	17.2	6.6
Vermont (Municipalities)	--	102	--	1	--	1.0
Wisconsin (Municipalities)	--	968	--	5	--	.5
				AVERAGE	7.6%	2.9%

30x

August 25, 1977

1975 PUBLIC SECTOR WORK STOPPAGES IN STATES WITH BROAD COLLECTIVE BARGAINING LAWS WHERE STRIKES ARE PROHIBITED

	NUMBER OF BARGAINING UNITS		NUMBER OF WORK STOPPAGES		PERCENTAGE	
STATE	STATE	LOCAL	STATE	LOCAL	STATE	LOCAL
Connecticut	1	674	0	10	0%	1.5%
Delaware	27	56	3	28	11.1	50.
Florida	0	233	0	2	--	.9
Indiana	6	434	0	5	0	1.2
Iowa	0	324	0	1	--	.3
Kansas[1/]	29	246	0	2	0	.8
Maine	1	282	0	1	0	.4
Massachusetts	51	1590	4	10	7.8	.6
Michigan	81	2313	2	28	2.5	1.2
Minnesota	116	1149	0	2	0	.2
Nebraska	8	162	0	1	0	.6
Nevada	2	55	0	0	0	0
New Jersey	29	1677	1	21	3.5	1.3
New Hampshire	8	72	0	1	0	1.4
New York	14	2634	3	30	21.4	1.1
Rhode Island	73	152	4	16	5.5	10.5
South Dakota	0	4	0	0	--	0
Vermont (State Only)	3	--	0	--	0	--
Washington	125	872	2	1	1.6	.1
Wisconsin (State Only)	11	--	0	--	0	--
				AVERAGE	3.1%	4.0%

1/ Meet and Confer Law.

August 25, 1977

1975 PUBLIC SECTOR WORK STOPPAGES IN STATES WITH NO COLLECTIVE BARGAINING LAWS

STATE	NUMBER OF BARGAINING UNITS		NUMBER OF WORK STOPPAGES		PERCENTAGE	
	STATE	LOCAL	STATE	LOCAL	STATE	LOCAL
Idaho	0	78	0	6	-- %	7.7%
Illinois	90	1032	2	41	2.2	4.0
Kentucky (except fire and police)	0	55	0	7	--	12.7
Louisiana	34	55	0	1	0	1.8
Maryland (some county legislation; exept teachers and public school employees)	2	94	0	1	0	1.1
Mississippi	0	12	0	0	--	0
South Carolina	0	4	0	1	--	25.0
Wyoming	0	55	0	0	--	0
				AVERAGE	.7%	6.5%

32x

August 25, 1977

1975 PUBLIC SECTOR WORK STOPPAGES IN STATES WITH NO COLLECTIVE BARGAINING LAWS WHERE STRIKES ARE PROHIBITED

STATE	NUMBER OF BARGAINING UNITS		NUMBER OF WORK STOPPAGES		PERCENTAGE	
	STATE	LOCAL	STATE	LOCAL	STATE	LOCAL
California[1/]	9	2415	1	33	11.1%	1.4%
Colorado	4	141	0	1	0	.7
Alabama	10	43	0	3	0	7.0
Arizona	0	103	0	3	--	2.9
Arkansas	3	28	0	1	0	3.6
Georgia	0	15	0	3	--	20.0
Missouri[2/]	10	203	0	6	0	3.0
North Carolina	3	2	0	2	0	100
North Dakota	2	56	0	0	0	0
New Mexico[3/]	9	--	0	--	0	--
Oklahoma[4/]	--	110	--	2	--	1.8
Ohio	74	1231	3	44	4.1	3.6
Tennessee	3	62	0	10	0	16.1
Texas	0	110	0	1	--	.9
West Virginia	6	26	1	1	16.7	3.9
Utah	5	88	0	1	0	1.1
Virginia	0	35	0	0	--	0
				AVERAGE	2.7%	10.4%

1/ Meet and Confer Law; local government bargaining.

2/ Meet and Confer Law.

3/ No Law; regulations for state employees.

4/ Law for some local governments.

August 25, 1977

BOARD OF EDUCATION

STERLING HIGH SCHOOL DISTRICT

SOMERDALE, N. J. 08083

WILLIAM M. ASTERINO
BUSINESS ADMINISTRATOR
(609) 784-3545

May 15, 1978

The Honorable Joseph D. Paterno
Chairman
N. J. Assembly Labor Committee

Dear Mr. Paterno:

In a very short time the Assembly Labor Committee will consider a bill mandating "Binding Arbritration in Public School Employee Disputes".

While I'm certain I do NOT speak for "all" my collegues on school boards nor for "all" taxpayers through out the state, I am reasonably assured (through constant personnel contact) of representating the majority opinion of both Board Members and our constituents.

Volumes will have been spoken and written concerning the impact such legislation will have on Collective Bargaining, School Financing, and the undermining of Board's management perrogatives.

But the first thought that came to my mind, is one that has been given a great deal of visibility lately. LOSS OF INDIVIDUAL RIGHTS. I would sight two recent examples as showing the public's reaction to such interference.

First was the recent pronouncement of the State Board of Health regulating smoking. While I and many others agree with the regulation, there is much concern, especially among your own legislatures, about enacting such rules without giving everyone (public) due process.

Second and most closely related to your bill, is the Report to the Governor and Legislature from the Task Force on Business Efficiency of the Public Schools. The most controversial part of this report is one dealing with the elimination of budget approval by the electorate. As you are hopefully aware, an overwhelming majority of voters, myself (a board member) included, reject this proposal. It eliminates one of the last vestiges of public control.

Mr. Chairman, your bill places another nail in the coffin of PUBLIC POLICY MAKING AND CONTROL.

BOARD OF EDUCATION

STERLING HIGH SCHOOL DISTRICT

SOMERDALE, N. J. 08083

WILLIAM M. ASTERINO
BUSINESS ADMINISTRATOR
(609) 784-3545

And lastly, Mr. Chairman, look at the force the general public has when it is confronted with an unresolvable condition, i.e. The Cherry Hill Township Board of Education Teacher Impass of 1977. Public pressure, not legislative remedy, led to binding arbitration. But it was the will of the people, in that district, not the will of an outsider.

I know the pressures from all quarters must be great, but I'm confident Mr. Chairman, that your committee, after careful consideration, will do justice to the Collective Bargaining, Educational and Public Control Systems in this great State.

Very truly yours,

Jack Farrell

JACK FARRELL,
Board Member
Sterling Regional High School

JF:rm

TEACHER STRIKE ACTIVITY

1968-1978

YEAR	NO. STRIKES	NO. DAYS
1968-69	11	30 1/2
1969-70	9	57
1970-71	12	98
1971-72	4	18
1972-73	7	27
1973-74	3	5
1974-75	2	10
1975-76	13	88
1976-77	14	50
1977-78	9	56
TOTAL	84	439 1/2

SUMMARY OF STATISTICS

1. 48% of the teacher strikes occurring since the passage of the public employee bargaining law in 1968 have lasted for two days or less. 34% were one day job actions.
2. 40% of all teacher strikes between 1968 and 1978 occurred within three years of the passage of C.303. 71% of the teacher days lost occurred in that same period.
3. In the period 1968-78, 84 teacher strikes occurred. Only 71 districts experienced these 84 strikes, as 13 districts experienced more than one strike.
4. The average number of teacher strikes per year in the period 1968-78 was 8.4/per year. Since we estimate that there have been 4000 contract

negotiations by teachers units in the past 10 years (400 teacher units negotiating in any one year), this indicates that the current system was successful in 98% of all bargaining situations.

5. In negotiations for 1977-78 contracts, there were 342 requests for mediation by units in public education, out of approximately 1000 units negotiating. That means that almost two thirds of the public education units bargaining were able to negotiate a settlement without reaching impasse. Only 18 units, or about 2% of those units negotiating for 1977-78 contracts, went on strike.

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Business Industry Association

50 Park Place, Newark, New Jersey 07102 201-623-8359

STATEMENT

of the

NEW JERSEY BUSINESS AND INDUSTRY ASSOCIATION

to the

ASSEMBLY LABOR RELATIONS COMMITTEE

on

A-553

"An Act Mandating Compulsory Arbitration
of
Public Sector Collective Bargaining Impasses."

38x

May, 1978.

The New Jersey Business and Industry Association OPPOSES the passage of legislation that would mandate compulsory arbitration of collective bargaining impasses in the public sector.

The concept of this bill is predicted on the unwarranted assumption that an unelected third party is the appropriate, ultimate decision-maker in a system of employer/employee relations in the public sector, and that this arrangement is in the public interest. We believe in binding arbitration, but feel it is something to be achieved through collective bargaining not by statutory imposition. Before analyzing the merits and demerits of this proposal, itself, it is important to show that any form of compulsory bending arbitration is inappropriate in the public sector and is contrary to the public interest. The overriding reason why compulsory bending arbitration in the public sector is not in the public interest is because it totally violates the right of the people through their elected representatives to control both vital government policy decisions and the cost of providing government services.

It is the considered opinion of NJBIA that the only thing that could be more destructive of citizen-taxpayer control is to give an outsider with no elected responsibility complete control of important public policy decisions. This is exactly what compulsory arbitration does. By imposing compulsory arbitration on all communities - no matter how willing and able the given city or town has been to negotiate in good faith with its employees -- this law would make normal collective bargaining irrelevant. This will take the responsibility of determining the financial future of a community, at least insofar as the cost of public safety services affect that financial future, from the local elected officials and given that responsibility to an unelected arbitrator who may not believe that this broad delegation of local fiscal powers is consistent with any reasonable notion of home rule.

We ask you to consider how can a freeholder, city council, city manager or board of education member effectively govern without the power to make decisions affecting community or board employment? Suppose the arbitrator decided to pay a group of employees more money than the municipality has for the purpose? We firmly believe that the power to spend money must be reserved for the duly elected governing body. This is such a basic tenet of government that it is hard to imagine how it can be abrogated by the passage of compulsory arbitration legislation.

There is no way around it. The only way to successfully operate an organization, particularly a public organization, is for the governing body to have the power to manage. It is perfectly proper for the employees to maximize their leverage through any legal means, and this includes collective bargaining. But the governing body must have the ultimate decision making power. It should not be transferred elsewhere.

In our opinion there are ten distinct things wrong with the concept of compulsory arbitration of labor impasses in the public sector:

1. It discourages honest good faith collective bargaining;
2. It places far reaching power in the hands of a person not elected, not accountable to elected officials and not necessarily a resident of the community, or even the state;
3. The arbitrator is an ad hoc appointee with no continuing responsibility to make an award that is workable as well as just;

4. It is probably impossible to make an award for one group of public employees without affecting other groups, yet the arbitrator has neither the authority nor responsibility to examine their situation.
5. Contracts are not negotiated in isolation from past or future arrangements. It is difficult to make an award for one contract without dealing with how it generally fits into long term labor relations;
6. The process is unbalanced because it makes a low risk or no risk step available for a union;
7. Arbitrators tend to provide something for each side in their award regardless of the actual merits involved;
8. Arbiteation is expensive;
9. Arbitration is a time consuming process;
10. There are serious questions of constitutionality. State Supreme Courts have ruled on the question 12 times. In 9 instances the law was found to be constitutional, in 3 recent decisions the law was held unconstitutional and in 2 decisions the court was evenly divided.

The Colorado Supreme Court, noted last year, in its unconstitutional decision, that "a contrary holding in our view would seriously conflict with basic tenets of representative government. Fundamental among these tenets is the precept that officials engaged in governmental decision making must be accountable to the citizens they represent. Compulsory arbitration removes these decisions from the aegis of elected representatives, placing them in the hands of an outside person who has no accountablity to the public."

The basic question proposed by compulsory arbitration is who can best represent the public interest in a bargaining impasse - the Mayor, the council, or the

board chosen by the people, accountable to the people, and whose concerns take in the entire municipal work force as well as the long range needs of the entire community, or an arbitrator, who has been given the assignment of doing equity by a limited group of workers, and in so doing may be affecting 70% or more of a community's budget involving personnel services as well as forcing drastic changes in the level of services and the tax system of the community.

A-553 is not only a bad bill from a theoretical standpoint, it is a grossly defective proposal even in practical terms. There are very few provisions which appear to be marginally positive in terms of preserving citizen control over governmental, these are far outweighed by the privileges granted to the public sector union officials.

For practical reasons, if compulsory arbitration legislation is inevitable, it is then marginally preferable, in our view, to structure a final package offer arbitration rather than issue-by-issue arbitration. This approach would tend to make the final offer of both sides, but particularly the union side, more reasonable.

In summary, New Jersey Business and Industry Association strongly urges (this committee and) the legislature to reject this bill and any bill mandating compulsory arbitration in the public sector. The involvement of the legislature in an issue which is historically negotiable even in the private sector is contradictory to legislative objectives. Such a system is fiscally unsound, philosophically undemocratic and morally worn, in that it grants special access to the governmental process to a private organization, namely the public employee union. Passage of this bill cannot be justified in terms of labor peace; it

can only be justified for what it is - shameless, special interest legislation designed to increase power and privileges of public sector unions at the expense of the citizen-taxpayers' rights, privileges and prerogatives.

LETTER FROM CHARLES MARCIANTE - President, N.J. AFL-CIO

May 19, 1978

Hon. Joseph Patero
Chairman - Assembly Labor Committee
State House
Trenton, New Jersey 08625

Dear Mr. Chairman:

RE: Opposition to A 553

We cite the following reasons for opposing A 553 as proposed by Majority Leader A. Purstein.

a.) The right to strike is an essential distinction between a free society and a totalitarian regime. Compulsory arbitration is incompatible with a free labor movement and free collective bargaining.

b.) Historical evidence demonstrates that compulsory arbitration has not been successful in countries where it has been tried. On the other hand, evidence does demonstrate that where the workers, through their unions, voluntarily agree with the employer to arbitrate their differences, the results have been satisfactory to all parties.

c.) Voluntary arbitration is compatible with a free society, while compulsory arbitration is an abridgement of freedom. Labor supports actions that strengthen collective bargaining but rejects all proposals that would compel workers in public or private employment to work against their will under terms imposed, directly or indirectly, by government.

d.) Despite some management outcry and hubbub in the press, strikes are very infrequent within the collective bargaining process -- less than two percent of all contract negotiations end in a strike. Less strikes occur as the process becomes refined.

e.) It is the employees' right to withold his services in the event that an impasse is reached in negotiations. If this were not true, there would be an imbalance in power, and the employee would always be ultimately subject to the employer's domination. Where are balances?

f.) If we intend to continue as a democracy and a nation of free men, then those freedoms must be universal and apply to all our workers -- not just to some, or when freedoms are convenient. Granted, it might not always be the easy way to grant public employees that right to strike, or the right to free collective bargaining, but freedom of choice is one of the basic tenets this nation was built on. Compulsory arbitration contradicts freedom of choice. We'll merely be playing hypocritical lip service to the American dream, if we deny that freedom to anyone.

In addition, while attending the hearings, the teachers union representatives and the Boards of Education representatives both opposed the legislation. The Boards of Education want to refine the negotiating process, they don't want compulsory arbitration. Something is obviously wrong somewhere, Joe. A 553 is bad legislation and should not be favorably considered by the committee.

Very truly yours,

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