

(Vol. I)

PUBLIC HEARING
before
ASSEMBLY REVISION AND AMENDMENT OF LAWS COMMITTEE
on
ASSEMBLY BILL NO. 521
(Right to Strike by Public Employees)

Held:
May 3, 1972
Assembly Chamber
State House
Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Assemblyman Kenneth A. Black, Jr. (Chairman)
Assemblyman John F. Evers
Assemblyman Brian T. Kennedy
Assemblyman John N. Dennis
Assemblyman John J. Sinsimer
Assemblyman Vincent O. Pellecchia

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ASSEMBLY, No. 521

STATE OF NEW JERSEY

INTRODUCED JANUARY 31, 1972

By Assemblymen GARIBALDI, JACKMAN, PELLECCIA,
SINSIMER, BASSANO and MEGARO

Referred to Committee on Revision and Amendment of Laws

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

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

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

3 8. a. Nothing in this act shall be constructed to interfere with,
4 impede or diminish in any way the right of private employees to
5 strike or engage in other lawful concerted activities.

6 b. *Except as provided in subsection c. of this section, nothing in*
7 *this act or in any other law of the State of New Jersey shall be*
8 *construed to interfere with, impede, or diminish the right of a*
9 *recognized representative of public employees selected or desig-*
10 *nated pursuant to the provisions of section 7 of P. L. 1968, c. 303, to*
11 *engage in a strike for the purpose of establishing, maintaining,*
12 *protecting, or improving terms and conditions of employment, or*
13 *of a public employee to participate in such a strike.*

14 c. *No court of the State of New Jersey nor any judge or judges*
15 *thereof shall issue a restraining order or temporary or permanent*
16 *injunction in any case involving a strike by a recognized representa-*
17 *tive of public employees unless—*

18 (1) *the commencement or continuance of the strike poses a*
19 *clear and present danger to the public health or safety which in*
20 *light of all relevant circumstances it is in the best public interest*
21 *to prevent: provided, that any restraining order or injunction*
22 *issued by a court for this reason shall prohibit only such specific*
23 *act or acts as shall be expressly determined to pose such clear*
24 *and present danger; or*

25 (2) *the representative has failed to make a reasonable effort*

26 to utilize the procedures provided in section 6, of P. L. 1941,
 27 c. 100, as amended for the resolution of impasse in negotiation;
 28 provide, that any restraining order or injunction issued by a
 29 court for this reason shall indicate the specific act or acts which
 30 the representative has failed to perform and shall remain in
 31 effect only until said act or acts shall have been performed;
 32 and such order or injunction shall be issued only on the basis of
 33 findings of fact made by the court or judge or judges after due
 34 notice and hearing in open court prior to the issuance of such
 35 restraining order or injunction.

36 d. Any restraining order or temporary or permanent injunction
 37 heretofore entered by any court of this State in any case involving
 38 a strike by a recognized representative of public employees shall
 39 be dissolved and any penalties imposed by reason of violation
 40 thereof shall be vacated and fines remitted, unless within 30 days
 41 after the effective date of this act findings of fact sufficient to sup-
 42 port the order or injunction are made by the court or judge entering
 43 the same following the procedures set forth in section c.

44 e. Nothing contained in this section shall prevent a court from
 45 enforcing any lawful provision of an agreement covering terms and
 46 conditions of employment.

1 2. This act shall take effect immediately.

STATEMENT

This bill would give public employees the minimal elements of due process by granting a right to withhold services under certain circumstances.

A court would be empowered to issue a restraining order or a temporary or permanent injunction in any strike by a representative of public employees (1) that poses a clear and present danger to public health and safety or (2) in which the recognized employee representative has failed to make a reasonable effort to utilize the procedures provided by law for the resolution of an impasse. The procedures provided by law include mediation and fact-finding.

Since the enactment of P. L. 1968, c. 303, a number of severe impasses have occurred between recognized representatives of public employees and their public employers. At the present time, when a strike occurs or appears imminent, the employer appears in court and automatically secures an immediate temporary restraining order. This order usually prohibits the recognized employee representative from engaging in any concerted activity, including picketing, mass meetings and demonstrations. Since a judge has no authority to do otherwise, he is usually forced to issue such an order

regardless of the circumstances. As a result, public employees can be enjoined from striking even though there is extreme provocation by the employer and the public health or safety is not endangered.

The provisions of this bill should produce the peaceful settlement of most public employer-employee disputes. Because a court could no longer issue an instant injunction without due process, public employers will seek the resolution of differences through good faith negotiation. By the same token, a court would restrain a recognized employee representative that failed to negotiate in good faith or did not follow procedures established by law.

This legislation calls for the vacating of penalties and remission of fines arising out of violation of restraining orders and court injunction. Such action would be authorized unless the court or judge find by following procedures set forth in section c. within 30 days sufficient facts to support the order or injunction.

The public interest should be served by the establishment of this reasonable and fair balance in the negotiation process.

III

ASSEMBLYMAN KENNETH A. BLACK, JR. (Chairman): Ladies and gentlemen, the public hearing being held by the Assembly Revision and Amendment of Laws Committee will now come to order with regard to Assembly Bill 521, introduced by Assemblymen Garibaldi, Jackman, Pellecchia, Sinsimer, Bassano and Megaro.

My name is Assemblyman Kenneth A. Black. I am Chairman of this particular Committee. I apologize for the roughly ten-minute delay. I have received news that two of my Committee members will not be able to arrive until approximately one o'clock, and three others have indicated they are on their way and for some reason they have been tied up.

Before we get under way, I would like to cover some of the ground rules on public hearings. The first ground rule is that there will be no applause from the gallery or from the people here on the floor. Secondly, there shall be no placards displayed, either pro or con, from the balcony. I caution the people in the balcony on this because, if this does occur, I will contact the State Police and have the balcony cleared. I hope that we have a very quiet, very calm, very orderly public hearing.

The normal procedure is that, when a witness is called, they will step forward to the seat directly opposite me and they will state their name; the organization they represent; and if they do not represent an organization, they should indicate they are speaking simply as a concerned citizen. If they have a prepared speech or presentation, I would ask that they present the chair with a copy of that, which will then be turned over to the two young ladies who do such an excellent job of transcribing the minutes.

There will be no questions raised, except from the chair. The chair reserves the right - and in this case we will reserve the right - not to answer questions, because the nature of the public hearing is to permit myself and the members of this Committee to gain your feeling with regard to the bill.

I have been joined by Assemblyman Dennis, who is a member of the Committee.

I will ask because of the size of the turnout and the listing which reflects some 85 to 90 individuals wishing to give testimony that the presentations verbally be brief, as brief as possible. The purpose is not to in any way stem the testimony being given, but rather it is to enable us to accomplish the public hearing as quickly as we possibly can.

We do have scheduled a second meeting on Wednesday, the 10th of May. That meeting will commence at 10:00 A.M. also.

Today we will listen to testimony until approximately 12:30, when we will break for lunch. When we return from lunch, I will read a list of those who I feel will be able to testify between the hours of 1:30 and 5:00. We will terminate today's session as close to 5:00 P.M. as possible. The listing will include those that I am sure will be able to speak today as well as those who perhaps will be able to speak today. The remaining people who have not had an opportunity to testify will, of course, hopefully return next Wednesday and present their testimony at that particular time.

The first person to step forward and give testimony is Assemblyman Garibaldi and he is the prime sponsor of Assembly Bill 521.

P E T E R P. G A R I B A L D I: Thank you, Chairman Black and Assemblyman Dennis. I want to thank the Committee for affording myself and all those who are concerned with the problem that exists within our public employee sector of labor, an opportunity to express our views with regard to Assembly Bill 521.

My name is Assemblyman Peter Garibaldi from District 7A (Middlesex County).

This Committee is about to hear testimony regarding Assembly Bill 521. I am the principal sponsor of this bill which, if enacted, would amend Chapter 303, P. L. 1968, the Public Employer-Employee Relations Act.

It would grant to public employees a limited right to strike under certain circumstances and an opportunity to appear in court to show cause why a strike by public employees should not be enjoined.

The current problem in the area of public sector labor relations has come about because of the absence of statutory guidelines. Some years ago, the New Jersey Supreme Court, in the Union Beach School District case took note of the fact that neither the state Constitution nor the statutes addressed the issue of strikes by public employees. In the court's opinion, this silence required a reliance on principles long established by precedent in common law.

In falling back on the common law, the courts have been required to grant public employers immediate and unconditional relief in the event of strikes. Even when certain public employers have shown utter disregard for statutes enacted by this Legislature, and strikes result, the courts are powerless to force full compliance with the law.

Assembly Bill 521 would put an end to the practice of some public employers whereby they force their employees into a corner by refusing to bargain in good faith. Having done so, these employers literally dare their employees to strike and then are quick to point out that striking public employees face court orders, fines, and even jail.

The Assembly must act to correct the one-sided advantage enjoyed by public employers in collective bargaining. A-521 is the answer. A-521 provides for equality at the bargaining table by recognizing that employees must have the right to strike in order to have the effective right to bargain.

Yet even so, A-521 does not neglect the right of the public to be secure in the knowledge that vital services will not be curtailed. This bill provides that strikes by public employees shall be enjoined if the court believes such a

strike represents a clear and present danger to public health or safety. However, for the first time, public employees would have the right to appear in court alongside the public employer. For the first time, the court would have an opportunity to hear both sides of the issues surrounding a strike. This is only fair. It is only just. And justice is in the public interest.

The Assembly cannot continue to ignore the pressing public need for peaceful relations between labor and management in government employment. If steps are not taken to equalize the unfair balance at the bargaining table, public employee unrest will continue to grow.

Economic warfare between labor and management in the private sector was curtailed when employees won the right to strike. Today statistics show that the problem of strikes in the private sector has been stabilized. There is even speculation that because of this, private sector labor relations may be entering a new and higher level of rational collective bargaining. If this turns out to be the case, it was only the equality created by labor's right to strike which made it all possible.

In the public sector, the trend has been in the opposite direction. For some reason, it was believed that the repression of strikes would eliminate strikes. Even though court orders and legal coercion failed to suppress strikes in the private sector, government continued to believe that its own house could be secure from strikes if the penalties for striking were severe enough. This thinking flies in the face of all logic and the facts speak for themselves. While labor unrest in the private sector is stabilizing, unrest in the public sector is increasing at an alarming rate.

A-521 would bring eventual stability to employer-employee relations in the public sector. It would make good-faith collective bargaining a genuine reality in the public sector. And it would protect the vital interests of the public in doing so.

That concludes my brief statement, Mr. Chairman.

ASSEMBLYMAN BLACK: Thank you very much, Assemblyman Garibaldi.

For the audience's benefit, I have been joined by Assemblyman Sinsimer on my left and Assemblyman Pellecchia on my extreme right.

At this point, gentlemen-- John, do you have any questions?

ASSEMBLYMAN SINSIMER: I have no questions.

ASSEMBLYMAN DENNIS: I have a couple of questions, Assemblyman. First, how many other states - or are there any other states that have a law similar to this?

ASSEMBLYMAN GARIBALDI: As a matter of fact there are several states that, in recent years, have enacted identical or similar laws to the one which is proposed here by myself in the State of New Jersey and I believe throughout the day in the course of your public hearing you will in fact hear testimony as to the favorable results that that legislation has produced in the various states who have adopted it.

ASSEMBLYMAN DENNIS: Do you have any idea how many public employees there are?

ASSEMBLYMAN GARIBALDI: Have any idea of--

ASSEMBLYMAN DENNIS: Of the public employees there are in the State of New Jersey?

ASSEMBLYMAN GARIBALDI: I don't have any idea of the exact figure but I can assure you that there are a substantial number of individuals throughout the entire State of New Jersey who work for public employers whether they be the State, County, local municipal government, autonomous or semi-autonomous bodies created by the State Legislature and the Administration. All of these employees are considered public employees.

ASSEMBLYMAN DENNIS: One other question. Do you know how many have been on strike here lately, so far?

ASSEMBLYMAN GARIBALDI: I don't have any exact number of the strikes that have come about. If you were to pinpoint it in the year 1971 or 1972, or however far back you wish to go with regard to the number of strikes, they have been substantial enough

to warrant the serious consideration of this legislation.

ASSEMBLYMAN DENNIS: My last question. You mentioned private employees have had the right to strike and it has been very beneficial in the field of labor relations and in private industry. One question which someone brought to my attention; In private industry, of course, when the workers go on strike, they do not get paid; if a public employee went on strike, would they continue to get paid, or would they not receive pay?

ASSEMBLYMAN GARIBALDI: I would assume that once a restraining order has been issued by the courts and the courts have enjoined public employees under the present law, that they do continue to get paid.

ASSEMBLYMAN DENNIS: This is not the case with private employees, is that correct? They do not get paid, whereas in public employment they would get paid?

ASSEMBLYMAN GARIBALDI: Under the present law they do.

ASSEMBLYMAN BLACK: Assemblyman Pellecchia.

ASSEMBLYMAN PELLECCCHIA: Assemblyman Garibaldi, I want to apologize for our being here a little late. We were held up on the turnpike because of the inclement weather. I would have liked to have heard all of your statement and I will therefore reserve some of the questions that I do have to some of the other speakers. I know your feeling on this and I appreciate your appearance.

ASSEMBLYMAN GARIBALDI: I do have prepared statements that I can give to you so that you will have it available for your perusal.

If I may add a supplemental statement to those which I have already addressed to the Committee: In recent months there has been a great outpouring of discussion dealing with prisons, prison reform, and the nature of crime, particularly here in the State of New Jersey. Editorial writers, columnists, the entire media, have devoted considerable space and time to questioning the wisdom of imprisonment for certain crimes. In some cases writers have even taken the extreme position that all prisoners are political prisoners and they should, as such, be sympathized with, even respected, even honored, since the crimes were merely

an expression of healthy rebellion against a "sick" system.

Now it is odd, strange indeed, that those who have expressed such deep sympathy for prisoners paying penalties for murder, robbery, rape, assault, narcotics traffic and acts of political violence have written not one word about the jailing of six teachers just last week in Passaic County, the jailing of five classroom teachers in Jersey City a few weeks before, the jailing of over 100 classroom teachers during the month of December in the City of Newark. All these teachers were pronounced guilty and many face additional jail sentences and fines. My question is, and I am certain it should be the question of the Committee, what was their crime? If any prisoner in America today can be called a "political prisoner," surely the teacher of the State of New Jersey deserve that appellation.

So, what is at issue here is quite clear. Assembly bill 521 would give public employees the minimal elements of due process under democracy here in America, and let the critics of Assembly bill 521, if there be any, address themselves to the question.

ASSEMBLYMAN BLACK: If there are no further questions thank you very much, Assemblyman.

I noted earlier that Assemblyman Manner was here in the House.

(Not present)

Is Chancellor Dungan present in the House?

(Not present)

At this point I would like to ask Mayor Nardi from the municipality of Camden to step forward.

J O S E P H M. N A R D I, JR.: Mr. Chairman and members of the Assembly Committee on Revision and Amendment of Laws, my name is Joseph M. Nardi, Jr. I am the Mayor of the City of Camden and 2nd Vice President of the New Jersey State League of Municipalities. I am also chairman of the League's Public Employee Labor Relations Study Committee and my statement today is on behalf of both the Committee and the League itself.

Our Committee, composed of Mayors, municipal managers and attorneys, all having public labor relations experience, has been studying closely the numerous pieces of legislation which have been introduced in recent years dealing with the very important area of public employee labor relations. Several of these bills, including A-521 which is before us today, have dealt with the matter of legislation permitting strikes on the part of public employees.

Gentlemen, the League, along with many organizations representing management in the public sector, is unalterably opposed to any legislation which would legalize the strike as a coercive tool for settling labor disputes in the public sector. Our objections have both a philosophical and pragmatic basis. The philosophic objections arise from what we believe to be clear constitutional intent to preclude the strike power in the public sector and additionally from the very nature of public service itself which, on the one hand, imposes a special public trust while granting the public employee, on the other hand, a much higher degree of security in terms of tenure, less probability of layoff, etc., than is enjoyed by the employee in the private sector.

These philosophic arguments, however, are common knowledge to everyone who has been involved in the continuing dialogue on the strike issue and I will not belabor the point by elaborating further on those arguments. I will address the major portion of my comments, therefore, to the very pragmatic and operational aspects of Assembly Bill 521.

First, let me briefly comment on the underlying rationale or justification for legislation of this type which, in effect, would permit the strike under certain circumstances. Those circumstances, as set forth here

in A-521, are basically two; the first is when the particular strike in question involves services in the public sector which do not pose a clear and present danger to the public interest. Proponents of the non-essential services strike argument assert that while there are certain obvious job categories in public service such as police and fire protection, health, garbage collection, etc., where work stoppages would represent a clear and present danger to the public interest, there are many other types of jobs in the public sector which, in fact, are not vital in the sense that the public interest would be seriously affected if services were withheld.

Gentlemen, this reasoning is specious and deceptively over-simplified. Let me cite some specific examples which illustrate the flaws in that approach. Take the case of a recreation worker. The services of such an employee who assisted with an arts and crafts program for senior citizens could be withheld for some time without endangering the public. But how about playground personnel. If such individuals refused to report for work, the playgrounds would be closed and hundreds of youngsters, deprived of a supervised outlet for their energies, would be thrown on the streets. Would it be over-dramatizing the case to suggest that the result would be an increase in juvenile delinquency, petty crime and a real threat to public safety? I think not.

And how about the case of a clerk. Certainly the public interest would not be seriously threatened if the clerk in the city's public information office stayed home for a week in connection with a work stoppage. But how about a fellow-clerk who processes checks in the welfare office or types up inspection reports in the health office. And how about the public works

laborer? The public interest might not be seriously threatened because a few pot holes in the street went unpatched for a few days, but what about the water main which ruptures or the street cave-in which needs to be barricaded?

I could give dozens of other illustrations, but I think the few that I have mentioned make my case. The case is that the public interest does, in fact, go far beyond those few "classic" police, fire and garbage collection categories which are usually identified. A recreation worker's services do frequently affect the public interest, and so do a clerk's, and a truck driver's and a sanitary inspector's. Stopping their services would indeed pose a "clear and present danger."

Let me make one further and extremely important point concerning the mechanics of A-521 under which these so-called non-essential service strikes would be permitted. In the procedure set forth in paragraph (1) of section c. of the bill, the determination of whether or not the particular strike at issue posed a clear and present danger to the public interest would be determined by the courts. It is our position, gentlemen, that this provision removes the judgment of what is, or is not, a vital service from the elected governing officials who are responsible for providing and maintaining those services and placing it in the sole discretion of a judge. We submit that such a procedure constitutes an absolute violation of home rule and we strongly oppose it.

I would like to move on now to the second of the two circumstances or justifications under which strikes would be permitted under A-521. Those circumstances are set forth in paragraph (2) of section c. and apply to those situations where it can be demonstrated that the impasse resolution procedures

provided by law have been duly and reasonably explored. The effect here seems to be to legitimize the strike technique as a "last resort" step if other earlier stages of negotiation, mediation, and fact-finding have failed. This line of thinking runs counter to the whole concept of Chapter 303 or any other comprehensive statutory mechanism which has been established for the very purpose of providing a legal framework for the processing and reconciliation of labor disputes. The very objective of such legislation is to remove the necessity for the strike as the ultimate expression of frustrated, desperate employee groups, seeking redress.

Another serious flaw in this pending bill lies in the fact that it would provide an absolutely unlimited right to strike after the two conditions set forth in section c. had been met, namely that the strike did not constitute a "clear and present danger" and that all other reconciliation avenues had been reasonably explored. Would the strike recourse apply only to new contract negotiations, or would it apply also to grievances over existing contract language? And would it also apply to simple disagreements over administrative decisions not set forth in a contract? The answer seems to be that the strike would be permitted in each and all of these cases. This bill has been called a limited right to strike bill, yet written as it is, it appears to grant an almost unlimited right to strike.

The bill suffers from still another deficiency from the management viewpoint. It does not outlaw the practice of the secondary boycott which is prohibited by the Federal Labor Management Reporting Act. Nothing would prevent, therefore, the establishment of picket lines on the premises of various suppliers and firms doing business with the struck municipality, school board, county or the state itself.

We agree that there are many deficiencies in New Jersey's present public sector labor statute as set forth in Chapter 303 and we have presented comprehensive recommendations for remedying them. Other organizations have done likewise, as we all know. We also agree that experience shows that there is a need for some further step after fact-finding, that is, some type of arbitration, best and final offer, or something else. But to suggest the strike as a logical and acceptable final recourse defeats the whole purpose of dispute settlement procedures. We totally reject it as a responsible solution.

We also object to the provisions of section d. of Assembly 521 which provide for the return of fines and dissolution of penalties on matters imposed prior to the passage of this measure. While that provision does not constitute an ex post facto clause in the strict construction of the term, it certainly makes a mockery of contempts of court and would encourage further violations of the law.

In conclusion, let me emphasize that the League supports a workable and equitable public employment labor law. Chapter 303 was a beginning. After several years of experience under that law, it is clear that further refinements and adjustments are necessary. We are working for the enactment of overall remedial legislation which hopefully can be achieved this year. With a good law of the type that is being sought, there is absolutely no justification for permissive strike legislation of the type under discussion today.

Gentlemen, that constitutes the statement on behalf of the League and the PERC Committee.

ASSEMBLYMAN BLACK: Thank you very much, Mayor Nardi.
Assemblyman Sinsimer?

ASSEMBLYMAN SINSIMER: Mayor Nardi, do you think that a strike by school teachers would present danger to public health and public safety?

MAYOR NARDI: It may. I could conceive of some situations, certainly in the inner-cities, and I can speak for a city such as Camden or Trenton, Paterson, Jersey City or Newark where a situation might pose such a clear and present danger.

ASSEMBLYMAN SINSIMER: Well, how do you determine that?

MAYOR NARDI: I think that obviously it would be on the facts just as they come. I can envision just a situation over the lack of a recreational facility within a school growing into a clear and present danger. I think we live in times today that conceivably any portion of the governmental operation could, and this is the very point that we make, that you can't categorize it. I think that the best example is that of a clerk or, perhaps, even of a recreational worker, so that I don't know and I don't believe that it can be categorized.

ASSEMBLYMAN SINSIMER: That wasn't part of my question, regarding recreational personnel, but since you brought it up, you did mention here that you felt recreational personnel being on strike could present a danger to health. Now, isn't it a fact that most school playgrounds are closed during the summer anyway, when the children are more apt to use them, when they are available for their use?

MAYOR NARDI: The aspect that I suggested insofar as recreational employees were concerned, and the subject of recreation, was not in relation to the operation of the school districts but rather recreation as provided as a city function, as a municipal function, or local government function, and they are open 12 months in the year.

ASSEMBLYMAN SINSIMER: I don't know of any that are open 12 months. You did suggest arbitration as a means of settling a

dispute of public employees and their employers when it comes to an impasse and yet, in another part of your statement, when you are talking about the determination - this is on page 3 of your statement - "determination of whether or not the particular strike at issue presents a clear and present danger to public interest.....should not be left to the sole discretion of a judge."

MAYOR NARDI: I suggested arbitration as one alternative that might follow from the last step which presently is fact finding and I suggested that perhaps someday we would get to that or to something else. Insofar as the inclusion of the reference to the court in this case, it specifically applied to the procedure provided for in this bill which would, in effect, take away that attempt to reconcile differences from the two parties.

ASSEMBLYMAN SINSIMER: But since you do state that the definition of whether or not a strike presents a clear and present danger to the public interest should not be left to the sole discretion of a judge, isn't it rather a contradiction to say that the impasse itself should be left to the discretion of the judge?

MAYOR NARDI: Not at all. Obviously there is some point in time where, even under present procedures, actions are taken for restraining orders or for injunctive processes and that is left to the discretion of the court to determine whether or not violations of the law have been committed. What we are suggesting is that insofar as providing for it as a part of the procedure under this bill, it would be improper violation of what we conceive to be home rule and a dilution of the powers of the elected officials of the governing body.

ASSEMBLYMAN BLACK: Assemblyman Dennis?

ASSEMBLYMAN DENNIS: Mr. Nardi, you are from the League of Municipalities; are all the towns and cities in the State of New Jersey represented in this League.

MAYOR NARDI: At last count I believe that there were-- As you know there are 567 municipalities in the State; I believe that at last count it represented something like - I'll take a

guess and say 95% or 97% of them.

ASSEMBLYMAN DENNIS: And all 95% or 97% agree with this statement, I mean this is their--

MAYOR NARDI: This represents the work of a public employment labor relations study committee that is made up, as I indicated in the introduction to the statement, of mayors, of city attorneys, and of managers of large cities and middle-size and small towns. It is a cross section of the entire State, yes.

Now, to directly answer the question, a plebiscite wasn't taken on it to determine reaction to it but the history of this Committee has been that it has fairly represented the entire State and every size municipality.

ASSEMBLYMAN DENNIS: Correct me if I am wrong, In summary, you say that you believe that public employees at the present time do not have the strength that they should have in bargaining; however, you believe that this is not the answer, that some alternative must be reached, is that correct?

MAYOR NARDI: I really didn't suggest that they didn't have the strength in bargaining because I didn't look at it strictly from the point of view of the employee. I would rather look at it from the point of view of the tax paying public because that is actually who we work for, you and I and the principals, and that is who the employee works for. So, it would be my hope that each of us would be really working in the best interest of ultimately that one person, or group of persons; any attempt to discuss this is as a means of really achieving the best results for that person, not for the mayor or council as a body, or not for the employees as a body, but rather for the public because that's what makes us different from the private sector.

ASSEMBLYMAN BLACK: Assemblyman Pellecchia?

ASSEMBLYMAN PELLECCCHIA: Mayor, you state in your statement here - at one point you did refer to the fact that there could be some strikes in other industries which would directly affect the children going to school.

MAYOR NARDI: No, I think that what you--

ASSEMBLYMAN PELLECCCHIA: I thought you were referring to

what we would consider a secondary boycott, putting pickets in front of--

MAYOR NARDI: Suppliers to the municipality, school, county or State.

ASSEMBLYMAN PELLECCCHIA: I am sure you are aware of the fact that there is a law preventing secondary boycotts of any sort?

MAYOR NARDI: Yes, and what I am suggesting is that this law is deficient in that it too doesn't mention it and if it is really going to apply to the situation, then let's make it a good one and that is why I suggested that. Let's not do it piecemeal in a fashion like this but let's do it as a complete revision of 303 and any other attempt to do it is just patching here and putting a band aid there and really taking an aspirin in another place. Let's do it once and let's do it for real.

ASSEMBLYMAN PELLECCCHIA: Mayor, as a member of the League of Municipalities, are you familiar with the amount of strikes that have taken place among the schools of the state in the last several years?

MAYOR NARDI: I can only answer it in this way, the League of Municipalities' jurisdiction, obviously, extends to municipalities, some of which have direct control over the school districts, some of which do not by reason of the fact that they are separately elected under a different law. I have, of course, personally read of many of the strikes that have in fact taken place and I know of some that have even taken place within the local government but, in direct answer to your question, I don't know the number; I know that there have been some, yes.

ASSEMBLYMAN PELLECCCHIA: Can I refresh you? I have here a survey that I made myself; unfortunately it only goes to the years from 1968 to 1970 and I find that in the State of New Jersey we list approximately 19 strikes, of which some were of a one day duration, in fact a majority of them were of a one day duration. Do you honestly believe that this would hinder the children in any way?

MAYOR NARDI: It may. In fact, they may have, yes.

I think that any interruption in the educational process

hinders it.

ASSEMBLYMAN PELLECCCHIA: Mayor, are you aware of the fact that if there is a strike of any duration, that the school year presently is 180 days and that there are 185 days to make up that lost time; do you think that this would hinder our children in any way, shape, or form?

MAYOR NARDI: I think it hinders them in a different way. I don't think the strike itself is justified under present circumstances and I think that children seeing that ~~or~~ being aware of - and this comes in various ways, through the press, through their parents or other ways - that knowing that the law does not permit for strikes and knowing that those that instruct them do strike, that hinders their education in addition to just the numbers of dates.

ASSEMBLYMAN PELLECCCHIA: I'd like to get back to one other statement. You refer to arbitration as a means to an end?

MAYOR NARDI: I suggested that as an alternative that can be considered.

ASSEMBLYMAN PELLECCCHIA: Are you aware of the fact that there have been many attempts by the school teachers to go that route and that there have been occasions where, after a decision has been rendered, the school board did not go along with it?

MAYOR NARDI: I am not aware of any specific cases of that, sir.

ASSEMBLYMAN PELLECCCHIA: Thank you.

ASSEMBLYMAN SINSIMER: Mayor Nardi, you have already made your position very clear regarding teachers right to strike; how do you feel about students right to strike?

MAYOR NARDI: About who?

ASSEMBLYMAN SINSIMER: Students.

MAYOR NARDI: Students striking? Well, that's a-- I feel the same way about that.

ASSEMBLYMAN SINSIMER: You indicated that the effect of a teachers strike would have a disastrous effect on the students themselves. Students themselves take this action and have taken this action.

MAYOR NARDI: I don't think it is justifiable and it is certainly not pursuant to a labor agreement. We have characterized it as a strike, the effect of it looks like a strike and I know all of the other incidents do as well but that doesn't justify it and it is certainly not in the same context that we are discussing here today. I think to properly define it or to properly identify it would be to term it a demonstration of some kind. Now whether you call it a strike or a demonstration really doesn't make any difference because, as I say, it has all the incidents of what we have traditionally referred to as a strike, but that doesn't justify the situation.

ASSEMBLYMAN SINSIMER: You have already stated that a strike of teachers could have a rather disastrous effect on the students because it hinders the education of the students. Now wouldn't a students' strike have the same effect?

MAYOR NARDI: Sure it would and as I said it doesn't justify it.

ASSEMBLYMAN BLACK: Thank you very much, Mayor Nardi.

MAYOR NARDI: Thank you, gentlemen.

ASSEMBLYMAN BLACK: Is Mayor Gibson, Kenneth A. Gibson, of Newark, or his representative in attendance?

The Chair has received a written document from Mayor Kenneth A. Gibson, Mayor of Newark, New Jersey.

(See page 82A for Mayor Gibson's statement)

Is Mayor William Meehan, Mayor of Union City, or his representative here?

He also has presented a statement.

(see page 85A for Mayor William J. Meehan's statement)

At this time I would like to call Mr. Warren D. Cummings, President of the New Jersey Education Association.

WARREN D. CUMMINGS: Chairman Black and members of the Revision and Amendment of Laws Committee, I am Warren D. Cummings, President of the New Jersey Education Association (NJEA) an organization of 73,000 members and we are unified with the National Education Association, an organization of 1 million 100 thousand members.

I appear before you this morning on behalf of the nearly 73,000 educators in New Jersey who are members of our association to urge the enactment of Assembly Bill 521 to amend Chapter 303, P.L. 1968, the Public Employer-Employee Relations Act.

We are convinced that A-521, providing due process and a right to withhold services under certain circumstances, represents the only way to correct flagrant abuses of the original intent of 303.

Since the enactment of 303 in 1968, NJEA has directed much of its energy toward helping affiliated local associations secure and improve collective bargaining agreements.

Chapter 303 is an excellent law. It has given teachers and other public employees many of the benefits long recognized for private sector employees. Nevertheless, experience has shown that 303 contains two very serious weaknesses which should be corrected by amendment.

One weakness is the inability of the Public Employment Relations Commission (PERC) to deal effectively with unfair labor practices.¹ This problem is well on its way to being solved. NJEA-endorsed legislation (A-520, the PERC Enforcement Power Bill) has passed both houses of this Legislature by wide margins and is now before the Governor for his signature.

The second weakness of 303 puts teachers at a gross disadvantage in collective bargaining with school boards. It is to this problem that I address myself today.

¹ See Burlington County v. Cooper, A-139 New Jersey Supreme Court (1970). The Supreme Court found that PERC was without legislative authority to establish criteria for and enforce findings of unfair labor practices.

A fair balance at the bargaining table is necessary in order to reach a fair agreement -- peacefully. Just as certainly as unequal power encourages the abuse of power, so equal power encourages reason and compromise. Yet in public employment in New Jersey, equality at the bargaining table does not exist.

Even the courts have recognized that there is no balance between parties negotiating in the public sector in New Jersey. On February 8 of this year, a panel of three judges (Mark A. Sullivan, Leon Leonard, and Lawrence A. Carton, Jr.) for the Appellate Division of New Jersey's Superior Court, affirmed the convictions of 16 Newark teachers for violating court injunctions. But, they also leveled this criticism at the status quo:

"It is unfortunate that resort must be had to contempt of court procedure in this type of situation. Jailing teachers is not the answer to school strikes. The solution is legislative. Public employees have the right to bargain collectively as to the terms and conditions of their employment but cannot do so with their employment unit since they have no means of negotiating from a position of strength."

Under such conditions, a fair agreement is simply not possible when, for example, a school board refuses to bargain in good faith.

The recent history of teacher-board relations shows general improvement because of the guidelines and procedures set down by 303. When teachers and boards meet in mutual good faith most differences of opinion are resolved. Rational and mature discussion of the issues is possible. Even when conflicting interests of the parties clash head-on, mediation and fact-finding procedures often provide the means for a peaceful resolution of the impasse.

But just as other general rules have their exceptions so too does this. In some districts in this state, school boards have resolutely and defiantly clung to outmoded, paternalistic, and dictatorial practices and refuse to negotiate with teachers in good faith. When this happens, mediation stands little chance of success and fact-finding carries with it no greater liability for such a school board than a few days of unfavorable exposure in the public media.

The "unfortunate situation" referred to by the three judges of the Superior Court is the outgrowth of this kind of non-bargaining relationship. The present laws of New Jersey are powerless to remedy the injustice.

What do teachers do in the face of this kind of frustration? The alternatives before them are equally harsh. Teachers can surrender to the dictates of recalcitrant school boards which are clearly in violation of the intent of state law. Unfortunately this sometimes happens but because teachers are also human, surrender doesn't solve the problem.

Other teachers in New Jersey, after much agonizing consideration have chosen to strike. NJEA does not encourage this type of action and teachers in local associations hesitate at great length before they take that final drastic step.

When this happens, school boards are able to walk into court and automatically obtain injunctions against teachers without any consideration of the circumstances. New Jersey courts are forced to proceed according to ancient principles of common law because of the absence of statutory guidelines. In the last few years, hundreds of New Jersey teachers have been jailed and fined, having been denied an opportunity to argue and give reasons why court orders should not have been issued.

Only last month, six teacher-leaders from Passaic were jailed for up to 90 days. One of these teachers is a decorated Vietnam veteran who fought to bring

democratic principles of fair play to the Vietnamese people. Now he is in jail because those same principles have been denied him in the name of the people of New Jersey.

Only a few months earlier, 20 teachers from Jersey City were jailed for their part in a strike which actually made it possible to keep Jersey City's schools open. These teachers were denied any chance of presenting their case even after Mayor Whelan attempted to blackmail the Legislature by deciding to close the schools -- permanently.

In the near future, 14 teachers from Fair Lawn may share the fate of the teachers from Jersey City and Passaic. It is a sad commentary indeed that New Jersey is the only state in the nation which jails teachers with such alarming regularity for actions which are perfectly legal in the private sector and in some states in the public sector as well.

Just across the river from Trenton, the 700 teachers of Bristol Township struck for two weeks last September. The Bucks County Court of Common Pleas found that this action did not endanger the public health or safety. No teacher was fined. No teacher was jailed. This dispute was settled satisfactorily.

Teachers at Rider College have the right to withhold services, but five miles away teachers at Trenton State College do not. Rider is a private college, Trenton State is public.

A man who maintains the greens at a private golf course can walk off the job with impunity, but a man who trims the public golf course cannot.

Teachers in public schools face legal reprisals if they withhold their services, but teachers doing the same work in parochial or private schools do not.

Bus drivers can legally strike if they work under a private contract but not if they are employed by a school board.

Some strikes should be permitted and others should be forbidden. But the test should not be who the employer is; the test should be the nature and impact of the function that the employee performs.

NJEA believes the history of the right to strike in the private sector points the way. Today we take this right for granted. We assume that industrial workers, for example, have always been legally able to strike. This is not so.

In the private sector, the strike was once outlawed. But justice and fair play have long since triumphed in the private sector. The ability to strike is the American worker's cherished right to guarantee fair balance at the bargaining table. The knowledge that employees have the right to walk out keeps the employer at the table negotiating in good faith.

In the public sector, this equality would provide a deterrent to the unwarranted provocation that has been the cause of most public employee strikes. It would provide the balance-weight of fair play.

With protection of the public interest guaranteed, as A-521 provides, both parties would be required to consider the issues carefully and be able to justify their positions in a court of law.

Actually, NJEA believes that A-521, if enacted, would effectively reduce the frequency of strikes in the public sector.

NJEA believes that Assembly Bill 521 now before this committee would correct the abuses suffered by public employees in collective bargaining situations. This legislation, if enacted, would enhance the voluntary resolution of conflicting interests by providing incentives to the parties to agree peacefully. It does not subvert the collective bargaining process by coercing either party into accepting an agreement dictated from on high.

A-521 is in reality "due process" legislation, a bill which would end the deplorable practice of jailing teachers without benefit of judicial review of the issues at the root of the problem.

A-521 would require both parties to negotiations to show cause why a strike should or should not be enjoined and the court would be guided by the nature and impact of the strike in rendering its judgement.

A-521 gives due regard to the public interest in that it prescribes in no uncertain terms that no strike in the public sector, regardless of the issues, shall be permitted to continue if in the opinion of the court, such a strike shall constitute a "clear and present danger to the public health or safety".

A-521 would correct existing gross inequities.

It would equalize the one-sided advantage to the public employer in collective bargaining.

It would preserve and enhance incentives to the parties to reach voluntary agreement.

It would extend to public employees the due process right to fair hearings prior to the issuing of restraining orders for the first time in New Jersey.

Finally, it would guarantee the protection of the public health and safety.

For these reasons, the New Jersey Education Association strongly urges this committee to give favorable consideration to A-521, a bill which recognizes the American principle of "fair play".

ASSEMBLYMAN BLACK: Thank you very much, sir.

Assemblyman Sinsimer?

ASSEMBLYMAN SINSIMER: Mr. Cummings, you mention a strike of teachers in Bucks County, Pennsylvania and the successful outcome of it.

MR. CUMMINGS: Yes.

ASSEMBLYMAN SINSIMER: Do you have any additional information on how Pennsylvania's right-to-strike bill for public employees is actually working in practice?

MR. CUMMINGS: Yes, Assemblyman, we asked for some extra information on this because we thought being a neighboring district it would be of particular interest to us and I would like to give you a letter we have from Senator Richard Frame from the 25th District who was the sponsor of the bill in

Pennsylvania. He is the Republican chairman of the Senate State Government Committee and he had full control of the bill when it went through there.

Here's what he says: "I am very proud of P. L. 195 which we know in Pennsylvania as the Public Employee Relations Act. As principal sponsor of the legislation, I understood the difficulties which would be experienced in the first year of the law's operation, but I had confidence that experience would teach us a better way under the rules of law to order the services of public employees, including teachers.

"Our first year of experience with the law has proved to me that my good expectations for it were justified. The law does provide an orderly way under rules to develop proper and effective relationships between public employees and the public agencies which employ them. I am especially pleased with the effects of the law on better and more rationale operation of our school program under contracts which have been negotiated by teacher groups and their employee school boards.

"In my opinion a law such as we have, even though it provides a very limited right to strike, has brought improvement to our school program and made a more sensible method for developing teacher-board relationships than we formerly had. There is every evidence that as school board and teacher groups become more practiced in the process of collective bargaining, not only teachers and school boards will gain but the interests of the people will be advanced and the educational opportunities of children improved.

"Finally, I would say that in this day and age under societal conditions such as we know, nothing but the greatest difficulty can result in the absence of the legal right of public employees to enter relationships with their public employers on a basis of equality with the employees in the private sector."

This is signed Richard Frame, Senator. I thought that was an interesting comment.

ASSEMBLYMAN BLACK: Any further questions? Assemblyman Dennis?

ASSEMBLYMAN DENNIS: Besides Pennsylvania, how many other

states have this right to strike?

MR. CUMMINGS: The State of Hawaii has a law almost exactly like the proposed A-521 and Vermont, I believe, has a somewhat similar one. There are some other states but Pennsylvania and Hawaii are the most parallel to the one which we are advocating.

ASSEMBLYMAN DENNIS: Mr. Cummings, I realize you are president of the New Jersey Education Association but would you know, since you are very informed, besides teachers who are public employees, how many other public employees would be affected by this law if it were enacted?

MR. CUMMINGS: When you asked that question before we were going over it over here and we had estimates that went as low as 150,000 and as high as 300,000. That is as close as we could come.

ASSEMBLYMAN DENNIS: I see, you say there are 73,000 teachers that this would apply to?

MR. CUMMINGS: That are in our association, yes.

ASSEMBLYMAN DENNIS: Was a poll taken of your group, a secret ballot taken of all the 73,000? I see you have quite a few representatives down here today. Was a private poll taken at each of the schools?

MR. CUMMINGS: No, not a secret ballot. We did take an opinion poll, you know a random sampling opinion poll, sometime ago which showed an overwhelming percentage. The basis for our being here today is that this is definite action by our Delegate Assembly which is our representative body. They took the stand in favor of A-521. That is who we are speaking for today - the Association as represented by their Delegate Assembly.

ASSEMBLYMAN DENNIS: A couple of more questions, please. I asked Assemblyman Garibaldi and I just want to get it from you also; you mentioned that these teachers when they are put in jail - and I agree, I don't think jailing teachers is the answer by the way - do they still receive their pay from the municipalities?

MR. CUMMINGS: No, they do not. They are not paid - when they don't work they are not paid.

ASSEMBLYMAN DENNIS: They only get paid when they work then?

MR. CUMMINGS: They only get paid when they work.

Now, this could be - after they go back to work - this might be a subject of negotiation and if they could negotiate-- They are not paid when they do not work, no.

ASSEMBLYMAN DENNIS: You used examples, for example Rider College vs. Trenton State; the private golf course vs. the public golf course; the private bus vs. the public school bus. I believe in all these cases - correct me if I am wrong - none of them have tenure do they? I know this is something that the public employees have which private industry does not have, is this correct?

MR. CUMMINGS: Well, all public employees do not have tenure, I don't think.

ASSEMBLYMAN DENNIS: I mean after the first three years--

MR. CUMMINGS: They are protected by collective bargaining contracts but they do not have tenure.

ASSEMBLYMAN DENNIS: Is this the argument that many people have mentioned? I am sure that many of my co-legislators have received thousands of letters bringing up the subject of tenure.

(no response)

That is all the questions I have.

ASSEMBLYMAN BLACK: Assemblyman Pellecchia?

ASSEMBLYMAN PELLECCCHIA: Mr. Cummings, I followed your statement quite closely and I have a series of questions that I would like to ask. I know that you have explained it in writing here but I would like some rationale on some of things that are in your statement. For instance, actually, why is it needed? Why do we have to have A-521.

MR. CUMMINGS: Well, in the past two years we have had 243 teachers in New Jersey go to jail and as long as one teacher goes to jail something is wrong and this is to try to correct that, to give-- it is simply to give teachers due process at the bargaining table so that when they come to the point of negotiation with the Board of Education, the Board doesn't hold all of the cards. Things have got to be evened up, we've got to get some balance and this is what does it.

We now have to negotiate by injunction. The Board just holds back and finally the teachers, in frustration, go out and automatically there is an injunction. No one gets a chance to have his case heard from the teacher's side, he is automatically wrong under the present system of affairs and this is why we must have a change.

ASSEMBLYMAN PELLECCCHIA: Mr. Cummings, do you really believe the teachers want to strike?

MR. CUMMINGS: The teachers want to strike? Oh, absolutely not. They are probably the last people in the world who want to strike just by the very nature of the kind of people that become teachers; they are not that sort of folks. When they do strike, it is in absolute frustration just because there is no place else to go, and we think that what this legislation is going to do, by giving them another tool in negotiation, is to cut down on the need to strike.

ASSEMBLYMAN PELLECCCHIA: Why do teachers strike?

MR. CUMMINGS: Because there is nothing else to do. What happens in case after case is that they run up against a board that just refuses to move, nothing happens. They come in with a proposition and there is no counter proposition. Nobody moves, nothing happens - where do you go? They've mediated and the board refuses to accept this, the board refuses to do anything and that is when you get strikes, when you get absolutely no motion. There is nothing else to do.

ASSEMBLYMAN PELLECCCHIA: Let me ask you this, do you believe that the major issue is money for teachers?

MR. CUMMINGS: No, that is the one that gets most publicized but there are many, many issues. I suppose in some cases there have been strikes when money was the major issue but I can tell you many times when teachers have struck for, among other things, size of classes; more special services, such as psychologists; better equipment - better classroom equipment - this is very often a reason. I am thinking of the cases of Jersey City and Trenton where money was only one of the issues and you will hear, I am sure, more testimony about this as we go along.

ASSEMBLYMAN PELLECCCHIA: Mr. Cummings, having seen

some of these teachers going to jail - and we are aware of the fact that there are laws saying that they are defying the law - why do you think it is just unfair for the courts to jail striking teachers?

MR. CUMMINGS: You see, the teacher is presented with two alternatives and neither one of them is good. It would be wonderful if he had a choice between doing what was good - that is, obeying the law and obeying the court's order - and what is bad, which is striking. But that isn't the alternative he is given. He is given the choice between what is bad, which is disobeying the judge's injunction and continuing on the strike - that's bad - and, even worse, allowing some callous school board, contemptuous of the rights of its teachers, to get away with another flagrant violation of the spirit of 303. That is why they do this.

ASSEMBLYMAN PELLECCCHIA: In your statement you quote three judges who made the statement that this was unfortunate, etc. Does anyone else agree with you and the judges?

MR. CUMMINGS: Do you mean anyone else?

ASSEMBLYMAN PELLECCCHIA: Does anyone else other than the Association and the statements from these judges agree with you? And do you know of anyone else who agrees with the fact that these teachers should not be jailed?

MR. CUMMINGS: Well, we have a row of distinguished sponsors of this bill in the Assembly which I would say was--

ASSEMBLYMAN PELLECCCHIA: I am one of them.

MR. CUMMINGS: Yes, I was aware that you were one. Theodore Kheel is a very well-known name in the field of mediation and he has endorsed this general position. He, incidentally, is one of the ones who sees that bargaining - compulsory arbitration, binding arbitration - is not the answer. This kills mediation; it undercuts the whole process. Everybody sits back and waits for the final judgment and it just doesn't work; we are aware of that now.

ASSEMBLYMAN PELLECCCHIA: One further question, sir. I do have more but I will reserve them for later, to other speakers. What do you think is the solution?

MR. CUMMINGS: To the present difficulty? A-521.

ASSEMBLYMAN PELLECCCHIA: Thank you.

ASSEMBLYMAN BLACK: Any further questions?

MR. CUMMINGS: Could I ask you to hear Mr. Bertolino, the field representative for the NJEA, for just a single statement he would like to make?

ASSEMBLYMAN DENNIS: I do have one question.

MR. CUMMINGS: Oh, excuse me.

ASSEMBLYMAN DENNIS: I have been asked this by many people. Do you think teachers, who are educating the leaders of tomorrow, are setting a good example by breaking the law and going on strike?

MR. CUMMINGS: Under the conditions, yes. Under the conditions they can do nothing else and be good citizens.

MR. BERTOLINO: Mr. Chairman, I thought it might be helpful.

ASSEMBLYMAN BLACK: Sir, before you start, would you state your name?

MR. BERTOLINO: Yes, my name is Jack Bertolino; I am the Director of Field Service for the New Jersey Education Association.

We too are troubled by some of the questions that you have raised here today, the whole question of the public interest, whether the law-- whether this bill would protect the public interest. And, of course, we have been looking across the river, as President Cummings has stated. The thought came to Mr. Applegate and I yesterday that it might be well for us to discuss the whole issue of this injunctive procedure with officials from the State of Pennsylvania. So yesterday afternoon Mr. Applegate and I went to Harrisburg and met with the Executive Director of the Pennsylvania Labor Relations Board, Mr. Abe Belski; the Director of the Bureau of Mediation, Mr. Phillip Kern; and also an assistant attorney general. And we discussed their law and their feelings about whether or not it was working and whether or not the public interest was in fact preserved. And it was the consensus there, there was no doubt at all, that each of the gentlemen thought that, yes, the public interest was preserved, that the courts in all instances were representing

the interests of the public and the fact is that with this limited right to strike the overwhelming majority of disputes were settled peacefully. As a matter of fact, as a result of this law, which is similar to provisions of A-521, in very few instances did any public employee organization violate a court order. As a matter of fact, one study showed that of the 47 school strikes that occurred up through December 1971 - this law went into effect in October of 1970 - all injunctions were obeyed. In other words, when the public employer went in and attempted to get an injunction, if the public employer was successful, in all of those school strikes, the teachers obeyed those injunctions. They did not violate the injunctions. My guess is that the reason they didn't was because, as the president has stated, they recognized that they now had new rights and they also had responsibilities, that they now had their fair day in court. They were now able to go before the judge and give reasons why an injunction should not be issued and having failed that, having been given their day in court, the teachers felt compelled to follow the court order. So that as a matter of fact it is their experience in Pennsylvania that the injunction tool is a very effective one in preventing strikes that have been deemed detrimental to the public health or safety. I would invite the Chairman, if he so desired, to talk with Mr. Belski. As a matter of fact, he has offered, should you invite him to speak to this Committee or to any others who might want to hear him, to do so. I believe, Mr. Chairman, that we must get over this idea that somehow anarchy is going to prevail because public employees have the right to present their side to a judge. That just does not make sense to me, Mr. Chairman, and I keep hearing that thread every time I talk with a public official and I heard it in the Camden Mayor's statement. This is simply not true. We say, as President Cummings has stated, that given this right, public employees will act responsibly, will recognize that there is equity at the bargaining table, and in fact will act in the public interest. Thank you very much, sir.

ASSEMBLYMAN BLACK: I have one question, sir. I am an old believer in an injunction is an injunction, is an injunction.

Do you feel that the teachers by failing to abide by the injunction several months ago did not deserve to go to jail?

MR. BERTOLINO: Sir, I think that there has been a great deal of unfairness with regard to the sentences that have been given to teachers. You know and I know that many convicted felons, including I would say even murderers, many of them have received suspended sentences. I think that in the case of the present court situation where judges have not had the ability to make judgments in this that some of them have been unnecessarily harsh and I believe that it is a stain on our democracy that teachers should be serving up to 90 days in Passaic and up to a couple of years in Newark for having practiced a right that others have. I cannot speak for the judges but I do know that there is a great deal of unfairness in the way the judges mete out punishment at the present time.

ASSEMBLYMAN BLACK: Any further questions?

ASSEMBLYMAN DENNIS: Yes. Just for clarification on the subject, a bill passed the Senate last year - I am from Essex County - and unfortunately we were unable to get it passed in the Assembly and this would have permitted the teachers, rather than go to jail, to use their experience in other ways. I believe you mentioned earlier another bill is introduced now.

MR. BERTOLINO: Well, that may be but I don't know that that removes the stain of the conviction in the first place.

ASSEMBLYMAN PELLECCIA: While I agree wholeheartedly with Chairman Black that an injunction is an injunction, I ask you, sir, if you are aware of the fact, or can you clarify it for me, that when an injunction is sought it is the school board that goes and they are the only ones heard at that hearing?

MR. BERTOLINO: Sir, in this very building I was involved with a superior court judge in an attempt to persuade him not to sign a court order for last year's Trenton strike. I used whatever persuasive talents I might have in order to do so. The Board President was there, the Board Solicitor was there. The judge did not want to sign that order but he had to sign it because the board of education insisted that he sign it. It was signed. Under 521, as you know, we would have a right to argue

in open court as to why that thing should not be signed and I know that in this instance and in many instances the judges have signed these court orders with much pain and with much reluctance, but they have no right to do anything else. Of course, you are absolutely right, Assemblyman; what happens is that as soon as the impasse reaches a point where there is even a threat of a work stoppage, the school boards inevitably go immediately to the judge and say to the judge, here is the order, you sign it, you must sign it, -and the judges must sign it and they do. And from that point on the teachers are in jeopardy. I can't see how anyone in his right mind can accept that as a democratic principle in which all of us should believe, I just don't see it and I believe this Assembly, and I believe that the Senate, and I believe that the governmental powers in this State are eventually going to see the light.

ASSEMBLYMAN PELLECCCHIA: Thank you.

ASSEMBLYMAN BLACK: Any further questions? Thank you very much.

MR. BERTOLINO: Thank you very much.

ASSEMBLYMAN BLACK: Mrs. Myra Malovany.

M Y R A M A L O V A N Y: Assemblyman Black and members of the Committee, I am Myra Malovany, President of the New Jersey School Boards Association. And on my right is Mr. Robert Martinez, Staff Counsel for the New Jersey School Boards Association.

As you know, the New Jersey School Boards Association represents the 603 local boards of education in New Jersey. We are submitting to the Committee a detailed statement presenting the case against permissive strike legislation in the public sector. My testimony today will summarize the major points discussed in that statement.

Four years of collective negotiations between public employers and public employees have resulted in massive gains in public employee salaries, fringe benefits, working conditions and other welfare items. These same four years have seen the resulting cost increase overload the fiscal structure of state and local government. At the same time the citizens and taxpayers of New Jersey have developed schizophrenia. They see the slightest exercise of big government power as a move to crush the "little man"-- and they revolt against the increased costs which directly result from the non-exercise of that same governmental power. Meanwhile, the public employee labor unions tighten their grip on the quality of government services; their leaders endorse the chaos of the strike as a bargaining tool, thus aping primitive unionists in their search for the classic "more."

It is in this context that the Legislature of the State of New Jersey is called upon once again to re-examine the age-old doctrine of governmental immunity from public employee strikes.

The boards of education of the State of New Jersey, duly elected and appointed policy-makers for this state's educational system, are overwhelmingly opposed to legislation which would grant school employees the license to strike. The unanimity of public management opinion on this topic and the efforts

of the proponents of the legislation to bury the hard facts of public interest in rhetoric necessitate a fresh discussion of both the policy and technical ramifications of the proposed strike license.

The fundamental policy of the State of New Jersey regarding the use of coercive measures against the government has been clearly stated by the Supreme Court in the case of the Board of Education of Union Beach v. the New Jersey Education Association.

It is the right of the individual, and it serves equally the collective interest of society,...to bring government before the bar of public opinion, thereby to alter its course.

But although citizens, individually and in association, may thus seek to "coerce" a public body to their wish, there is no right to achieve that end by disabling the public body from acting at all. There is no right to "compel" government to change its ways by blocking the administration of law until it yields.

Proponents of permissive strike legislation seek to cast aspersions on this common law prohibition by pointing out that it dates from the days of monarchy, when public labor strikes were considered a personal disloyalty to the crown. However, regardless of whether the power to govern rests with a monarch or with the duly elected representatives of the people, as in our form of government, it is axiomatic that the authority and responsibility of those who govern not be subject to arbitrary interference or even temporary suspension. This principle of political science is firmly fixed in the constitutional law of this state. Our Supreme Court has said:

"It of course is essential to the constitutional promise of an ordered society that government shall be able to govern, and we may therefore assume the legislature could not legislate the branches of government into idleness...we remain satisfied that any concerted action which obstructs or disables government runs strongly against sound public policy."

The right to govern then must rest with those appointed to exercise it, and it cannot be abdicated in any manner which would bring a branch of government,

state, county or local, to a standstill. If coercive measures against government are to be tolerated, they must be expressly sanctioned and within the foregoing limits. In other words, such measures must be licensed, and that license must be limited to something short of a full strike. That limitation cannot be waived even in the face of an individual's assertion of his freedom to withhold services. "Liberty," New Jersey's Supreme Court has said, "implies the absence of arbitrary restraint, not immunity from reasonable regulation and prohibitions imposed in the interests of the community."

PUBLIC-PRIVATE SECTOR DIFFERENCES

Proponents of permissive strike laws argue that there are inequities between public sector employees and private sector employees. The existence of that difference in itself does not compel a change in the law. In fact it suggests that the law shouldn't be changed.

In the private sector, employer-employee bargaining is essentially concentrated on the activity of "cutting up the pie." The private sector strike right simply helps cut a larger piece for employees. However, there is no public pie to be divied up. The New Jersey Education Association itself acknowledged this ten years ago when it said: "The teacher's situation is completely unlike that of an industrial employee. A board of education is not a private employer, and a teacher is not a private employee. Both are committed to serve the common indivisible interest of all persons and groups in the community in the best possible education for their children. Teachers and boards of education can perform their indispensable functions only if they act in terms of their identity of purpose in carrying out this commitment."

This essential distinction bears close scrutiny in any discussion of strike legislation. As noted above, the private sector strike is aimed at freeing

up a portion of the anticipated profits which will fall into the corporate treasury as a result of the collective activities of management and labor. In the public sector, dollar receipts are not directly proportionate to management's and labor's efforts. In fact, revenues are determined in advance of any activity for the fiscal year in question and certain laws prohibit public management from incurring contract liabilities in advance of appropriations to cover them.

Furthermore, unlike the private sector where management generally controls its prices as well as the allocation of profits, the public sector employer suffers under a diffusion of responsibility in the fiscal process. For example, local voters, boards of school estimate, town councils, the Commissioner of Education, and the State Legislature are involved in determining the amount of basic receipts for a school district, subject to such further complications and vagaries as federal aid programs and negotiations with sending districts on the tuition and numbers of students to be received.

The foregoing facts of life about government weigh heavily against the strike as an appropriate weapon of public employee unions. The complexity of the fiscal process, the extended time required to complete it, the diffusion of responsibility for decision making, and its distinction of having no bearing to profit or productivity, make it highly unlikely that a public employee "strike" can be conjured to hit the right people in the right places for a sufficient period of time and in such a way as to have any salutary effect.

The public labor strike does not inflict the economic damage on the public employer which a strike would inflict on the private employer. The public strike inflicts damage only on the public, and in the case of schools, on an innocent public.

In Pennsylvania during the first year under permissive strike legislation, 64 strikes occurred in the schools alone. The average duration was nine school days; the longest was 25 school days. Approximately 400,000 students and 20,000 teachers were affected, and nearly three and one-half million student days were lost. Yet a comparison of Pennsylvania settlements with those in New Jersey for the same period indicates that teachers with the strike weapon fared no better than those without. Indeed, the New Jersey public school teacher continues to be one of the best paid in the profession and among all professions. In September 1971 in New Jersey, the average beginning teacher with four years of college training was paid \$7800 plus benefits for 185 days of work.

Erwin B. Ellman, general counsel of the Michigan Education Association, recently reported that over half of the injunctions against teacher strikes in Michigan were actually secured from the courts by teachers themselves, ostensibly to take advantage of mandatory pretrial conferences to explore settlements, but more clearly to save face in strike situations which were not having their desired effect.

Public sector strikes simply do not work according to the theory of private sector strikes, and the great weight of evidence indicates that they do not work at all.

THE STRIKE AND BARGAINING POWER

Proponents of the permissive strike laws contend that the absence of the strike threat produces inequity in the bargaining power of the parties, that it causes public employers to refrain from good faith bargaining entirely, and that it leaves the employees no recourse when an employer rejects a fact-finder's award. Besides, they say, public employees will strike when provoked despite the existence of no-strike or anti-strike laws.

Inequity in bargaining power can mean several things when it is discussed in connection with strikes. It can refer to a union inability to catalyze its membership into unified feelings of support and supportive action. It can mean that psychologically the employee comes to the bargaining table with no ultimate weapon, and hence feels unarmed. It can also refer to an imbalance of actual power to alter the outcome of the talks.

Public sector unions have been remarkably successful in organizing locally and even mandating membership in nationwide super unions, in much the same way private sector unions over a longer period of time created internationals. There has been no real evidence of a failure to manipulate local unit memberships into supporting, often blindly, the goals and wisdom of state level leadership.

Similarly, there is no evidence that public union negotiators approached the bargaining table with less psychological weaponry than public management. In fact, public employers such as school boards must labor not only under the diffusion of responsibility and other complexities described earlier, but

also under a labor relations statute and outdated education laws which are stacked in favor of the employees. Moreover, public officials have not yet learned to cope with what is essentially a pincer strategy unique to the public sector; the assault on some items is made at both the bargaining table and in the halls of the legislature. Inroads at one front tend to weaken resistance at the other. The psychological and organizational weaponry of public sector unions does not want for lack of the strike.

Those who argue for the permission of the strike in the public sector plead that, without it, public employees suffer from a deficiency of actual negotiations power in comparison to that of private sector employees. Let us examine this proposition more closely to expose the fallacy; the ultimate threat of a private sector strike is its potential to force the employer to "retire from the field," (i.e., to go out of business, relocate, etc.) if management does not come to terms. In the public sector, such a threat is utterly meaningless because under no circumstances can a public agency retire from the field. Can one, for instance, imagine a local public school district going "out of business" as the result of a strike?

Government cannot allow economic warfare to replace due process of law either in whole or in part. Public employees cannot expect a governmental agency to abdicate its commitment under the federal and state constitutions to reasoned dialogue as the best and only means of securing equal protection of the law.

Government, in its turn, must recognize that to the extent it gambles with the uncertainties of economic warfare, it shirks its responsibility to see that it operates equitably and with due process. Likewise, government must be prepared to accept the obligation to submit itself to the standards of due process. To that end, because the strike license is meaningless, destructive, and unacceptable surrender of the obligation to govern, other mechanisms for achieving finality in labor bargaining must be devised and submitted to by public employers and employees alike. These mechanisms must assure a result based upon reason and equity and free of the arbitrariness and capriciousness of economic warfare.

In this regard, Assembly Bill 1123, introduced at the request of the New Jersey School Boards Association, will provide another mechanism for bringing finality to negotiation impasse. This legislation, under the prime sponsorship of Assemblyman John Evers, together with 14 co-sponsors, provides, in addition to mediation and fact-finding, the option of voluntary arbitration through the technique of "fair and final offer." Under this procedure, the parties would voluntarily agree to this form of arbitration, wherein a neutral third party selects one of the last best offers of each of the disputants in arriving at a determination. This proposal has received favorable public attention, for example, in a recent Paterson News editorial. We commend this procedure to you as an alternative to the economic warfare of the strike.

To say, finally, that public employee strikes will continue and, therefore, ought to be legalized, is specious reasoning. The fact that a law is

occasionally violated does not compel the conclusion that the law should be changed. The New Jersey Supreme Court has said, "A doctrine designed to protect the public interest is equal to any demand upon it. It does not yield to guile and ingenuity." The public policy of governmental immunity from strikes, and the very logic of the situation, demand that policy not be changed frivolously nor until all other possibilities of recourse have been examined and utilized.

While not judging the motives of those who strike, the law of this state allows room to regret that in presumably some cases, idealism can lead to civil disobedience which is so costly in human life and resources. Indeed there must be a better way.

But that regret does not compel a rush to the most obvious, and upon examination, the most fallacious of apparent solutions. The legislature's response must be creative. As Donald H. Wollett, chairman of the Committee on Law of Government Employee Relations of the American Bar Association and for many years a teacher organization spokesman, has said:

"Since I am persuaded that the established procedures and practices of private collective bargaining fit very badly in the public sector and can, indeed, do much mischief, I think we need to move very cautiously until we are much surer than I think we are now, that we know what we are doing...The thing of which I am most certain is that the answers which we seek, lie, not in the past, but in the future -- in the ideas as yet undiscovered, and in experiments not yet undertaken, demanding fresh perspective and new approaches."

We therefore strongly urge the Legislature not to embark upon a sea of troubles by allowing economic warfare to replace due process of law, either in whole or in part. We urge above all that the way of reason not be given up for the sword of battle against the public.

ASSEMBLYMAN BLACK: Thank you very much.

Assemblyman Sinsimer?

ASSEMBLYMAN SINSIMER: Mrs. Malovany, you mention here on page 2 of your report that "their leaders endorse the chaos of the strike as a bargaining tool, thus aping primitive unionists in their search for the classic 'more.'" Now would you say that the strikes in Pennsylvania that occurred recently were chaotic?

MRS. MALOVANY: You have done some research on the situation in Pennsylvania, Mr. Martinez. Would you like to speak to that, please.

MR. ROBERT P. MARTINEZ: Assemblyman, I would have to respond by saying that I think they are chaotic in this sense: As has been described before, there were some 64 strikes. About half of those in Pennsylvania went to the injunctive stage and the results of the injunctions there were entirely uneven. Some judges found in one situation that it provided a clear and present danger to the public health and safety, and therefore enjoined them. And in a virtually identical situation, other judges found the contrary. From an attorney's point of view, that is a chaotic result where you have a standard that results in uneven results across the state.

ASSEMBLYMAN SINSIMER: That is from an attorney's point of view. How about from the public's point of view? The average duration was of nine school days, according to your own figures here.

MR. MARTINEZ: That's correct.

ASSEMBLYMAN SINSIMER: And that is a chaotic situation?

MR. MARTINEZ: The chaos in a public sector strike, I think as you will probably hear from Board members later on who have been involved in them, results from a lot of little details. Let me just try to touch on a few. In situations like the recent Madison Township strike where there is an honest-to-God picket line up around the school, some people trying to get to work find themselves hit with these "disturbing the peace" summonses from the local police,

who, of course, are in sympathy with the public union that is picketing.

In many cases, I would wonder how it is going to be possible to get into a court to obtain injunctive papers or even have this argument that everybody is looking forward to, when perhaps the clerks of the court are going to also be out on strike and the courts won't be open. This, from that point of view, is a chaotic situation.

ASSEMBLYMAN SINSIMER: How long would you say schools are closed in the summer time?

MR. MARTINEZ: I beg your pardon?

ASSEMBLYMAN SINSIMER: How long would you say schools are closed in the summer time?

MR. MARTINEZ: We have a mandatory 180 days of school in order to get State Aid here. Whether or not they are going to be open in the summer, depends on how long they are closed in the winter.

ASSEMBLYMAN SINSIMER: But they are closed for about a three-month period every summer, aren't they?

MR. MARTINEZ: During the summer?

ASSEMBLYMAN SINSIMER: Yes.

MR. MARTINEZ: Right now they are, although we are all looking forward to the necessity of going to the so-called extended school year.

ASSEMBLYMAN SINSIMER: But you are saying in effect that schools can be closed for three months during the summer without creating a chaotic condition. But if they are closed for nine days because of a strike, it would be chaotic.

MRS. MALOVANY: When schools are closed in the summer for the normal vacation period, this is in the orderly processes of government. When you have strikes in public employment and specifically strikes in schools, you present an example to your children of groups of people gathering together to draw the orderly processes of government to a halt. And it makes it very difficult to convince your children of your sincerity when you speak to them of obeying the law and respecting

their government.

ASSEMBLYMAN SINSIMER: Well, schools are closed for a number of reasons other than vacations, for instance, snow days. We may have several days in rapid succession where schools are closed. We may have a closing because of a health epidemic.

MRS. MALOVANY: Those two examples occur in the orderly processes of government. A snow day is certainly no secret. A child can look out the window and see that it is snowing. A closing of schools for health reasons happens very rarely, but when it does, it is very carefully announced and it is government protecting its people.

ASSEMBLYMAN SINSIMER: But it does not disrupt the educational process.

MRS. MALOVANY: Because it is done in an orderly fashion and by the authorities of the government who are entitled to do this.

ASSEMBLYMAN SINSIMER: You made a statement on page 6 that the New Jersey public school teacher continues to be one of the best paid in the profession and among all professions. Would that mean that teachers in New Jersey are paid as well as doctors, dentists, lawyers and other professional people of that type?

MRS. MALOVANY: On a similar level of education and for a similar number of hours and days of work, as well if not better, yes, and we have ample research to back that up.

ASSEMBLYMAN SINSIMER: I don't have any more questions.

ASSEMBLYMAN DENNIS: Just one question: I see you represent 603 local boards and I think I have gotten mail from most of them. But just as a point of information, as I asked the previous speaker, did you take a vote of the various 603 board and did they all agree wholeheartedly?

MRS. MALOVANY: Yes, we did, and Mr. Martinez has the details of our survey.

MR. MARTINEZ: That was a survey that was taken not only of the boards as a whole - that is to say, the board as

an organization - but also of each individual board member. In other words, it wasn't a poll of the boards; it was a poll of every member. Of the responses that we got, 97 per cent were opposed to A 521.

ASSEMBLYMAN DENNIS: How many board members are there throughout the State? I guess it varies relative to the size of the community.

MR. MARTINEZ: There are over 5,000 all together. I could give you the exact figure. I don't have it right here.

ASSEMBLYMAN DENNIS: Just a point of information, which is not too relevant, we have two types of boards, the elected and the appointed. On these strikes, have they taken place more in the appointed or the elected or what?

MR. MARTINEZ: There are far fewer appointed boards than there are elected boards. Right at this point, I would probably say there are a far greater number of strikes that have occurred in Type 2 districts. But I don't think necessarily there is any correlation there.

ASSEMBLYMAN DENNIS: It has no bearing?

MR. MARTINEZ: No, I wouldn't see any bearing.

ASSEMBLYMAN PELLECCCHIA: Mrs. Malovany, in all candor, is a teachers' strike a threat to the public health and safety?

MRS. MALOVANY: Yes.

ASSEMBLYMAN PELLECCCHIA: Can you give me some rationale on that?

MRS. MALOVANY: I can give you a good deal of rationale. Let me start with one that is very dear to my heart. In my own district and districts with which I am very familiar, more and more of our children are coming from homes where both parents work and must work in order to pay their living costs. More and more of our children and more and more children from districts with which I am very familiar come from homes where there is only one parent, the mother, and she is the wage earner. She must work to support her children and the orderly procedures of her life depend upon her being able to send her children to school. In the face of the strike, we saw utter chaos in Newark, for example, among all these women who have to work in order to support their

children. The schools were closed and there they were trapped. And this is not just a situation of Newark. It exists throughout the entire State of New Jersey. More and more of our children are coming from one-parent homes. This is just one example.

The other example is, in general, a strike is a violent method. It leads to strife and dispute among various teachers. This is a sad example for children. It is utter chaos.

ASSEMBLYMAN PELLECCCHIA: Let me ask you this, Mrs. Malovany: Do you believe that the teachers that are presently jailed are serving the public safety and welfare?

MRS. MALOVANY: Well, I agree with Assemblyman Black that an injunction is an injunction. I am a very strong "law and order" person. I believe that one is familiar with the law - one obeys the law. One finds other means for making his voice heard and for settling disputes. I cannot comment on each and every strike that has taken place in the State of New Jersey, but I am reasonably certain that in every case cool heads and a determination to be law-abiding citizens would have prevented the jailing of these teachers.

ASSEMBLYMAN PELLECCCHIA: Getting back to the first question, you implied that there was chaos and confusion because of the fact that the parents had made preparations before time. Isn't it a fact that that same condition exists during the vacation period and during the other days they are also out of school?

MRS. MALOVANY: During vacation periods, there are other plans made, orderly plans for taking care of children. Some one spoke earlier of Recreation Commissions as being very important to major cities, and indeed they are. They are working very effectively. There are also day care centers of one sort or another. There are orderly procedures. This is a disorderly situation for which there are no orderly procedures.

ASSEMBLYMAN PELLECCCHIA: What alternative do you think the teachers have where school boards refuse to negotiate in good faith?

MRS. MALOVANY: Let my lawyer take that.

MR. MARTINEZ: Let's talk about the present law. If the school board refuses to negotiate in good faith, I heard somebody here say that they have no alternative right now other than a couple of unacceptable ones or at least things that aren't very pleasant like going to jail or sitting back and being quiet. One of the things that people have complained about was the lack of unfair labor practice jurisdiction in the Public Employment Relations Commission. We all know about A 520 now. Yet at the time the Supreme Court overruled that jurisdiction in PERC, it said that the courts would be willing to hear unfair labor practice. Yet since that case over two years ago, no one has attempted to go to court - I am talking about any public sector union or even employers, for that matter - and say the other guy is committing an unfair labor practice. Everybody complains that they have no alternative. There are alternatives there that are not tried.

Another thing is the possibility of restraining State Court action under the Federal Court doctrine in *Dombrowsky versus Pfister* and the others that say wherever a restraint has a chilling effect on free expression, that restraint can in itself be restrained at the State Court level.

There have been numerous opportunities to go into court to get a hearing on the merits of the thing - in fact a better hearing on the merits than A 521 would provide, and nobody has used them.

ASSEMBLYMAN PELLECCCHIA: Sir, you referred to the National Labor Relations Board. I am sure as an attorney you must be familiar with the procedures that we have for unfair labor practices.

MR. MARTINEZ: Right.

ASSEMBLYMAN PELLECCCHIA: Are you aware that a case going into the National Labor Relations Board would take sometimes in the neighborhood of six months to two years to solve because of the bureaucracy that we have?

MR. MARTINEZ: At the Federal level, yes. That is exactly why we are opposed to the national negotiations bills because ~~they will~~ create that same bureaucracy. The courts here could expedite this kind of hearing on an ex parte basis with an order to show cause almost overnight.

I mean, everybody said, look how fast the court will give the employer an injunction. Well, nobody from the employees' side has gone in and tried to restrain an unfair labor practice and have that same kind of service.

ASSEMBLYMAN PELLECCCHIA: Getting back to Mrs. Malovany's statement, on page 8, I think she referred to the fact the public sector can retire from the field.

MRS. MALOVANY: The private sector ~~can~~.

ASSEMBLYMAN PELLECCCHIA: Are you aware of the fact that this is an unfair labor practice?

MRS. MALOVANY: Well, only under certain circumstances.

ASSEMBLYMAN PELLECCCHIA: -- under any circumstances.

MRS. MALOVANY: You can go into bankruptcy.

ASSEMBLYMAN PELLECCCHIA: This too would be an unfair labor practice.

MRS. MALOVANY: The Herald Tribune retired from the field, didn't it, and the Daily Mirror, and the Newark Evening News. Well, the Newark Evening News is back with us, but it was gone for eleven months, wasn't it?

ASSEMBLYMAN PELLECCCHIA: I have no further questions.

ASSEMBLYMAN DENNIS: Just one question - I assume the private schools, of course, are not included in this group at all. Do you have any kind of working arrangement with the private schools? The parochial or private schools would not be affected by any legislation such as this.

MRS. MALOVANY: There was something in New York City, wasn't there, some time back - the employees of the parochial schools in New York City? But I know nothing in New Jersey.

ASSEMBLYMAN SINSIMER: Mrs. Malovany, you spoke about violence with regard to strikes a few minutes ago. Do you know of any teacher who committed any act of violence during

any of the strikes that occurred in New Jersey?

MRS. MALOVANY: Not of my own personal knowledge.

ASSEMBLYMAN SINSIMER: Do you know of any acts of violence there were committed against the teachers?

MRS. MALOVANY: Not of my own personal knowledge.

ASSEMBLYMAN SINSIMER: Well, I have personal knowledge that there was. School teachers in Newark were physically beaten when they were on the picket line or going to and from the picket line. Yet I know of no one other than a school teacher who has suffered physical harm.

MRS. MALOVANY: You will be hearing from the distinguished president of the Newark Board of Education a little later on in the day, Mrs. Helen Fullilove, and I would imagine that she would be far better informed about the situation in Newark than I am.

ASSEMBLYMAN SINSIMER: Tell me, are you in favor of strikes in the private sector?

MRS. MALOVANY: Am I in favor of strikes? I am not in favor of strikes as a weapon. It is an ultimate weapon and has been utilized in the private sector nobly and well and with some success. I would hope that in every dispute, a reasonable solution can be arrived at without resorting to the ultimate weapon of the strike.

I tried to make a very careful distinction between private and public employment.

ASSEMBLYMAN PELLECCCHIA: I just have one more question. Maybe I had better address it to your attorney.

MRS. MALOVANY: Thank you.

ASSEMBLYMAN PELLECCCHIA: Why shouldn't a judge hear both sides of an argument before he issues an injunction? Why shouldn't he hear both sides before he does it?

MR. MARTINEZ: I don't believe I have ever said that he shouldn't. I would be unprepared to argue that point.

ASSEMBLYMAN PELLECCCHIA: It is a pertinent issue and I thought maybe you might shed some light on it.

MRS. MARTINEZ: If you are referring to the present

prohibition in common law against strikes and the fact that that automatically results in an injunction, the judge there is really nothing more than a rubber stamp to the common law. There is no question about that. It says when the judge is confronted with a prima facie case, namely, an affidavit of somebody saying, "people are going on strike," he issues an order saying, "you can't go on strike, whoever you are." It's as simple as that. The judge is a rubber stamp there.

ASSEMBLYMAN BLACK: If there are no further questions, thank you very, very much.

Will Mr. Joseph J. Stevens ~~step~~ forward to give testimony.

J O S E P H J. S T E V E N S: Chairman Black and gentlemen, I am Joseph J. Stevens, Executive Vice President of the AFL-CIO.

On behalf of the New Jersey State AFL-CIO may I express our appreciation for this opportunity to be heard in support of Assembly Bill No. 521. This is a most important piece of legislation which will to some extent eliminate the inequities under which public employees in the State of New Jersey are presently suffering.

At present, since a strike has been declared to be illegal at common law, collective negotiations between public employers and public employees have become a farce. Any public employer wishing to refuse to negotiate will simply take an adamant position and after having goaded his employees to a point where they must in all self-respect undertake a strike, the public employer seeks an immediate and automatic injunction from the Courts.

Under the present law, the Court has no alternative other than to issue an injunction. It has no alternative other than to issue severe penalties for the violation of these injunctions. Therefore, the public employer who desires to avoid his responsibilities may do so with great simplicity: he may refuse to negotiate, force his employees on strike, secure an injunction and see to it that they go to jail. No one can reasonably deny that this happened to the teachers in Newark, and that the Board of Education and its representatives deliberately brought this about.

Assembly 521 would seek to eliminate this inequity. It would recognize the right of public employees to strike and would permit injunctions against such strikes to prevent a clear and present danger to the public health or safety or to require the employee representative to comply with the impasse provisions of the law.

The present law empowers PERC to mediate public employee disputes and to designate fact-finders in cases of impasse. However, it has no enforcement powers, and the public employer is not required to mediate, to engage in fact-finding, or to accept a fact-finder's recommendations. Instead, the employer is at liberty to refuse to agree to anything, to demand impossible conditions, and the Courts are bound to support him. All he needs to do it is to allege that a strike exists, or even that he believes a strike will take place, and the Court rushes to help him destroy the union by issuing an injunction.

Our Courts have never learned, nor is it likely that they will ever learn, that their tyranny against workers, public or private, has always

consolidated the unions , has made them stronger , has encouraged defiance and disrespect of the Courts .

The whole history of the trade union movement has been one of the struggle between the Unions and the Courts . From the 1805 Court decision in the Philadelphia Cordwainer's case , in which it was decided that membership in a Union was a crime , down through the days when the anti-trust acts were invoked , when the doctrine of "conspiracy" was enforced , when injunctions were the order of the day , unions have struggled to be relieved of the active opposition of the Courts . Even today , the Courts of New Jersey are actively undermining and subverting the State Anti-Injunction laws , and the Unions are more and more turning to the Federal Courts for relief from the outrageous decisions of the State Courts .

This inequity is multiplied in the case of public employees . Here , our courts are still in the age of Alexander Hamilton . It is almost a crime to belong to a public employee union . At the least , it is a crime , the crime of contempt , for a union to attempt in any effective manner , to secure fair wages and working conditions from a public employer .

A. 521 would , to some limited extent , alleviate this condition . It would declare that a strike of public employees is not ipso facto illegal . It would prohibit a sweeping injunction against a strike unless the Union refused to submit to mediation and fact finding . (Please note that it does not impose any penalty against a public employer for such a refusal) . However , even if the Union engaged in mediation or fact finding , the Court could enjoin it from any acts which pose a clear and present danger to the public health or safety .

We have grave doubts as to the results of this provision. We can easily visualize our Courts, with their present anti-labor attitude, finding that a strike of the teachers of even the smallest school district, constitutes a clear and present danger to public safety because the school children, not being in school, could go on a rampage of arson and rioting.

However, we must hope that the Courts will, some time, give effect to legislation as it is written. We must hope that at some time, the Courts will stop telling the Legislature that it meant one thing when it said the opposite. We must hope that our Courts will comply with their oath to support and enforce the acts of the Legislature.

If this should come about, Assembly Bill 521 will have its intended and hoped for effect of relieving public employees of some of their presently intolerable conditions, and securing meaningful collective negotiations from their employers.

One more thing -- A. 521 would also relieve from their present imprisonment a number of honorable, respectable and publicly respected people who are in jail only because of the intolerance of the Courts, coupled with the intransigent attitude of their employers who obviously schemed to put them in jail. It would provide amnesty and a remittance of fines for those public employees and their Unions who, under the provisions of A. 521, could not have been found guilty of contempt. We submit that common decency requires the vacation of these sentences and the remission of these fines.

May we urgently solicit your support for A. 521, and assure you that its adoption may well mean, with the reasonable cooperation of the

Courts, the elimination of much of the inequity under which the public employees now labor.

ASSEMBLYMAN BLACK: Any questions, gentlemen?

ASSEMBLYMAN SINSIMER: Mr. Stevens, wasn't it illegal at one time in our history for employees of all types, that is, both public and private, to strike?

MR. STEVENS: Yes, after 1800.

ASSEMBLYMAN SINSIMER: And wasn't the treatment the same? Weren't they thrown into jail?

MR. STEVENS: Thrown into jail - lost their jobs.

ASSEMBLYMAN SINSIMER: -- much as the teachers are today?

MR. STEVENS: Yes.

ASSEMBLYMAN SINSIMER: Didn't that give rise to the type of legislation we have today in the collective bargaining field?

MR. STEVENS: Over the years, it did, as early as in the early 1900's - with the industrial unions in the '30's. All that legislation was finally brought about to protect the people in the private sector. This legislation that we are looking for today is going to finally bring about help for people in the public sector.

ASSEMBLYMAN SINSIMER: There was a point in our history then when people like you and me and probably everyone sitting here would have been thrown in jail for doing exactly what the teachers are doing?

MR. STEVENS: Yes, that's right.

ASSEMBLYMAN DENNIS: I have two questions. I am somehow given the impression that you think public employees should be the same as private employees.

MR. STEVENS: Not quite to that extent. We have some problems with public employees that wouldn't arise in the private sector. As the last speaker mentioned, when you are talking to part of a city government, they just don't go out of business - they just don't go out and get other money. What we are talking about in this bill, I think, is the

unfair treatment that was given to - we always say the teachers, but there are other people involved-- the unfair treatment that the court gave these people and said, as was mentioned before, "We can't do anything different. If you want anything changed, legislate it." That is what we are trying to do, to give them a fair shake.

ASSEMBLYMAN DENNIS: Do you know how many injunctions were issued in the school years, say, '70-71 or '71-72?

MR. STEVENS: How many injunctions?

ASSEMBLYMAN DENNIS: Yes.

MR. STEVENS: No, sir, I really do not know.

ASSEMBLYMAN BLACK: Thank you very much.

MR. STEVENS: Thank you.

ASSEMBLYMAN BLACK: At this time I would like to call Mr. Joel Jacobson.

J O E L R. J A C O B S O N: Mr. Chairman and members of the Committee, my name is Joel R. Jacobson. I am the Director of Community Relations for the United Automobile Workers Union, the UAW.

I am present to represent the views of the 50,000 members of our union in New Jersey in support of A 521.

There are a number of preliminary remarks that I had intended to make, but you have already heard testimony about it, so I am going to bypass that and go right to the heart of the position I would like to present to you.

Chapter 303, the PERC law, has been effective since July 1, 1968. When Chapter 303 was first enacted, it was hailed as providing public employees with the broader participation they needed in determining the terms and conditions of their own employment. We were told at that time to be grateful for small favors, that this was a step in the right direction. I hardly regard it as a big deal that, in 1968, New Jersey finally came around to provide its public workers with the rights long since taken for granted in the private sector and in other government jurisdictions.

In supporting A 521, we reach our conclusions based on an analysis of the existing Chapter 303. May I make the following observations:

Number one, the PERC law has not worked. It has not succeeded in resolving disputes and it has, in fact, in some instances perpetrated labor disputes and prolonged those already in existence.

Number two, the PERC law is a deception. It dangles before public employees the concept of collective bargaining, the promise of collective bargaining, but denies to them the substance of collective bargaining.

Number three, this inability of public employees to enjoy the full benefits promised to them in both procedural rights and substantive gains has generated cynicism, disillusionment and despair. Peaceful and harmonious labor relations do not feed on disillusionment and despair. Strife and bitterness and long strikes do.

Number four, the PERC law has not prevented strikes. To the contrary, its provisions for a third party intervention have not only impeded collective bargaining, but have exacerbated tensions and differences which have prolonged some strikes.

Number five, the role of the New Jersey courts, which A 521 aims to improve and change, has been destructive and the destruction starts at the very top within the State Supreme Court. The courts with their injunctive power have diverted attention from the bargaining process. In other instances, such as the Newark teachers strike, the court in its infinite wisdom has jailed leaders of that union so that negotiations couldn't even be conducted. When the futility and the stupidity of this act was unveiled and the union leaders were returned from jail to the bargaining table, does anyone believe they emerged in a more understanding, more mellow mood to consider the problems before them. If one does, one is naive indeed.

This compulsive preoccupation with restraints, with

injunctions, with penalties and with jail have created an atmosphere in which collective bargaining is impossible. Much of the responsibility for this unbelievably unacceptable condition is the PERC law. The rest is the responsibility of the State's courts. One of the fundamental requirements of the PERC law is that the parties negotiate in good faith. This is the law. You must negotiate in good faith. Admittedly, this is sometimes difficult to prove. But when one of the parties to negotiations confesses that he did not negotiate in good faith, wouldn't you expect our system of justice to produce a court which would inflict penalties on the violator of the law?

Through a circumstance of scheduling, I am appearing at this microphone before Mr. Frank Fiorito, the President of the New Jersey State Federation of Teachers. He will discuss with you in length an issue about which I merely want to allude. It is an article contained in the Bergen Evening Record of December 22, 1971, which quotes Mr. Donald Saunders, who was during the time of the Newark Teachers' Union negotiations the chief negotiator for the Newark Board of Education. Mr. Saunders is quoted as saying, "I wasn't bargaining in good faith. There was no way I could." Mr. Fiorito will go into greater detail about this situation. But I use that as my point to indicate to you that if a violator of the law confesses to it, it appears to me that the courts should take the proper action to do what should be done to violators of the law. But did the court act against the violators? No, it didn't send Mr. Saunders of the Newark Board of Education to jail. But it did send hundreds of school teachers to jail, the very first time in the history of our nation, marking New Jersey, if I may say so, as something akin to the slave labor state of our nation.

I would like to convey to the Chief Justice - I suppose I am risking contempt of court. I won't express my specific feelings about it. But I would like to convey to the Chief Justice of the State Supreme Court that he jailed the wrong

people during last year's teachers' strike and that famed Jersey justice would have been better served if the Chief Justice had pressured his lowest courts to jail the distinguished members of the Newark Board of Education rather than the striking school teachers.

In that strike, the Newark Board of Education violated every canon of morality and decency in fomenting the strike. They forced the union out on strike. That was their strategy and tactic, and Mr. Fiorito will tell you why. In the face of such venality, the teachers were compelled to strike. And the subsequent ruling of the State Supreme Court imposing a blanket prohibition on the right of public employees to strike literally made it a crime to combat tyranny. These school teachers are still facing jail terms. I would hope that the Governor and the courts would seek a redress of this heinous injustice by granting amnesty and, failing that, I would hope that this Legislature would legislate amnesty so this injustice does not continue.

What a paradox it was indeed - what a paradox - to witness the State Supreme Court, powerful, potent, pompous, to bring to bear its tremendous weight to protect the oppressed, to penalize the violators? Oh, no. But the Supreme Court brings to bear its tremendous weight to strengthen the tyrants and to punish the victims.

In my service with the United Automobile Workers Union, we have had occasion to watch at first hand the General Motors Corporation and its activities. Its most recent event you may have seen in the newspaper was to announce record-breaking profits with an accompanying announcement that it does not intend to reduce prices. The work on an assembly line in a General Motors plant is dehumanizing. General Motors is not a good employer. I would like to humbly set forth, based upon our observation of GM and the Newark Board of Education, that compared to the actions of the Newark Board of Education in the Newark Teachers' Union strike, General Motors now looks like Florence Nightingale.

Number six, the PERC hasn't worked - and this is something that may be within the purview of this Legislature - because it is impossible to identify in government who does have the authority to negotiate and to make commitments. In the private sector, we would never stand for negotiations with the representatives of employers who could not commit the employer to the arrangements and the agreements that may be made. In the public sector, you never know who is in charge. You never know to whom to talk.

I happen to be a member of the Board of Governors of Rutgers, the State University, in which I find myself in the anomalous position sometimes of acting as the employer. And I sit there with amazement at the fact that the teachers, the professors, would waste their time talking to the Board when the Board has no authority to determine what the conditions shall be. It is you gentlemen in the State Legislature through the process of your Appropriations Committee and the adoption of the budget who have the authority. There is this difficulty for all public employees of finding out who is in charge. Whom do I talk with? With whom do I negotiate?

Now A 521 sets forth two objectives: first, to provide the public employees with the mechanism to guarantee equitable treatment in wages, terms and conditions of employment; and, two, to prevent the disruption of vital public services. I emphasize "vital."

With regard to point one, to provide employees with the mechanism for the guarantee of equitable treatment, there are only three ways to do this. You have an option of three ways.

Number one, you can provide that the employer has a right to make a unilateral decision concerning all conditions under which his employees work. Well, this is the coolie concept. This has been ruled out many years ago. You take what is offered and you be grateful. I regard this as unworkable. You can use a lot of other adjectives to describe it,

but certainly in the present context of our times, you can regard it as undemocratic.

The second method is to refer all decisions to a third party for binding commitments. In Pennsylvania, this applies to the problems affecting the policemen and the firemen. In countries, such as Australia, they have special labor courts. In Italy, they have regular courts. But I would submit that no court, no third party, can by fiat regulate the complex relationships which exist between an employer and an employee and the hundreds of different issues to be resolved. Furthermore, to have final and binding arbitration is a denial of collective bargaining and the facts are simple to comprehend. If you and I are involved in negotiations and I know that whatever is unresolved here may be decided by a third party, and possibly in my favor, what incentive do I have to yield on anything? I take my chances with the third party. And, in fact, negotiations, collective bargaining, is nullified. It does not exist.

The third way is by voluntary joint agreement, through negotiations, through collective bargaining. This is most workable and most characteristic of our highly-vaunted free enterprise system, which in some cases is neither free nor very enterprising. But in 1972, I would submit that voluntary negotiations is the only way to operate. And if we opt for collective bargaining for our public employees, we have to accept the possibility that an extension of the bargaining process is in some instances the use and the resort to the final instrument, the strike.

Now having the right to strike doesn't always mean that it will be exercised. I hear the tremendous fears of these good people envisioning anarchy. The exercise of that right is one that is exercised after due care and generally with no other options available to them.

I would like to make one final distinction, if I may, sir, concerning the disruption of vital public services. I make a distinction in support of 521, as does the bill,

between a vital public service and any public service. And I concede that where a clear and present danger to the health, safety and existence of the community is present, the exercise of the right to strike should be voluntarily waived as a condition of employment. But where it does not affect the health and welfare and safety and existence of the community, what harm is there if the democratic processes apply to an individual? For example, does the Senior Regional Technician of the Division of Weights and Measures, if he should withhold his labor, pose any threat to the Constitution or democracy of the United States or the State of New Jersey? If the Driving Instructor at the county golf links goes on strike, is anyone going to suffer? If the Towel Attendant at the municipal swimming pool is not present, you might be a little wet, but that is not threatening the community. If the Night Elevator Operator at City Hall isn't at work, is this a threat to our democracy? If I listen to Mr. J. Herbert Stern, I come to the conclusion we might all be better off if some of the Mayors couldn't get into City Hall after dark. (Laughter.)

The judgment has to be made as to who does have the right to strike and it should be made not on the nature of the employer, whether he be public or private, but on the function of the employee. Now Mayor Nardi and the nice lady from the Boards of Education had some things to say to which I would like to respond just for a moment. I know the Mayor is not here any longer, but I would like to tell him that a strike is not fun and games. People don't strike for the ecstasy and pleasure of picketing. There is no great joy in picketing when it's 20 degrees below zero or 110 degrees in the shade. You picket not because you like the exercise; you picket to seek a redress of grievances. And when a venerable public statesman or two-bit politician, depending upon your point of view, is blind and deaf to the plea for justice for public employees, what recourse do they have? If you depend upon the conscience of the management in the

public sector, you depend upon a rather forlorn hope and a very thin reed indeed is the conscience of some public officials. I exclude specifically and emphatically you gentlemen here.

ASSEMBLYMAN BLACK: On behalf of the Committee, that is greatly appreciated.

MR. JACOBSON: There was the young lady from the Federated Boards of Education who quoted some legal decision in which was the word "liberty," the legal definition of liberty. I lose patience with sanctimonious expositions such as the one quoted by the young lady. Is it liberty when public employees are being compelled to work for employers who are venal, are being compelled to work for wages which are inadequate, are being compelled to work under conditions which are intolerable? Is it liberty if they are compelled to do so and if they refuse, go to jail, sit in the cooler? Is this your definition of liberty? I would suggest you go back to your first grade course in Civics and find out about it. So I lose patience with the sanctimonious definitions of the right of the sovereign to prohibit its serfs from exercising their free rights as I do under the Constitution in the private sector. And is it liberty when school teachers -- how many of them were there? 200, 400, 700 -- if there was one, it was a crime -- are sitting in jail and the venerable statesmen, the distinguished members of the Newark Board of Education, for example, who were responsible for the strike in the first instance, are walking the streets free? I would suggest you look up the definition of the word "liberty."

The current law, with its implied prohibition against strikes by any public employee, is an anachronism. Injunctions, jails, penalties, court service aren't going to solve labor disputes. Mr. Joseph Weintraub, the Chief Justice of the State Supreme Court, didn't teach one student one thing when he put the school teachers in jail. And his actions will not prevent strikes in the future, but will rather invite disobedience and the corrupting influences on the general

social order itself when intolerable conditions are fomented and pressed upon the brows of public employees.

So the UAW, gentlemen, urges passage of A 521. We contend that to deprive public employees of the same rights which are enjoyed by workers in the private sector is to create a subclass of citizens, in violation of the concepts of democracy and our fundamental constitutional rights. Let me hear no talk - let me hear no more sanctimonious talk - about democracy and liberty and the great free government we enjoy when school teachers and public employees are put in jail because they have the guts to stand up against the tyranny such as was depicted in the City of Newark within the last two years.

Let's do something right for once. Let's bring this State into the 20th century. Let's give our public employees the right to do what every other American has in this nation, and that is to do what he must to see that the conditions under which he works and the wages he receives are just and acceptable to him. We urge support of A 521.

ASSEMBLYMAN BLACK: Thank you, Mr. Jacobson.

Any questions?

ASSEMBLYMAN DENNIS: Just one - when these public employees took their particular positions, didn't they know what the working conditions were at that time, what they were getting themselves in for, that they didn't have the right to strike, etc.?

MR. JACOBSON: Yes, they did. But I think implied in your question or I would interpret it to mean, therefore, they should not expect at any time in the future to improve those conditions. I don't think you meant that. But to accept the implication in your question means that we must accept today and forever with no attempt to improve in the future. I don't think you would like to work under such conditions and I know the public employees don't.

ASSEMBLYMAN DENNIS: For the record, everybody might as well know, I am not committed one way or the other on this bill. But my wife is, by the way, a public employee who would be affected by this bill.

You mentioned the Newark Board of Education. Being a resident of Essex County, I am well aware of what happened there and perhaps you are right in your statements. I don't wish to say one way or the other. However, that is one out of 603. I know in several other areas they have had some problems too. But it would look like on the whole, things are working out pretty good, wouldn't you say?

MR. JACOBSON: The PERC law?

ASSEMBLYMAN DENNIS: No. I mean, you say the Board of Education in Newark and the teachers there had some conflicts and things didn't work out. That is one out of 603. I know we have heard of two or three areas having trouble, Freehold right now and some others. But, by and large, out of the 603, in the majority of places the relationships seem to be working pretty good between the employees and the employers.

MR. JACOBSON: Why are you afraid to give them the right to strike then?

ASSEMBLYMAN DENNIS: I have my own reasons. That is why I am here today to find out.

MR. JACOBSON: If you are telling me they are getting along and you are giving them a right that is up there in the sky, there is no need to exercise that right, what are we talking about then?

ASSEMBLYMAN PELLECCCHIA: Mr. Jacobson, I certainly would like to prolong this, just to pick your brain a little bit. I see you are well versed. I know you are well versed. But I would like to ask just two questions, so we can expedite this. The first question is, and no one else has seemed to touch on it as yet: Do you believe that policemen and firemen have the right to strike?

MR. JACOBSON: Assemblyman Pelleccchia, I want to discuss now the question of a right and, secondly, the exercise of that right. Your question, do I believe they have a right to strike - in my opinion anybody who works for anybody else in a free nation has a right to withhold his labor if he finds anything unacceptable to him. To be contrary, to compel

somebody to work under conditions which are unacceptable, smacks of slave labor. And I can make a speech against the Soviet Union as well as anybody. So anyone in my opinion who works for anybody else has a right to withhold his labor.

The other part of that thought is: Shall that right be exercised? I will concede to you that the police and fire do provide a vital service that I would not like to see curtailed. My recommendation would be or rather my personal reaction would be, if I were to accept a job as a policeman or fireman, I would be willing to voluntarily waive that right to strike given statutory guarantees that enabled me to seek a redress of my grievances without the necessity of appearing with a tin cup in my hand or depending upon the largesse of some statesman or two-bit politician.

In other words, yes, they have the right. They should not exercise their right, but there should be guarantees that they are entitled to things to which everybody else is entitled without the necessity of having to resort to a strike.

ASSEMBLYMAN PELLECCCHIA: My last question has to do with something that is near and dear to all of us right now. Do you see any difference between a strike against the Transport of New Jersey and, as an example, the Fifth Avenue Bus Corporation in New York?

MR. JACOBSON: Assemblyman Pelleccchia, that is a very intelligent question. Thank you for asking it. It shows you understand full well the concepts here.

As you know, Transport of New Jersey, which now has a strike conducted against it for almost two months, is a private corporation. Nobody has raised the question as to whether the bus drivers have the right to strike. Again I am emphasizing I am differentiating between a right and the exercise of a right. Nobody has even breathed the thought that they don't have the right to strike. They do because it is a private employer. But if Transport of New Jersey had the same status that the Fifth Avenue Bus Corporation of New York does where it is owned by the municipality, everybody

would be screaming, "they've got no right to strike." That shows how ridiculous the differentiation is when you merely determine the nature of the employer rather than the function of the employee.

Is there any threat to the existence of the community as a result of the transport strike? Inconvenience, yes. All sorts of other things I could talk about. But it doesn't threaten the community. Everybody is living. Somehow we are getting through it. To make the same point about school teachers, about clerks, about grass cutters, about the thousands of other employees who work for the State, county and municipal governments is not appropriate. They are no threat to the community. To have a blanket denial of the right to strike, even in a legislative fiat or a ruling by the court, is to turn the clock back 200 years. And we urge A 521 to bring us up to date.

ASSEMBLYMAN BLACK: Any further questions?

ASSEMBLYMAN SINSIMER: I have one question. As long as you referred to Mrs. Malovany's testimony, Mr. Jacobson, I would like to ask you a question regarding a statement that she made. She said that by endorsing the chaos of a strike, public employees would be aping the primitive unionists in their search for the classic "more." Would you say that it is only the unionists who look for more or would you repeat the statement you made on General Motors' profit-making margin this past quarter and perhaps find an indication that the forces of management are also looking for more?

MR. JACOBSON: All I would ask is a simple question: Which is primitive, to accept tyranny or to fight tyranny? If she would opt for accepting of tyranny - that's her definition - that's her right. It seems to me that I was taught in our American schools - in Newark, by the way - that you fight tyranny.

ASSEMBLYMAN SINSIMER: I think the Newark schools did a very effective job.

ASSEMBLYMAN BLACK: Thank you very much, Mr. Jacobson.

The last speaker before lunch will be Mr. Maurice Veneri.

While Mr. Veneri is coming up to the microphone, I would like to indicate who the first four speakers will be when we resume at two o'clock. It will be Lieutenant Frederick W. Stevens, Mr. Peter Smith, Dr. Scuorzo, Mr. Morris Stern and Mr. Frank Fiorito. I think that is more than four.

M A U R I C E M. V E N E R I: Mr. Chairman and members of the New Jersey Assembly, my name is Maurice M. Veneri. I am President of the New Jersey Industrial Union Council, AFL-CIO, representing over 125,000 workers in this State, including several thousand in the public sector.

My organization has asked me to testify here today in favor of A-521 and to make known our deep outrage at the jailing of hundreds of school teachers in the past few months.

The spectacle of close to 200 Newark teachers being herded into jail during the Christmas season is still fresh in our minds and is living testimony to the fact that our laws have failed us and new ones must be fashioned here and now.

In 1971-72, we saw Jersey City teachers jailed, Newark teachers jailed, Passaic teachers jailed and serving time at this very moment. In July of this year, 14 Fairlawn teachers will find themselves in cell blocks instead of classrooms. And for what???

In these strikes, teachers were jailed because of their determination to enforce true collective bargaining on their school boards, jailed because they were defending contract conditions agreed upon in previous contracts, jailed because they sought concrete improvements in education, jailed because, like

the rest of us, they were striving to catch up with skyrocketing food prices, rents and taxes.

Two years ago, I stood before this same Assembly pleading for passage of A-810 which would have bestowed on New Jersey's public employees the precious American right to go on strike. Had my voice been heeded then, the tragedy of throwing into jail so many decent and talented public servants could have been averted.

I hope that I won't have to be back here two years from now to speak of similar tragedies. I hope this Legislature will follow up passage of A-520, which gives enforcement powers to PERC, with A-521, its companion bill, a measure which has been drawn with such skill and wisdom as to protect the interests of all the people of this State.

Under A-521, public employees will be given the right to strike, unless it can be proven in a court of law and so decided by a Judge of this State that:

1. The strike represents a clear and present danger to the citizens of New Jersey; or
2. The collective bargaining representative of the employees has not utilized all avenues open to it under the law for settlement of the dispute, including mediation and fact finding.

These are wise provisions, because they protect against those kinds of strikes which clearly imperil the people of this State. At the same time they insure that other types of strikes are called only after every attempt has been made to reach a peaceful settlement.

Certainly, if A-521 had been on the books back in 1970 and 1971, the long, bitter Newark teacher strikes would have been averted. The underlying reason for those strikes rests on the proposition that wherever the right to strike is denied, the compulsion for the public employer to engage in true collective bargaining is absent.

On the contrary, public employers have been inclined to resist true bargaining, in the expectation that the law will step in and enjoin the bargaining agent from striking and thus force the employee representative to accept inferior terms.

That this was the case in Newark in 1970-71 is now attested to by the Newark Board of Education's Chief Negotiator, Donald Saunders. In an exclusive interview printed in the Bergen Record last January, Mr. Saunders admitted that, as top negotiator in the Newark situation, "I wasn't bargaining in good faith; there was no way I could." He then is quoted as saying "You're joking when you talk about negotiations in the public sector, you're still accepting crumbs from the master's table, if you're the union. If you don't accept the crumbs, you go to jail."

This point is further illustrated by the experience in the Public Utilities field in New Jersey. The record shows that following the passage of the Public Utilities Anti-strike law in 1946, there were 22 strikes in six years. During the 24 years preceding the law's enactment, however, there had been no strikes at all.

It should be clear to us in 1972, that continuing to outlaw the right to strike in the case of public employees will not act to deter such workers from striking where the cause is clear and the provocation present.

In the past two years we have seen postal employees go on strike, police, firemen, nurses and even major league ball players engage in strike action.

The fact that Newark teachers, Jersey City teachers and Passaic teachers have served time and that Fairlawn teachers have been sentenced to jail has not acted to prevent a strike from taking place at the present time among teachers in Freehold, N.J.

The failure of the Freehold Board of Education to dignify the Teachers Association with any kind of collective bargaining has once again forced strike action on New Jersey teachers, despite the consequences which must be vividly clear.

Injunctions, arrests and throwing strikers into jail are all part of this country's bitter labor history. In asking you to pass A-521, the N.J. Industrial Union Council is urging you to write a new chapter in labor relations which will bring justice and equity to the embattled public employees of our State.

That concludes the prepared statement, copies of which have been given you. While I am here, I want to thank you for inviting me to present our views to you.

ASSEMBLYMAN BLACK: Thank you very much. Are there any questions?

ASSEMBLYMAN SINSIMER: Mr. Veneri, you mentioned that you represented 125,000 workers in the State of New Jersey. Most of these, I understand, have the right to strike? Is that correct?

MR. VENERI: Yes, most of them do, not teachers and public employees. They are also a part of our group.

ASSEMBLYMAN SINSIMER: Would you say that the people you represent have ever taken unfair advantage of that right?

MR. VENERI: Would I say ---

ASSEMBLYMAN SINSIMER: Would you say that the people you represent have ever taken unfair advantage of their right to strike?

MR. VENERI: Definitely not.

ASSEMBLYMAN SINSIMER: Are there many strikes going on in the groups of people you represent right now?

MR. VENERI: We have one in the private sector, not too far from here. I guess you could hit it with a stone. It is Fedders Corporation. They are industrial workers.

But my reason for being here is that I just can't understand -- We have found from past experience that having the right to strike - and I firmly believe this - we will have less strikes. We have strikes every day by major league ball players and everyone else today. The school teachers' and public employees' will continue. I understand the Freehold situation has been cleared up. But having the right to strike doesn't necessarily mean you will go on strike. I have had some personal experience in the Newark situation. Prior to the strike we had several meetings with Mayor Gibson of the City of Newark. I didn't know at the time what his reason was for giving this kind of an answer when we said, "Are we looking for trouble or are we heading for a strike," and the Mayor said to me, "Marty, we definitely will not have any strike." Now at several different meetings this was said. Some people interpreted this to mean - well, they didn't feel that the teachers - and I am talking, of course, of the last strike in Newark - had the courage to go out again. But they went out.

I know for a fact from the Chief Negotiator who appeared at a meeting that I had attended -- and I am saying if they had the right to strike, he wouldn't have said anything like this -- but he said that before he even sat down with these teachers to negotiate, they would have to give up the binding arbitration which they had won in the strike one year prior to that. Now the strike of the Newark teachers was expiring at the end of January.

Here we were late in December and they hadn't called the first meeting. The union was very anxious to meet. But I have personal knowledge that they were looking for a strike and that is exactly what they got. It is just a shame the teachers have to be put in prison for it while dope peddlers and muggers and everybody else run the streets. They are going to teach them a lesson.

In fact, I spoke to President Carol Graves of the Newark Teachers' Union only yesterday. She tells me, and I didn't realize it, that she is going to be put on probation also. She is going back to serve her second term and I hope if you enact this legislation, we will prevent that. Imagine putting her on probation after being in jail. I always thought they took these habitual prisoners and put them on probation so that the officer could keep his eye on them, so that weekly or monthly he would see them and ask them how they were doing and everything else. But apparently a school teacher, mind you, is put on probation now because they have to watch her very closely. It is a shame in this day and age in this great country of ours that we have these types of conditions.

Gentlemen, that is why I am here. I urge favorable action be taken on this bill.

ASSEMBLYMAN SINSIMER: Mr. Veneri, wasn't one of your members physically harmed at one time when he joined the Newark school teachers on their picket line?

MR. VENERI: Yes. We had some of our members assisting them, attending meetings and contributing money. In fact, it was more than one that was injured. Someone threw a chair out of a window on top of one of the pickets. It was a rough situation and this fellow was pretty badly hurt. I understand he is O.K. now.

ASSEMBLYMAN SINSIMER: Thank you.

ASSEMBLYMAN BLACK: Any further questions?

ASSEMBLYMAN DENNIS: As I mentioned earlier, my wife is a public employee, but I work in private industry. I

try to relate circumstances. In private industry, we are members of a union, the United Textile Workers of America. We just had a contract. Fortunately, we haven't been on strike yet. But assuming the workers did go on strike, we would be in a position to increase our wages - we would have to increase wages perhaps and better working conditions. As a result, we could possibly increase the prices of our products. Whereas, in a school, how are they going to get the money? They would have to raise taxes, would they not? That's the only way they could raise income, by taxes.

MR. VENERI: That is true. I might say, having some knowledge of the Newark strike, the teachers recognizing the plight of the City of Newark, the plight of the Mayor, were certainly in agreement with the Mayor that there was no money there. But you know when you are part of a union and you are told by the Chief Negotiator, he's not even going to sit down with these people until they agree to give up binding arbitration -- Many grievances have nothing to do with economics and don't mean money. The proof of the pudding is that they settled without any wage increase for the first year of the contract.

ASSEMBLYMAN DENNIS: The other thing - of course, in industry we can try to make changes within our company, but in school it is awfully difficult to make changes. We can try to automate in certain areas or possibly shift personnel around a little bit, but in public employment, you can't reduce teachers. Obviously you have to have a certain ratio there. I am not familiar with this, but how does tenure compare with seniority? In seniority, if things get slow like they do in our industry which is seasonal, we do tend to lay off and, of course, we have to lay off the newer workers. Is seniority similar in the private sector to tenure in the public sector?

MR. VENERI: There may be some similarity.

You have tossed a few at me. You say that the employer in the private sector can raise prices. That was the first

thing you mentioned. If he gives a wage increase, he can raise prices. And what would they do in schools? I do know that the Newark Teachers' Union was demanding smaller class size and the cry has been - and you have probably read it, I am sure, in many papers - in Newark about the poor quality of education. Of course, you can't expect a teacher when they are teaching twice and two and one-half times the number of pupils that has been accepted as being a proper class size, to do that kind of a job.

I am just amazed at this questioning of the right to strike. I feel that every American should have that right.

You asked the question of the previous speaker about a policeman or a fireman. I wouldn't want a fireman to drop his hose while the house was burning or some cop to turn from a crime and go on strike. I wouldn't want a doctor or a nurse or some technician to drop his tools by the operating table or something. But they ought to have this right to strike. Let them make the judgment. How can you treat one differently than the other? And I am sure if they had the right to strike, they would handle the situation better.

In the first place, you have PERC now. And if you don't have something in there with teeth to really be able to do something, some third party to be able to say you are wrong, as the teachers where they had this binding arbitration and then were told, "We won't even sit down with you," -- You know, collective bargaining means sitting down, you and I. There is a little give and take. You don't lay the law down, you know. And that's what was done in that case.

I think the previous speaker, my good friend, Joel Jacobson, mentioned the many types of public employees. Why it's a joke. I haven't heard some of the people who oppose this bill ever say to me, "Mr. Veneri, I agree. There are many public employees who should have the right to strike, but some, such as a cop, a fireman and a teacher - -" They don't even go that far, you know. I think they should all

have the right to strike and be treated not as second-class citizens, but be given the same equality and justice that other Americans enjoy.

ASSEMBLYMAN BLACK: Any further questions? (No response.)
Thank you very much, Mr. Veneri.

MR. VENERI: Again let me thank you for having me here.

ASSEMBLYMAN BLACK: May the record of the public hearing indicate that we recessed at five minutes of one, to reconvene at 2:00 P.M.

(Recess for Lunch.)

(Afternoon session)

ASSEMBLYMAN BLACK: Ladies and gentlemen: The hearing will now resume. Before we start, I would like to make a few statements.

The first is that the roll of people wishing to testify has only been depleted by approximately 10; that leaves us with about 70 dedicated citizens who have journeyed down here today to give testimony. The hearing will recess at 5 o'clock this afternoon and we will reconvene at 10 o'clock, next Wednesday, the 10th of May.

I am going to ask, if you have prepared statements and if it is possible for you to summarize your statement, would you please do so, because, when the Committee report is printed, your statement will be printed in its entirety and your remarks will also be added, your remarks in summary. In order to expedite the hearing this afternoon, I would ask you to be as brief as you possibly can.

I have listed 25 people to give testimony this afternoon. I realize that when you get down to around the 17th, 18th and 19th it's going to appear that perhaps you are being scheduled to be heard first next Wednesday. But, hopefully, if we can move along fairly rapidly, we should be able to perhaps ~~hear from the major part of~~ the 25 I have listed.

In order that you may know who is scheduled, I will read the names at this point.

First, Lt. Frederick W. Stevens; next, Mr. Peter Smith; Dr. H. Scuorzo; Mr. Morris Stern; Mr. Frank Fiorito; William G. Hin; Mrs. Katherine Stillwell; Mrs. Eleanor Barbash; Mrs. Dolores Corona; Mr. Archer Cole; Mr. Larry Archione; Mr. S. J. Williams; Mr. William Liebeknecht; Mr. Jack Malone; Anne S. Dillman; Mrs. Dorothy Lassiter; Mr. Hrair Zakorian; Mrs. Margaret Roukema; Mr. Paul A. Shelly; Mrs. Helen W. Fullilove; Mr. Louis Casazza; Mr. Patrick G. Welsh; Mr. Ernest Boener; Mrs. Helen P. Leach; and Mr. Harold L. Ritchie.

Now they will not necessarily appear in that order, but I will stick very close to that schedule.

At this point I would like to have Lt. Frederick W. Stevens come forward.

W I L L I A M C A R R O L L: Assemblyman Black, honorable members of the Assembly Committee on Revision and Amendment of Laws, I am Sgt. William Carroll of the Jersey City Police Department. I am the Legislative Officer of the New Jersey Association of Police Superiors, Inc. I am representing the President of that Association, Lt. Frederick Stevens, who is presently engaged in governmental business in Jersey City.

Mr. Black, of course I will comply with your request to be brief.

We, as police, accept that a strike is not the way to resolve our labor problems, simply because, historically, police respond to all emergencies disregarding vacations, days off and, of course, strikes. Police are dedicated to the protection of life and property. And as such, we would continue to do so, regardless of the inequities suffered in collective bargaining.

However, in my judgment, other areas of the public sector employees should have the right to strike, as a final recourse. For that reason, we urge passage of A-521.

While we, as police, accept the loss of this privilege of strike, we ask what remedy can be prescribed in lieu of strike.

Again, we have a situation which relegates policemen to a class of citizens other than first. Even though we can voluntarily accept the loss of the privilege already in effect in the private sector of striking, we ask for some alternative to resolve impossible impasses after months of negotiations, long after the contract has expired.

Gentlemen, briefly, I urge the passage of Assembly Bill 521. To us, in the police area, it is the best we have at this time.

Thank you for your courtesy.

Any questions?

ASSEMBLYMAN BLACK: Thank you very much, Sergeant Carroll.

ASSEMBLYMAN PELLECCCHIA: Sergeant Carroll, I was just wondering whether or not you have some sort of suggestions you might think would apply especially to our finest in the State and to the firemen.

SGT. CARROLL: Assemblyman, your bill, A-521, has, of course, all the remedies as would apply to police striking because you have built into that bill the fact that public endangerment would be one of the reasons why there would not be a strike or that an injunctive action could be held.

At this time, I can offer nothing better than this bill because, as I said, it's the best we have for now.

ASSEMBLYMAN PELLECCCHIA: Thank you.

ASSEMBLYMAN BLACK: Any further questions?

Thank you very much.

Mr. Peter Smith.

P E T E R S M I T H: Mr. Chairman, Assemblymen, my name is Peter Smith. I am a Delegate to the Firefighters Association, New Jersey AFL-CIO.

The Firefighters Association of New Jersey supports Assembly Bill 521.

Public employees should receive the same rights, privileges and benefits as employees in the private sector of the economy.

Public employees should have the same right to strike as private sector employees, and not be subjected to restraints and such conduct which are not imposed against employees in the private sector.

The Firefighters feel that Assembly Bill 521 will cause true and sincere collective negotiations to take place.

The Firefighters Association of New Jersey urges

the New Jersey Legislature to pass this legislation and give it a chance to prove itself worthy.

ASSEMBLYMAN BLACK: Thank you very much.

Any questions? (No questions.)

Dr. Scuorzo.

H E R B E R T E. S C U O R Z O: Having gotten caught in the "make it short" grind of the prior Committee hearing, and testifying at 5:30 p.m., I made it short to begin with.

I am Herbert E. Scuorzo, Legislative Committee Chairman of the New Jersey Association of Elementary School Principals. This statement is made on behalf of the Association. I intent to refer only to the application of A-521 to professional educational employees.

The Association of Elementary School Principals shares with the New Jersey Education Association deep concern over the possibility that the basic rights of our members as public employees could be abrogated by those boards of education which care little for our rights. In this State today, there are some, hopefully few, boards which transfer principals indiscriminately, delay compliance with Chapter 303, and in general make principals scapegoats for all the ills of the schools. They play at the game of calling principals part of the management team, while trampling on their employee rights.

On the other hand, at this time, we also share with School Boards and the New Jersey Association of School Administrators the belief that professional educators should presently not be allowed the strike weapon as a means of achieving goals that we believe to be just.

We know that there have been cases where school boards have deliberately provoked strikes and refused to settle them using the power of injunction, and contempt citation to send teachers to jail. Fortunately, New Jersey employees who felt constrained to strike, and boards which felt they had to take contempt action, are a small minority. And, the same unreasonable position can also be taken by

employee groups. The only loser is the school child. We note that New Jersey principals have never been on strike.

Our main concern is for the pupils who attend our schools. They have a right to a full education, and they must receive it. To give school employees the right to strike, even under the limited circumstances proposed in this bill, before we exhaust all other possibilities for equitable dispute solution is wrong. Please note, I stressed the word "equitable".

Just because we reject the right to strike at this time, please do not interpret this to mean that we view ourselves as second class citizens. We reject a "public be damned" attitude; we equally reject a similar attitude toward public employees by employers.

Where then do we turn. Since we do not wish to be granted the limited right to strike at this time and since we will not be subjugated by that minority of boards with an employee be damned attitude, we must propose a viable alternative.

That alternative is the same today as we proposed last year in Senate Bill 2244 hearings: Mandatory binding arbitration.

Such arbitration must be available in all phases of negotiation and terms and conditions of employment, or the spectre of illegal strikes will continue to loom. And the arbitrator must be completely impartial, not a representative of a so-called public board, for employees would merely view that as another attempt to "stack the deck" against them. Illegal strikes could and would continue.

In summary, we oppose A-521 at the present time. We ask for mandatory binding arbitration, legislatively directed within the PERC system, but with decisions made by completely independent arbitration agencies.

Thank you, gentlemen.

ASSEMBLYMAN BLACK: Thank you very much, sir.

Do you have any questions?

ASSEMBLYMAN SINSIMER: Doctor, you mentioned

several times that you oppose the right to strike at this time. Does that mean that at some time in the future you may reconsider that?

DR. SCUORZO: Yes. The question is an open one. We oppose it now with this bill. We feel that there are other alternatives which should first be assessed and possibly used. And we would feel quite free to reconsider if we find that those other alternatives do not prove effective. But we think they should be tried first.

ASSEMBLYMAN SINSIMER: Isn't it more of a hope than a realization, though? In other words, you hope that the present method works out, and if it doesn't --

DR. SCUORZO: All right, we hope, sir.

ASSEMBLYMAN SINSIMER: Thank you.

ASSEMBLYMAN PELLECCCHIA: One question, Doctor.

How do you reconcile the fact that in the past there has been arbitration and that the school boards just disregarded the decision.

DR. SCUORZO: The fact that it has not been a mandatory binding arbitration, school boards and, in fact, employees, could just tell the arbitrator where to go and leave, which they have done. And I don't feel - I'm speaking, of course, for the Association -- the Association does not feel that this should be open to either party; we feel that some completely impartial arbitrator should decide it and then make that binding by law.

ASSEMBLYMAN PELLECCCHIA: Thank you.

ASSEMBLYMAN BLACK: Thank you very much, sir.

DR. SCUORZO: Thank you, sir.

ASSEMBLYMAN BLACK: Mr. Frank Fiorito.

I might take this opportunity to reintroduce the Assemblymen who serve on the Committee. Assemblyman Sinsimer on my extreme left, Assemblyman Dennis, Assemblyman Evers and Assemblyman Pellecchia; and I'm the fellow in the middle, Assemblyman Black.

F R A N K A. F I O R I T O: Gentlemen, I am Frank A. Fiorito, President of the New Jersey State Federation of Teachers, AFT/AFL-CIO. I have come to endorse strongly the passage of Assembly Bill No. A-521 into law.

For decades there has been a crying need for a law such as A-521. Public employees have been at the complete mercy of the public bodies that employ them. Those rights granted to all other Americans who happen to work in the private sector have been denied public employees, and only laterally in this State, has there been any legislation which has allowed public employees to organize and bargain collectively. The right to organize and bargain collectively without the right to even a minimal amount of equity in collective bargaining relationships with public employers, is almost no right at all.

The record of public employer intransigence in bargaining with public employees in this State is blatant with its disregard of even the pretense of good faith bargaining. The spectacle of 200 teachers being put into jail for sentences ranging from ten days to 18 months is an enormity that the conscience of this State and of this Nation will not long allow.

The record of the Newark Board of Education in dealing with the Newark Teachers Union is a classic example of the corrupt use of power by a public employer against public employees. It is on the record in the words of Donald Saunders, Chief Negotiator for the Newark Board of Education, when he stated in The Record, a Bergen County newspaper, on December 22, 1971, "I wasn't bargaining in good faith. There was no way I could." In other statements made by Mr. Saunders, he stated that the strategy of the Newark Board of Education was to provoke a strike; that there had to be a hiatus in the contract, a time period during which the old contract would run out and a new contract would not yet be in existence. During that time period, when the teachers of Newark had no contractual protection, the Board of Education planned to make mass

transfers of activists in the Newark Teachers Union, to intimidate on a massive scale and to destroy the Newark Teachers Union root and branch.

Chapter 303 of the laws of New Jersey for 1968 mandates that the public employer must bargain in good faith. Where was the good faith bargaining of the Newark Board of Education and where was the punishment for those who violated a statute of the State of New Jersey?

Punishment was reeked on the teachers but the arch perpetrators remain immune to any punishment even when blatantly and assertively violating the laws of the State of New Jersey. Equity is the touchstone of the law. Where laws are inequitable they will not long stand. No body of men and women who labor for their bread will continue to bear injustice mutely.

A resolution requesting that Governor Cahill grant amnesty to all teachers awaiting jail sentences, and pardon to all teachers serving jail sentences has been brought to the New Jersey State Assembly. That resolution was put into committee and it has not yet come out of committee for a vote by the members of the Assembly.

The forces of organized labor in this State will make every strenuous effort to have that resolution come before the Assembly for a vote. Assembly Bill A521 provides minimal equity for public employees in bargaining with public employers. It would be the first genuine attempt to take from the employer the unbridled use of the injunction as a weapon against public employees. So long as a public employer can hide behind an instantly obtainable injunction, he need never bargain in good faith. A521 will provide that an injunction cannot be issued unless an imminent strike poses a clear and present danger to the public health and safety

of a community and that the injunction, if and when issued, shall prohibit only such specific act or acts as shall be expressly determined to pose such clear and present danger.

Further, an injunction shall not be issued unless it can be proven on the basis of findings of fact made by the court or judges after due notice and hearing in open court prior to the issuance of such restraining order or injunction that the representative has failed to utilize all procedures provided for by law to resolve an impasse in negotiations.

The law further provides that fines and sentences heretofore imposed on public employees shall be vacated, unless within thirty days after the effective date of this act findings of fact sufficient to support the order or injunction are made by the court or judge entering the same, following the procedure set forth in Section C.

Public employees have asserted and will continue to assert their right to all the protections that private employees enjoy. Public employees are no less American citizens than private employees even if they work for public employers.

A521 is far from a perfect bill and in endorsing it, public employees do not in any way diminish their assertion that they have the right to strike. This bill is an honest attempt to bring the beginnings of equity to public employees in their bargaining relationships. It is not a landmark bill, and it is not a definitive statement on public employees rights.

In the name of equity we urge its passage.

ASSEMBLYMAN BLACK: Thank you, sir.

Any questions?

ASSEMBLYMAN SINSIMER: Mr. Fiorito, I know that you were involved in the Newark Teachers' strike, and I know that there was some violence connected with the strike. Would you mind explaining what violence occurred, who were the victims of such violence, and what the outcome was?

MR. FIORITO: The victims of the violence were the teachers. The most prominent case of violence was an attack made by 30 organized goons on a group of 15 teachers leaving the Newark Teachers Union Office early one morning as they were to go out to picket. They were attacked with lead pipes, with sticks studded with nails; five were injured, one critically; one so badly that he required extensive surgery and he almost died. So the victims of the violence were the teachers.

ASSEMBLYMAN SINSIMER: Did the teachers provoke any of the violence?

MR. FIORITO: No. The teachers did not provoke any of the violence. The very fact that they were teachers and they were on strike was enough to provoke violence against them by certain elements in the community.

ASSEMBLYMAN SINSIMER: Mr. Fiorito, you spent some time in jail yourself; would you care to comment on that? I understand you still have a jail sentence hanging over your head. Is that correct?

MR. FIORITO: Yes. The Newark Teachers Union - when I speak about an enormity, I mean exactly that. The sentences imposed on the teachers of Newark are a enormity. Approximately 200 teachers, some having sentences of 10 days and the leadership having sentences extending out. The original sentence imposed upon me was 18 months. I've served 4½ months in jail already; I face 6 more months in jail. Carol Graves, the President of the Union, has served 4½ months; she faces another 3 months in jail. Donald Nicholas, Executive Vice President of the Union,

has served 4½ months, and he faces another 3 months in jail. And there is a whole list of the major officers and activists of the Union who face a long time in jail; in fact, there are 15 who are waiting, daily, the decision of the Appellate Court as to when we will go to jail again.

I do not believe that the State of New Jersey, and I do not believe that the country, in general, can long sustain this kind of action against public employees. I feel it will become a stench in the nostrils of the whole nation and of this State.

ASSEMBLYMAN SINSIMER: Thank you, Mr. Fiorito.

ASSEMBLYMAN DENNIS: Just a couple of questions.

I am quoting you here. You say: "The record of the Newark Board of Education in dealing with the Newark Teachers Union is a classic example of the corrupt use of power by a public employer against public employees." Do you think the other 602 Boards of Education are as bad, shall we say, in your opinion?

MR. FIORITO: Well, I have direct, personal knowledge of how the Newark Board of Education acted. I'm sure there have been many instances - well, even in the experience of the Federation. We had a situation in Woodbridge, 4 years ago or 5 years ago, in which there was a relatively long strike for the time - Strikes are getting longer -- in which there was a strike of 3½ weeks at the time. It seemed that the Mayor of that city was under indictment; I believe he's under indictment again. In the City of Newark, the Mayor who put the majority of the teachers in jail in 1970 was under indictment, in fact he's serving time in jail right now.

The record in many of the school districts - while I do not believe that any of them are as extreme as Newark - the same process follows. If you tell a public employer that he has an instantly obtainable injunction, he will not bargain in good faith. That's a very simple fact.

ASSEMBLYMAN DENNIS: One other question. On these goons - I would assume, just to clarify this, these goons were not any representatives of the Board of Education, were they? I mean, let's go out and get the teachers, or anything of this nature, - was this just an independent group of some citizens in the community?

MR. FIORITO: A very complicated situation in Newark, sir. Whether these were direct agents of the Board of Education or whether they were, well, not maybe proximate agents but some form of agent of the Board of Education, is a question that I really don't know.

ASSEMBLYMAN SINSIMER: Just one more question, please. On these doings, they were not agents of the teachers, were they?

MR. FIORITO: They certainly were not agents of the teacher. That we can rest assured of.

ASSEMBLYMAN BLACK: I have several questions.

The first question I would like to ask is, I'm not familiar with the situation in Newark; I would like to know if a single contract representing all of the teachers is signed with that school board, or does each teacher employed sign a separate contract?

MR. FIORITO: No, a single contract is signed. There are not individual contracts in Newark. Some school systems do have individual contracts and some school systems have individual contracts and a master contract. But in Newark there is one contract signed.

ASSEMBLYMAN BLACK: Any other questions?

ASSEMBLYMAN EVERS: Yes. Mr. Fiorito, the bill points out that an injunction could only issue if an imminent strike posed a clear threat to the health and safety of the community. Do you have an opinion as to whether a pending teachers strike would affect the health and safety of the people in a community?

MR. FIORITO: Yes, I do have an opinion. I do not believe that a teachers strike affects the health and

safety of the community.

ASSEMBLYMAN EVERS: Including mental health? Have you considered the mental health of the pupils?

MR. FIORITO: Yes, I have considered the mental health of the pupil. And I answer again in the negative. ~~I do not~~ think that a teacher strike affects the health or safety of the community. I don't think it affects the mental health of the students.

ASSEMBLYMAN EVERS: You think it does not affect the mental health of the students?

MR. FIORITO: No.

ASSEMBLYMAN EVERS: Could you expand on that?

MR. FIORITO: Well, could I ask you a question, sir. Why would you assume that it affects the mental health of a student?

ASSEMBLYMAN EVERS: I'm not assuming. I'm asking you the question.

MR. FIORITO: Do you have any ideas on whether it would or not?

ASSEMBLYMAN EVERS: You're testifying.

MR. FIORITO: Okay.

ASSEMBLYMAN EVERS: Let me ask you this too, Mr. Fiorito. Assuming that it doesn't affect the mental health, I would assume that you would assume that it would affect the health and safety if firemen or policemen were to go on strike. Is that a correct assumption?

MR. FIORITO: Yes, I would assume that it would affect the health and safety if our firemen or policemen went on strike. But I do not believe that it affects the health and safety when teachers go on strike.

ASSEMBLYMAN EVERS: That's interesting.

Do you have any feelings as to the possible effectiveness of legislation calling for mandatory arbitration or binding fact-finding?

MR. FIORITO: Yes, I do have opinions on it.

ASSEMBLYMAN EVERS: Would you care to give them?

MR. FIORITO: Yes. These are forms of compulsory arbitration. In general, they have been an anathema to labor. And it's a form that I do not believe would solve the problem. We do not want compulsory arbitration of labor disputes.

ASSEMBLYMAN EVERS: Why not?

MR. FIORITO: Because in the compulsory arbitration of a labor dispute, you destroy collective bargaining. No one is going to settle because everyone knows that someone else is going to settle it for them. And you destroy the effectiveness of the bargaining process completely. The only way that these problems are going to be solved is with true collective bargaining. There cannot be true collective bargaining if all of the clubs are on one side of the table and no clubs are on the other. What we want and what we ask is equity. Again and again I've used that word, and that is the only thing that this bill might begin to give, equity in the bargaining process.

ASSEMBLYMAN EVERS: The only equitable proposition then, to settle the issue once and for all, would be to give public employees the right to strike.

MR. FIORITO: That is the ultimate solution of it.

ASSEMBLYMAN EVERS: Thank you very much.

ASSEMBLYMAN PELLECCCHIA: Mr. Fiorito, I am sure that Assemblyman Evers stole some of my thunder and asked several questions that I thought I wanted to ask of you. I heard the good Doctor refer to arbitration too. And it's still not clear in my mind what binding arbitration would really mean to the teachers, if anything.

MR. FIORITO: Well, you see, the term "binding arbitration" there's a little confusion on it. I would like to term, and I believe what you're saying is compulsory arbitration of an entire labor dispute. I believe that's what you mean, Assemblyman Pelleccchia. Is that right?

ASSEMBLYMAN PELLECCCHIA: That's right.

MR. FIORITO: The compulsory arbitration of an entire labor dispute. See, there's confusion on binding arbitration because within a contract you can have a binding arbitration of a grievance. See? Now, if you put the entire labor dispute to compulsory arbitration, the bargaining process is lost. And I believe that we do want the bargaining process because the bargaining process is a complex thing. You have a myriad of elements that have to be resolved. And when you put it into compulsory arbitration, you do not have the sophistication with which to resolve those elements.

ASSEMBLYMAN PELLECCCHIA: Mr. Fiorito, within your contract, are there any arbitration clauses now, presently existing?

MR. FIORITO: In our contract?

ASSEMBLYMAN PELLECCCHIA: Yes.

MR. FIORITO: In the contracts that exist in Newark or --

ASSEMBLYMAN PELLECCCHIA: Well, let me phrase it another way. In any of the contracts that you know of that cover teachers per se.

MR. FIORITO: Yes. See, again, we make the distinction between binding arbitration of grievances that exist in our contract. In fact, in the Newark contract it was one of the elements that precipitated the strike, the attempt to take the binding arbitration of grievances away. Because, without that, given a situation that exists in the bargaining relationships, without the right to strike, binding arbitration of a grievance becomes a very important element. In many parts of labor and in the private sector many of the unions don't want binding arbitration of grievances because if they grieve something, they'll grieve it in the streets, because they can strike.

ASSEMBLYMAN PELLECCCHIA: Thank you.

ASSEMBLYMAN BLACK: Any further questions, gentlemen?

(No questions)

Thank you very much.

Mr. Morris Stern.

M O R R I S S T E R N: Mr. Chairman, my name is Morris Stern. I am speaking on behalf of the New Jersey American Civil Liberties Union.

I support this bill. I would recommend several changes, if possible; but in concept, anyhow, I support this bill.

At present, strikes by public employees are deemed to be illegal, as a matter of common law in New Jersey, by the New Jersey Supreme Court. In the absence of legislative enactment the injunction has become the enforcement device for the common law strike ban. The contempt proceeding, or the threat of it, is the ultimate weapon now used in New Jersey to prevent public employee strikes. And this ban appears to be absolute.

Thus a public employer, at least to date, can feel secure that the usual economic weapon - the strike - will not be lawfully wielded against him. The resulting imbalance in bargaining power could make collective bargaining a sham. The power and control over livelihoods, working conditions, etc., thus reside in an agency, board or bureaucracy, all of which cannot be always viewed as reasonable. And there is a great potential for arrogant use of power here, and unreasonable exploitation of the public employee.

On the other hand, some public employee strikes, as you people pointed out, can have devastating impact on the public at large and could result in tremendous waste of resources. Moreover, the economics of the public sector does differ from the private sector, and dollar burdens are not necessarily passed along to what you might call the ultimate consumer, as is done in the private sector. The resulting problem of protecting the

public at large while providing basic due process for the public employee is staggering and requires Solomon-like approaches.

To that extent, I sympathize with any legislative committee that must deal with this problem. The problem is highlighted by the growth of municipal, county, state and federal government as an employer and also the concurrent growth of unionization in this area, a tremendous explosion in both public employment in absolute numbers and the unionization.

But New Jersey, to date, has failed; it has failed miserably because its answer to a tremendous social problem has been very simple, all too simple. Over 200 teachers were jailed in 1971 for striking in the face of extraordinary court documents, broad injunctions resulting from a common law strike ban, no legislation at all relating to the strike. This is probably the largest number of people ever sent to jail in this country after criminal prosecution and conviction. You know, I have racked my brains and researched to come up with another illustration where over 200 people went to jail in one shot, after conviction. Now we've had many people arrested in Washington, D. C., in demonstrations, etc., but that was not after the culmination of the trial process. So there's a failure; it's all so obvious.

The strikes continue. The simple answer has failed. You still have the economic waste which comes of these strikes, and you also have the weaker member of the collective bargaining situation punished.

Any studied effort to ameliorate these problems, in my opinion, should contemplate, among other things, the following: 1) the due process protections for employees offered by the Norris-LaGuardia Act and its New Jersey counterpart; 2) an obligation on both sides to bargain in good faith in the negotiating process; 3) an apparatus to separate the critical strike from the more ordinary strike;

4) the penalty for those who strike in the face of the law, those who strike in a forbidden area; 5) the experience value of the Newark teachers' strike and other recent strikes; and 6) the draftsmanship necessary to overcome the New Jersey common law without running afoul of the prerogatives of the Judiciary. This is something which concerns me with this bill.

Generally, Assembly 521 is a welcome effort in this area. It is respectfully submitted that the following suggestions might be considered in amending it.

First, Norris-LaGuardia. New Jersey has a little Norris-LaGuardia Act, passed in 1941, and I believe if you gentlemen can read through it, it is an enlightening experience, it's a wonderful bill. Even today, 31 years later, this is a bill which has extraordinary wisdom and depth. And it has worked. I agree, it's in the private sector and the New Jersey Supreme Court has read it out of the public sector, but the provisions of it are wise.

One area that 521 does not go into is the duration of an injunction and what might be termed a "permanent" injunction. The 31 year old bill, the Norris-LaGuardia Act, in New Jersey and at the federal level, does not allow a permanent injunction. It allows an injunction to be issued if the standard is met for enjoining a labor dispute or strike attendant to a labor dispute, for a 6 months period, renewable once for 6 months if the burden again is met. I think this is very important in collective bargaining because situations change from year to year.

Mr. Fiorito pointed out distinctions between the 1970 strike in Newark and the 1971 strike. And, in fact, on close analysis they were distinctly different strikes. Yet a permanent injunction, issued in 1970, was slapped on to the union in February of 1971 with no hearing allowed. And 15 people are awaiting jail now for violating a year old injunction in a fact situation which was completely different from the fact situation which precipitated the actual

issuance of the injunction. So, to that extent, Norris-LaGuardia concepts of limiting permanent injunction should be cranked into this bill, and I recommend that.

The obligation to bargain in good faith on both sides is really not explicit in this bill. I know there is an A-520 which is now in the hopper, but I believe that in order for an injunction to be issued to a public employer it should have to demonstrate that it has bargained in good faith and that it has carried forward its burdens under the law.

I agree that the union or the representative of the employees would have to make the same showing in defense against the injunction. Or perhaps you could have a provision where the public employer could be enjoined for not bargaining in good faith, which is something not now contemplated.

Penalty. Private employees who violate injunctions for the first time - by that I mean, violate injunction number one, time number one, - can be sentenced to only 15 days in jail, as a maximum, and fined a maximum of \$100 under the Norris-LaGuardia Act. And yet, Mr. Fiorito pointed out that people are now facing jail for, well, up to 12 months, fines of several thousand dollars against individuals. And you have an obvious inequity. You have a private sector employee who can thumb his nose at an injunction and go to jail for 15 days and be fined \$100; and a public sector employee who is going off to jail for a year or more, and be fined \$1,000 or more. I would suggest that Norris-LaGuardia is, again, wise in providing minimal penalties for the first violation of an injunction. And I suggest that some consideration be given to this.

Finally, I'll combine the draftsmanship concept with the concept of a right to strike. I know that generality has been floating around.

The New Jersey Constitution, as it has been interpreted, is neutral on the issue of public employees'

right to strike. The common law ban - the New Jersey Supreme Court says, "it has long been the rule in New Jersey" and that's the quote from the New Jersey Supreme Court, "that public employees cannot strike." It has long been, since 1962, when a Chancery Division Court said they didn't think it was appropriate and cited a Norwalk, Connecticut case; and in 1965, when a trial level law division judge said the same thing; and then, in 1967, it suddenly long became the rule that public employees could not strike in New Jersey. Well, that rule has to be changed, and I don't believe your law quite carries it off. I think you're going to run into trouble with the Judiciary. I think you should say outright that there is a right to strike, however that strike may be limited or enjoined under the following circumstances, as you do.

Again, to sum it up, we support the bill. I think the concept is good. I think it could be strengthened and I wish you all the luck in the world with a very difficult problem.

ASSEMBLYMAN BLACK: Thank you very much, Mr. Stern. Any comments, gentlemen? Questions?

ASSEMBLYMAN EVERS: I would like to compliment Mr. Stern on submitting a very informational statement and explanation. And one of your concerns that you express, Mr. Stern, on page 3 and again on page 6 of your statement, I know concerns many of the people in the Legislature too. I'm talking about Roman numeral IV: "The draftsmanship necessary to alter the New Jersey common law in such a way," etc.

MR. STERN: Yes, sir.

ASSEMBLYMAN EVERS: And then, over on page 6, you hit the nail right on the head, at least in my opinion, where you say: "Finally, to the extent that the bill does not talk more in terms of 'substance', the Court might view the limitation of its equity powers as 'procedural' and thus not within the Legislature's province."

MR. STERN: Yes, sir.

ASSEMBLYMAN EVERS: Do you have any suggestions as to how that language could be beefed up?

MR. STERN: Yes. The New Jersey Supreme Court tipped its hand in this area and, about five years ago, wrote an opinion where they said that the Legislature could pass a law which provided for the right to strike by public employees. I believe that you have to say it, and your bill does not say it. In paragraph (b) of your bill it says that nothing herein shall be read to restrict -- if I may paraphrase -- restrict the right to strike. But it doesn't exist. So (b) does not help. The common law rule is still abutting you. When you get into (c) it says an injunction will not issue from the court unless A, B, and C. Well, what you've skipped over is the substance which is the right to strike. And I believe it's incumbent upon the Legislature to say that public employees have the right to strike; however, that right to strike may be limited by A, B, and C. And there you're in a substantive area and I think you will get away from the problem with the court.

ASSEMBLYMAN EVERS: Thank you.

ASSEMBLYMAN SINSIMERS: Mr. Stern, do you favor the right to strike for all public employees, that is, including police and firemen?

MR. STERN: Yes. The concept of the right to strike, I do favor. And if I might turn it about a little bit, what I oppose is an absolute strike ban, which now exists.

Now, let me give you an illustration. The police, for example. If every policeman in the City of Newark or Trenton were to go out on strike, I would consider that to be a clear and present danger and certainly something which could and should be enjoined, if the burden is met. I think the City has to bargain in good faith; I think that there should be a hearing; and then I think the

injunction should be issued if the burden is carried. But to be mechanical and say that no policeman can strike is to deprive the police of several weapons they may use in their bargaining process which will not be a clear and present danger. For example, there might be some slowdowns; there might be a decision to have one out of every ten men strike; there might be a decision to have - oh, as creative as the mind might be - certain areas where an individual might deprive an employer of his services without, in fact, affecting this clear and present danger. So I don't see any reason to be mechanical. It should be done on a case by case basis. I agree that generally police strikes will be enjoined because in the most standard case there is a clear and present danger. The same thing may be said of firemen, and perhaps it could be said of school teachers. But the burden would have to be carried in each case, and there would be an intelligent decision made in each case; it would not be anything mechanical, saying school teachers cannot strike. Well, maybe they can strike; maybe school teachers can strike between - and I'm not suggesting this as the law, but suppose they wanted to strike between June and September; suppose one out of ten were to go out and strike. These are economic weapons which are used in the bargaining process and you can't deny them this and still have an equality of bargaining power.

You know, you can talk about binding arbitration, etc., those things might be considered, but if you want to preserve bargaining, as such, you don't want both sides to sit on their hands and say, well, we'll leave it up to a neutral party. Of course, there are ways around that too, and I don't want to eat up all the time.

ASSEMBLYMAN KENNEDY: Mr. Stern, as I understand your premise, you believe then that the public employees should have the basic right to strike but you feel that there should be certain limitations on this right. Is

that correct?

MR. STERN: Yes, in the public interest.

ASSEMBLYMAN KENNEDY: Yes. Now, let's talk about teachers specifically. What specific limitations would you espouse with regard to teachers and their right to strike?

MR. STERN: I would not espouse any limitation because your bill, I think, covers it. That's the benefit, really, that you get from a generality - I hate to call it a cliché but it almost is - as a standard. Clear and present danger is something which is determined on a fact by fact basis. It's done in the 4th Amendment area as to what probably cause is for a search. You see the facts of a particular situation. So, for example, with teachers in Newark, in 1971. If your bill had been in being, if this were law, there would have been a hearing, there would have been a burden that would have had to have been carried by the Board of Education of Newark. And, I dare say, I believe they would have failed to carry their burden. They were not bargaining in good faith - I think there is ample evidence of that - and I think that the court would then, reading your bill as I would like to amend it anyhow, - would have said, nonsense, this strike is not the fault of the union; this strike is a burden and the fault of the board; and until this board bargains in good faith, these people are free to do as they wish.

ASSEMBLYMAN KENNEDY: Then, if I understand you correctly, listening to you speak a moment ago, in defining certain limitations you did define the limitation for policemen, as I understand --

MR. STERN: No. Maybe I gave the wrong impression.

ASSEMBLYMAN KENNEDY: Well, you could see limitations as to this absolute right with regard to policemen.

MR. STERN: No. I can see it with regard to every public employee, not just policemen.

ASSEMBLYMAN KENNEDY: Well, then I ask you again to

define some of these limitations with regard to teachers.

MR. STERN: Well, my point is that it's a case by case standard which you people have put into your bill, and I agree with that standard; and it's something which avoids the broad mechanical definition - teachers shall not strike, firemen shall not strike. There are circumstances where perhaps they can strike. Allow that discretion to be in the hands of an equity judge - and you have some very fine equity judges in this State - give them a standard, which you have - clear and present danger - add in there, the burden, on both sides, to bargain in good faith; which is very important because that preserves your bargaining process; put the facts before them, of a given situation, and let the judge decide then whether the public employer, who seeks the injunction, has in fact complied with the burden; if he has, issue the injunction.

ASSEMBLYMAN EVERS: I would like to follow up.

Mr. Stern, I don't want to belabor the point but can you think of one example, just one, - I don't care whether it's a big one or a little one - where a teacher strike might present a clear and present danger?

MR. STERN: Might present? Yes. Oh, certainly.

ASSEMBLYMAN EVERS: Could you tell us?

MR. STERN: Might present?

ASSEMBLYMAN EVERS: Might or, to take it a step further, would.

MR. STERN: Yes. I think, in all candor, if you closed down the city schools in Newark for a full year, while faced with a Board of Education that is willing to bargain in good faith, that is willing to use all the mechanism that the State has provided - mediation, factfinding, etc. - has dealt honestly, and yet the union says, "I'm going out", that should be enjoined. That is a clear and present danger. You know, that's not a very hard thing to find. And, you know, it could be two months.

ASSEMBLYMAN EVERS: What would be the results in

a situation like that, to the public health and safety?

MR. STERN: Devastating.

ASSEMBLYMAN EVERS: For example? How devastating? Could you give us an example?

MR. STERN: You know, I can only point to Newark in 1971. Who benefited? Thirteen weeks of strike.

ASSEMBLYMAN EVERS: Then are you suggesting, perhaps, that in some cases there might just be a little strike as opposed to a complete strike by everyone?

MR. STERN: Sure. You've had slowdowns in the City of New York?

ASSEMBLYMAN EVERS: Isn't that like being a little bit pregnant?

MR. STERN: No. No, I don't think so. And those terms are changing too in these days - but I guess that's another bill. (laughter)

No. I think in New York, for example, you've had slowdowns which have been effective weapons in collective bargaining and yet have not paralyzed cities and have not endangered people on the street. Maybe it has made some administrators get out of plush offices and come down and, you know, go on foot patrol, or whatever, but the job was done and yet the pressure was brought to bear where it should have been brought - you know, at the bargaining table.

You know, here's a chance for the Legislature to lead the collective bargaining process and provide - you know, not heavens and hells -- to provide more flexible devices. And you have a flexible device on a case by case basis.

So, for example, the teachers union might say - if I were advising them, for example -- might say, if they ran up against an employer that would not bargain with them in good faith, they might say, now I'm going to try this law out, I'm going to go into court, I'm going to enjoin that employer for not bargaining in good faith; or they might say, I'm going to have every tenth teacher

stay out of school; ~~the schools will be open~~, it won't be a clear and present danger, and yet we will have some impact at the bargaining table.

There are all sorts of things. I don't claim to be the world's most creative person in this area. There is a lot written about it and great suggestions that might come out of it.

ASSEMBLYMAN EVERS: Thank you.

ASSEMBLYMAN BLACK: If there are no further questions, thank you very much, Mr. Stern.

MR. STERN: Thank you.

ASSEMBLYMAN BLACK: Mr. William G. Hin.

W I L L I A M G. H I N: Mr. Chairman and honorable members of our State Legislative Committee, I am here to represent President Herman Brockman and the members of the Bayonne Board of Education, one of the larger city districts in the State.

The Bayonne City Board of Education expresses its objection here to A-521 and to any legislation which would grant the right to strike to teachers of the public schools in our State.

The Board notes that there exists a trend in American labor circles to reduce and eliminate strikes or work stoppages as a device for supposedly gaining employee status and benefits. We especially question the success of such teacher strikes as have occurred in recent years - have these been acclaimed for any singular success? Have these markedly improved teacher status? Have these markedly improved the education of the children in the system's schools? Have these markedly strengthened the bonds between the teachers and parents of the city or community? Have they strengthened the bonds of relationship, working relationship, between the professional staff and the legally constituted board of trusteeship for the school system?

Our belief and opinion is that teacher strikes are not necessary, have little characteristic success, will not

accomplish any real improvement for public education and for children, and can seriously jeopardize schools and students. Legalizing such strikes will only impinge on the schools' chance of succeeding with their most serious educational and social obligations in this trying era of the seventies.

Our Board members have conducted mutual discussions and review of the teacher strike process and results, with persons representing a wide range of citizens, with professional staff and negotiators and board members from different communities in and out of New Jersey, with other districts, with the teacher groups from our own city. The Board's opinion generally reveals to itself negative and undesirable results emanating from any teacher strikes observed to date. There appears a disruption of the educational process; a loss of confidence by parents and families, possible disobedience or disrespect of the law and the legal process, loss of time and economic resources obviously by several parties, and probably disrespect for schools and those who teach children. We do not favor disruption and disrespect in any way. We do not believe that strikes which might promote such reactions should be legalized in any way.

Rather than reduce the level of professionalism, which should characterize the operation of the American public schools, or rather than encourage a process which can be demeaning to well educated professional people highly regarded by our Board and our community, rather than those sorts of things, we feel that there should be exhibited an exemplary reason and behavior in the public schools and in the negotiations processes which characterize relationships between boards and their staffs. We believe that there is today, in the 1970's, a viable, workable, safe, secure and ongoing educational process and negotiations process that's provided under the current framework of law and practice. It may not be perfect but it's workable.

We ask that you not legalize strikes which can stop the safe, secure and ongoing educational process of our schools in these times. We do believe that sufficient avenues for reasonable change are available in the present legislative and negotiation processes under which we operate. Therefore, we respectfully suggest that you remand A-521 to Committee for further study but not for adoption certainly at this time.

Thank you very much for the opportunity to appear.

ASSEMBLYMAN BLACK: Thank you very much, sir.

Are there any questions?

ASSEMBLYMAN SINSIMER: You mentioned, sir, that the present system is working today. How can you testify to that in light of the fact that there have been a number of teacher strikes in the State of New Jersey and more than 200 teachers have gone to jail? Is that an indicator that the system is working?

MR. HIN: No. But in contrast with other states where strikes are legal, we have had far fewer strikes; a small percentage of strikes in contrast with states where the number of strikes has been characterized as rather high or very high since their adoption of legislation which is enabling to the strike process.

We do not feel that it's easy to operate an American urban school system these days. By the same token, you must realize we spend many long, arduous hours on the part of our communities, that boards and the teachers ~~groups themselves~~ have a long, hard series of battles in reaching their conclusions together. But we do believe in the viability of this process, and we do believe that it's workable. We have found it so. Hard and arduous, I assure you that, but workable.

ASSEMBLYMAN SINSIMER: I find it hard to believe that it's workable in view of the evidence. In Pennsylvania, we had testimony given here before, that the average strike in the State of Pennsylvania, where

public employee strikes are legal, was only nine days. Now, is that catastrophic in your opinion, a nine day strike?

MR. HIN: I think it might be in some communities. I would question - would you have evidence which would incline you to believe that those strikes have promoted a better or an improved educational process for the children in those schools?

ASSEMBLYMAN SINSIMER: Do you believe that there really is equality at the bargaining table in New Jersey presently?

MR. HIN: Yes, I do believe that I have observed in our community reasonable and generally rational bargaining procedures at work. And I would point out to you that we have had the same negotiators, the same federation of teachers, and the same national personnel, as have been involved in the leading strikes in New Jersey and in the Nation.

ASSEMBLYMAN SINSIMER: Okay. Thank you.

ASSEMBLYMAN DENNIS: Just one question for the record. How large a city is Bayonne?

MR. HIN: About 75,000 people. We sit in the heart of the metropolitan region.

ASSEMBLYMAN DENNIS: In proportion, what size are you in the State?

MR. HIN: We're about the 10th or 11th largest in the State. We're surrounded by the metropolitan area of Manhattan, Newark and Elizabeth.

ASSEMBLYMAN PELLECCCHIA: Mr. Hin, I am just curious. In Bayonne, is the Board of Education elected or appointed?

MR. HIN: It was appointed up until last November. We have now gone to an elected board type of district as of February 3d.

ASSEMBLYMAN PELLECCCHIA: Is the Board that is presently serving a part of an association?

MR. HIN: Yes. Yes, if by that you mean part

of, say, the Hudson County School Boards.

ASSEMBLYMAN PELLECCCHIA: Of a union, belong to a union. This association, isn't it something similar to a union?

MR. HIN: Does it belong to the New Jersey School Boards Association, the National School Boards Association? Yes.

ASSEMBLYMAN PELLECCCHIA: Would you consider the National School Boards Association a sort of union?

MR. HIN: To a mild degree, possibly.

ASSEMBLYMAN HIN: Do you pay dues?

MR. HIN: Yes.

ASSEMBLYMAN PELLECCCHIA: You do. All right. That's all.

ASSEMBLYMAN KENNEDY: Mr. Hin, a number of school teachers who have corresponded with me state basically that the biggest problem is that the school boards refuse to negotiate in good faith with the teachers and the teacher representatives because the school boards know that the teachers cannot go out on strike legally. Would you comment on this, please?

MR. HIN: Yes. I think in my own experience in more than one state, I have not had the personal experience with schools that have steadfastly refused to bargain in good faith, nor even have refused to bargain in good faith or consistently in good faith. Therefore, my experiences in a number of cities indicate to me that school boards are not seriously concerned about the strike process other than that it will promote a disefficiency in their negotiations with their staffs and that it will promote, primarily, a potential or tentative kind of disrespect for the schools and for the staffs themselves.

That may sound overly sincere to you but I think it's quite my feeling. ~~I have sat on~~ both sides of the table and I could point out, for example, for any of our teacher friends in the audience, that I consider myself

an educator, as much as a managerial superintendent for my Board, and have, in fact, been the chairman for not only one or two of the cities in another state but also for a multi-county area embracing a large portion of this state in terms of being a teacher negotiator for salaries for teachers.

ASSEMBLYMAN KENNEDY: Then, if I understand you, Mr. Hin, you do recognize that there may be a problem with certain school boards who might not negotiate in good faith because of this, at the moment, no right to strike on the part of the teachers. Would you say that is correct?

MR. HIN: Yes. I would rather, if you don't mind, turn to the possibility, though, of other avenues.

ASSEMBLYMAN KENNEDY: Oh, yes. I'm not for a moment advocating or even suggesting the right to strike; I'm trying to define the problem on both sides.

ASSEMBLYMAN PELLECCCHIA: Just one more companion question to the questions I asked before.

Isn't it a fact that the boards are compelled to join this association that I spoke of?

MR. HIN: No.

ASSEMBLYMAN PELLECCCHIA: It is not?

MR. HIN: No.

ASSEMBLYMAN PELLECCCHIA: I'm misinformed.

ASSEMBLYMAN BLACK: Thank you very much, sir.

Before I call the next individual to testify, I would like to make sure that we do not find ourselves experiencing a strike. We have two young ladies doing the stenographic work and I thought I better check with them and see if they would like to have a break.

We will pause now for a five minute break.

(Recess)

(After recess)

ASSEMBLYMAN BLACK: If you will return to your seats, we will resume the hearing.

At this time I will call Miss Kathryn Stilwell, Vice President, New Jersey Education Association.

K A T H R Y N E. S T I L W E L L: Chairman Black and members of the Revision Committee, first, I would like to make two comments, unofficially. Up to a few minutes ago, we had six of the seven members of your Committee and we are very pleased that they are here or were here.

The other point that I would like to make is that this Chamber and the gallery have been filled with public employees, including teachers, who have demonstrated their interest in A-521 by being here today. And while they are quiet, because you requested them to be that way, let me assure you of their deep concern.

Some of these teachers have been jailed because of a lack of legislation such as A-521.

These teachers welcome this hearing and a frank and open discussion of this issue.

I am Kathryn E. Stilwell, Vice President of the New Jersey Education Association but speaking to you as an individual and "one of the Fair Lawn fourteen". We, "the Fair Lawn fourteen", are soon to serve a 30 day jail sentence and pay fines of \$22,950.00 for violating a court injunction.

Everyone in this Chamber today is a product and a recipient of the educational system that we have in this great country of ours.

As a public school educator for over 35 years I am proud to be a part of the great teaching profession. For over 30 years of my life - I opposed vehemently anything that pertained to "teachers withholding their services". But, ladies and gentlemen, times have changed, and have forced us to re-align our position. I am not a radical - in fact I believe I am a conservative.

Educators as a group have championed the cause of justice and equality for all our people for almost 200 years. Yet, today, we educators find ourselves as second class citizens in the courts.

Educators are not asking for preferential treatment, but equality, equity, and justice. It was before and during the Fair Lawn strike that I saw the unfairness and the imbalance in the negotiation process. Teachers must be able to negotiate from a position of strength and equality - not with their hands tied behind their back. The same rules must apply to both sides at the negotiating table. Unequal justice is injustice!

In the Fair Lawn situation even though our Board of Education had corrupted the negotiation process, the board had the authority to go into court and secure a court order against the strike - an order that the judge was compelled to sign. Our association did not have the right to argue before the judge that the order should not be signed, nor that the health and safety of the Fair Lawn children were affected.

A521 will give the right of judicial review of the merits of a case and a local association will have its day in court. As it is today - the teachers are convicted of being guilty without a trial. Is this justice? I am going to jail not because of a strike, but because I violated a court injunction.

The teachers are asking for - and certainly deserve - the right of due process, and that judges not be required to issue instant injunctions, and that the democratic principle of fair play in the courts be extended to teachers.

Historically, reform has been the result of the courageous actions of dedicated people who have been willing to sacrifice themselves for the principles in which they believed. We believe in education, children, and our dignity as human beings.

The existing criminal statutes are a mishmash of Ancient Common Law, Victorian interpolation and modern addenda. They have never been rationalized, never been reduced to a coherent whole.

The wide disparity in sentences for teachers' violating a court injunction is caused by the latitude allowed judges, and is one of the reasons for the penalties not fitting the crime. Cases are settled by common law precedent and judicial interpretation. Is this equality?

Jailing teachers is not the answer to teachers' strikes. It violates logic, common decency, and the public interest. There seems to be much injustice in the seat of justice.

If breaking a law, paying a fine, and serving a jail sentence will bring about a change in our laws, and will give educators their day in court - our schools and our educational system will be better for it.

There are times when laws must be broken to show and prove how unfair and unjust they are - remember the American Revolution!

Ladies and gentlemen - I guess I should say, gentlemen - we look to our legislators to correct the inequities and injustices as they now apply in our laws. We respectfully request that you reassess the current situation. We are certain that you will then have the courage and foresight to change the laws and give educators their rightful status of first class citizens in the courts.

Thank you.

ASSEMBLYMAN BLACK: Thank you very much, Mrs. Stilwell.

Any questions?

ASSEMBLYMAN SINSIMER: I have one.

Miss Stilwell, with this jail sentence hanging over your head - I can understand something like this happening in Nazi Germany during World War II but in the United States of America, today, it's a little difficult for me to believe that someone would be sent to jail for committing the terrible "crime" that you committed. But since you have been sentenced to jail and 13 other teachers in Fair Lawn, do you feel that when you finish your sentence you will have a different conviction as to the collective bargaining process or will your convictions remain the same as to what you testified today?

MISS STILWELL: I understand what you're asking me --

ASSEMBLYMAN SINSIMER: Quite briefly, are they going to change your mind?

MISS STILWELL: No. I believed in something when I did what I did before, as 400 teachers in Fair Lawn did, and it's not going to change my mind a bit. We believed in what we did. We believed what we did was right, although we knew that we had broken a law; and I am sure that teachers as a group do not deliberately and wilfully go about violating laws. But we had no alternative. I can only speak for myself in this situation, but certainly, facing the same thing again, I would do the same thing again.

ASSEMBLYMAN SINSIMER: Do you think then that giving the teachers the right to strike would give them also the desire to strike?

MISS STILWELL: No.

ASSEMBLYMAN SINSIMER: Can you foresee a rash of strikes as a result of this?

MISS STILWELL: No. If the situation which

involves the injunction process, as it now operates, and the change which would come about as it pertains to A-521, I believe this would have averted the strike.

In our situation, and this is a matter of public record, Judge Pashman, the Assignment Judge in Bergen County, offered to arbitrate the case. And we went along with the idea, but our board refused. So then he offered to assign another judge and they refused. Even that, I think we would have gone back to work because we would have been going in the right direction.

ASSEMBLYMAN DENNIS: Is your board an elected board or an appointed board?

MISS STILWELL: Elected.

ASSEMBLYMAN DENNIS: Technically then, if they are elected they are supposed to represent the wishes of the town when they go to the bargaining table. If they don't represent the wishes of the town, is it not a fact that you, as a teacher, or your friends, associates, could possibly encourage the people of that town to throw them out of office next year?

MISS STILWELL: In answer to your question, we had an election this past February. There were four incumbents. They were all defeated. (Laughter)

ASSEMBLYMAN DENNIS: You proved my point.

MISS STILWELL: Thank you, sir.

ASSEMBLYMAN EVERS: You made your point, Miss Stilwell. And I'm not sure you made a mistake by addressing us as ladies and gentlemen because with the women's lib debates that we've had down here, I don't know if there is really a difference anymore.

ASSEMBLYMAN PELLECCCHIA: Speak for yourself.

ASSEMBLYMAN EVERS: As Vice President of the NJEA, are you familiar with the new bill which was introduced and had its first reading on Monday, known as The Fair and Final Offer? I wasn't here this morning. I happen to have sponsored the bill. I wasn't here this morning

and I think it may have been covered briefly. So, if it was, I don't want to go back into it.

ASSEMBLYMAN BLACK: It was covered very briefly.

ASSEMBLYMAN EVERS: In short, ~~Miss~~ Stilwell, where an impasse has been reached, if this provides a procedure whereby both parties can exchange written offers, and then it provides for another procedure for negotiations, etc., and if still the impasse isn't resolved, then the bill further provides for a final fact finder. Then there are still more negotiations. I'm going through it briefly. If it still hasn't been resolved after a period of approximately 31, maybe 35, days, then that fact finder picks either one of the two final offers, without change - okay? It's not flexible. And he says to the Division, this is what I recommend. Okay? In other words, I think it goes even a little bit further than compulsory arbitration. I think this finally says, okay, I have an offer here, I have two offers, I weighed the two of them and this is the one that I think is fair; they're both final, this is the one that I recommend the Commission to accept, and it does accept.

Do you think that that might be the answer to this whole situation?

~~MISS~~ STILWELL: How is that different from the compulsory binding arbitration, except that it might take longer or shorter, I don't know. I might say this, we went through mediation, factfinding, super-factfinding, mediation again, I don't know, we had about two or three mediators, I think, and, as I recall, we had agreed to accept the findings of the mediator or arbitrator, - we had them all - and the Board would not. So we had no place to go.

ASSEMBLYMAN EVERS: Are you familiar, for instance up in my home town, Wayne, up in Passaic County, where I know a very capable gentleman was the fact-finder. He came in with a report, after, I'm sure, a month or so of

diligent work, and his report was rejected by the Board. Now this would make it binding on both parties, his final report. This would be it. So, there is a difference.

MISS STILWELL: Well, as I said earlier, I wondered what the difference was with this setup, how is it different from compulsory binding arbitration which, as has been stated a number of times today, would kind of negate a certain amount of collective bargaining in good faith. But, Mr. O'Brien wants to comment on this.

WALTER O'BRIEN: I am Walter O'Brien, Director of Development, NJEA.

In direct response to your question, Assemblyman, that bill is under study at NJEA but, as I understand it, there is one weakness in it which would not have helped in the Fair Lawn case. As we understand your bill, it depends on both parties voluntarily accepting arbitration. And in the Fair Lawn case, as Miss Stilwell pointed out, the School Board was unwilling to accept arbitration or its report.

ASSEMBLYMAN EVERS: The bill reads: "Should the Division so direct" - and that might be a weakness because in the first instance it makes it permissive with the Division of Public Employment Relations as to whether or not this procedure is invoked. But assume that a change is made that makes it mandatory. Say now the bill further reads and says this: "Should the Division so direct, after receiving such notice, the parties shall" mandatory "within 7 days of receiving notice from the Division, exchange final written proposals." So that I think we have a mandatory situation here where it takes away the curve balls that might otherwise be thrown.

MR. O'BRIEN: As I indicated, Assemblyman Evers, we do have your bill under study. It has just been introduced and it deserves the kind of consideration which this bill is getting. However, we would want to caution you of the fact that traditionally we have been opposed to

arbitration for the reasons offered in earlier testimony. For example, noted mediator, Theodore Kheel says that arbitration does corrupt the free flow of collective bargaining. And we are most likely to continue and persist in that position. But we do want to give your bill consideration.

ASSEMBLYMAN EVERS: I can appreciate your position. Thank you.

ASSEMBLYMAN PELLECCCHIA: Miss Stilwell, very frankly, I can't find myself ready and willing to ask you any questions about the statement you've made. I just want you to know that you have my heartfelt sympathy for what you're going through. When I look around the State, not only you but the rest of the teachers throughout the entire State, I kind of feel ashamed to know that guys like Edgar Smith, a confessed murderer, is walking the streets, and we have people committing rape, murder, and you call it, and these people are allowed to walk the streets even after they appear in front of a judge. In many, many cases they appear before a judge and plead to get their crime downgraded and are still walking the streets and committing the same crimes within a week or so. Yet people, such as you, in a profession that's an honorable profession, are subject to this kind of degradation.

I honestly believe that somewhere, somehow, we're going to have to find the ways and means to see that this never happens again.

Thank you.

MISS STILWELL: Thank you very much, sir.

ASSEMBLYMAN KENNEDY: Miss Stilwell, in your statement you state that the Fair Lawn Board of Education had corrupted the negotiation process. Would you explain that to me?

MISS STILWELL: Yes. As the school year ended, we had not been able to arrive at any agreement, and, in August, - I believe that was 1970 - a letter was signed

which was called "the letter of intent", both the Board and the Association signed it. I don't know whether you would like me to explain --

MR. KENNEDY: Yes. I would like to hear all of this.

MISS STILWELL: All right. The letter of intent said this, that the minimum salary the following year would be based on the average accepted contract as of January 1, 1971. When January 1, 1971, came around, there were only four contracts that had been agreed upon and settled. The Board said that four were not enough. Our point was that, while we--as they had expected there would be more than four, the signed letter of agreement said that it would be the average of the contracts signed at that time, and this was accepted, and they refused to. And again this was tried to be resolved in court, and so on. So the letter itself was about two or three sentences, as I recall. I mean, it wasn't long and involved in any way.

ASSEMBLYMAN KENNEDY: And this is the extent of the corruption of the negotiations process?

MISS STILWELL: No, I wouldn't say so. I think you talk about frustration and so on, a negotiating committee sits hours and hours, nights, mornings, Saturdays and Sundays, and so on, and when a Board will send, say, three of their members to sit with the Association Negotiating Committee and they agree upon something or you think you have an agreement, and they go back to the Board and the rest of the Board rejects it, then you start all over again. I think this is a phase of the frustration one goes through.

ASSEMBLYMAN KENNEDY: Did you participate in the negotiations?

MISS STILWELL: The second year I sat with the negotiating team as an officer, not as a negotiating member. And the reason I did it was because, as I stated, all of my life I vehemently opposed anything that resembled this sort of thing. I am pretty thick-headed about some

of these things, and no one would ever have been able to have convinced me of what it was like to sit at that negotiating table unless I had been there myself. And I guess there's nothing worse than a convert, you know, whatever it is.

ASSEMBLYMAN KENNEDY: While you were at the negotiation table, was there ever any discussions of the possibilities of a strike?

MISS STILWELL: As I recall, I recall this being said but I do not recall by whom, that they would push us to the wall and break our Association.

ASSEMBLYMAN KENNEDY: You heard someone say that?

MISS STILWELL: Yes, sir. But as I said, this has been like two years ago now and I couldn't say, if I could I would but I don't recall.

ASSEMBLYMAN KENNEDY: Thank you.

ASSEMBLYMAN BLACK: Thank you very much.

I would like to call Mrs. Eleanor Barbash.

E L E A N O R B A R B A S H: Gentlemen, I am Eleanor Barbash, a member of the Millburn Board of Education. Miss Stilwell is a difficult speaker to follow, and I commend her for her dedication.

I wish I had a button today which read "Fair play for everyone."

It is always effective dialogue when people involved know to whom they're speaking. I know that you are elected officials; I know the time you spend serving the citizens of New Jersey. In view of the fact that I receive the Legislative Index regularly, - thanks to the good offices of one of my oldest living friends, Senator DeRose - I know that individually you are concerned with children in general; that you're concerned with safe school buses; with selling term papers; with the New Jersey Symphony, a great bulk of whose program is involved with children; with abortion; with children whose parents are from other states and on welfare; with amnesty for

striking teachers; and I note that one of you may be planning to invade Delaware, or does he fear their move first.

I note that individually you are concerned with reimbursement of defense expenses, with flags, and with changing the date of school elections. You are concerned and we of the State are fortunate that you are willing to serve.

I am a duly elected official, an elected member of the Millburn Board of Education, and its only woman member. I have three children, products of the public school system. I have a Master's Degree. I have worked as a public employee, and I am concerned. I have studied Chapter 100, Laws of 1941; Chapter 303, Laws of 1968; A-521; New Jersey Education Association literature; New Jersey School Boards Association literature. I have listened to parents, to teachers and to lawyers. I can say many things about the legal technicalities of the bill you are dealing with, but there are many experts here today who can speak more eloquently and with more authority than I.

With this background in mind, I speak to you today about the welfare of the children in our schools and the welfare of the teachers. I am fully aware of the horrendous situations which have occurred, and do occur, in the schools of our state. I am sure there are Boards of Education who do not deal in good faith, just as I am sure there are teachers who do or do not do the same. One of my principal concerns is the concept of tenure. I know why it is necessary and I know the protection it affords the teaching profession and I am not unaware of why it is a reality of life. I feel that in life one cannot have it both ways. If one's future is protected in great degree by the tenure laws and if there are adequate laws on the books to settle grievances, I feel it is not in the best interest for teachers to strike.

I can imagine very few instances where a teacher

strike would pose a clear and present danger to public health and safety, but I feel that strikes by teachers would be intolerable in that it would, first of all, interfere with the normal functioning of the governmental process in the determination of teachers' compensation. How can you negotiate in good faith when the ultimate weapon is a strike which interferes with the public education every child in the State is entitled to.

In Millburn, which is sometimes envied, sometimes maligned, and often held up as the example of wealth, dollars spent per student, inequities in terms of money spent as compared with the urban areas, - in Millburn we are fortunate in that we have never had a threat of a strike, and I sincerely believe that our teachers in the Millburn Education Association bargain in good faith as I believe our Board does.

I am confident, if the present bill were put into effect, our teachers would not strike. We were one of the few districts in Essex County, possibly the only one, to settle our teachers' salaries before the budget vote.

I do appreciate the fact that many other districts have had histories of poor teacher-board relationships, but I do not think the right to strike will solve these problems but rather, with the strike as an ultimate weapon, perhaps the situation will be aggravated.

Under the present law teachers are far from helpless in pressing their demands. And judging from statistics I have, and have read, in regard to those demands or requests, they are moving in the direction of being a powerful force in the setting of policy with regard to public education in New Jersey. Boards are required to bargain in good faith, whatever that means. And if there is an impasse, there is machinery built into our present laws for factfinding and mediation. Teachers can and do exert tremendous political and community pressure on boards of education and on the Legislature. Teachers talk to

parents, they attend board meetings. They are heard. If the present laws are considered inadequate, perhaps we should look into ways to strengthen them, including possible provisions for compulsory arbitration in limited areas.

The Millburn Board of Education is unanimously opposed to the passage of Assembly Bill 521.

I realize full well that not granting the right to strike will not necessarily prevent strikes, but will put teachers in jail. And who loses? the children. Granting the right to strike to teachers will not facilitate the settlement of salary disputes or the working-out of satisfactory working conditions when these are questioned. It will make it impossible to maintain a continuous program of instruction in some districts, and often those are the same districts whose children most need a continuous instructional program. The children will be the losers. This can serve only as a destructive force in the educational process.

The Millburn Township Board of Education is opposed to any legislation which would give public school teachers the right to strike. A-521 speaks of the right of public employees to strike. I speak of the right of our children to be educated.

On a very personal note, I must add that I have earned the right to speak here today. I work many hours a day on my job, that being a member of the Board of Education. I do not testify here in any kind of righteous indignation. I spend time not only negotiating in good faith, in planning curriculum, in working to improve education in our District, but as our Board's representative to the New Jersey School Boards Association, I spend much time in this fair city. Every week I present a legislative report to our Board advising them, and the public, to write to their Legislators concerning what is happening here. I do not tell them what

to say but rather to say something. I've earned the right to appear here and speak to you, not in legal terms but in terms of my interest and concern for the educational process of New Jersey. I do not know how you can mandate bargaining in good faith, but I do not think a strike of public officials is the answer.

I ask you gentlemen to use your influence to make New Jersey the best place to live if one wants quality public education for all children.

Governor Rockefeller's decision not to go to Attica during that prison's rebellion was based on a philosophical belief that elected officials should not negotiate under the pressure of criminal acts. I refer to Mr. Garibaldi's reference to prisoners this morning.

At present, teachers are striking while under contracts. Is this bargaining in good faith? I call it coercion. Now we have the onus of an illegal act. I call it a strike. Why must we condone an illegal act by making it easy?

Assemblyman John H. Froude stated in a letter to the President of the Millburn Board of Education, and I quote: "A strike by public employees is a cause for alarm to all of us. The services they provide are very basic to our society. The jailing of public employees as a result of their efforts to bargain effectively is also a cause for alarm. I shall vote for A-521 but I hope we can develop some acceptable form of binding arbitration as a means of preventing the necessity to strike."

Gentlemen, I suggest that we develop this form instead of granting the right to strike.

Before I return to Millburn, I would like to return to the idea of bargaining in good faith. I was recently in a town where the police department had declared a job action. It was a horror. For some reason,

the police were not allowing trucks into the town and, I am sure, following the letter of the law. There was ill-will on both sides, ill-will which I am sure will affect the tenor of the town for years to come. It occurred to me that if the effect of the job action was the result of following the letter of the law, perhaps we should look to the laws and follow their letter at all times or change them, update them, and get on to the business at hand.

Thank you.

ASSEMBLYMAN BLACK: Any questions, gentlemen?

ASSEMBLYMAN SINSIMER: Mrs. Barbash, you said earlier in your statement that Boards of Education were required in good faith and then you added "whatever that means"; then, later on in your statement, you said that you had spent your time negotiating in good faith.

MRS. BARBASH: Yes.

ASSEMBLYMAN SINSIMER: Would you mind explaining that to us?

MRS. BARBASH: My reason for that comment is, that's a very nebulous term. When we sit and negotiate with our teachers, we are accused of not bargaining in good faith. We can do the same. I think it's the kind of term that is not quite proper in legal terminology, although I am not a lawyer. That was the only reason I said that.

ASSEMBLYMAN SINSIMER: But you did say later, as I mentioned, - you mentioned that you were negotiating in good faith, which is bargaining in good faith.

MRS. BARBASH: I stand corrected.

ASSEMBLYMAN SINSIMER: So, I would assume you knew what it meant.

All right. You said earlier, too, that strikes by school employees are not in the public interest. Can you tell me which strikes are in the public interest?

MRS. BARBASH: No.

ASSEMBLYMAN SINSIMER: Thank you.

ASSEMBLYMAN BLACK: Before going further, might I

caution the members of the Committee that time is flying. Not that I wish to muzzle any of the gentlemen here at the table but we have only gotten to speaker number eight and I read a list of twenty-five and we're going to have an awful lot of disappointed people.

Assemblyman Dennis?

ASSEMBLYMAN DENNIS: One question. I tried to get on this this morning a little bit, and that's tenure. You said teachers have tenure and therefore should not have the right to strike. If you took away tenure, would you be more inclined to go along with teachers having the right to strike?

MRS. BARBASH: No.

ASSEMBLYMAN DENNIS: Again, how does tenure work. In a school district say you have three schools and because of a shift in population you're closing one of the schools down, or your town is merging with another school, how does this tenure work?

MRS. BARBASH: Well, in our town we are facing the problem of a declining school population and we have to face this as a future problem. Therefore, as to the way it works, I can speak as it works in our town. We have to deal primarily with teachers prior to their tenure, through their obtaining tenure. It is very difficult to dismiss a teacher when on tenure. But I believe there are laws on the books that say if you have teachers that have tenure and you don't have places for them there are methods for handling the situation.

ASSEMBLYMAN DENNIS: That's all.

ASSEMBLYMAN PELLECCCHIA: Mrs. Barbash, you read your statement kind of fast and I didn't quite catch up with all of it.

MRS. BARBASH: I will give you copies.

ASSEMBLYMAN PELLECCCHIA: That's quite all right.

The thing I would like to know is, do you honestly believe that strikes are criminal? Is that what the

statement implied?

MRS. BARBASH: At this point, strikes by public employees are criminal, yes.

ASSEMBLYMAN PELLECCCHIA: I don't think your statement confined it to strikes by public employees.

MRS. BARBASH: I'm sorry.

ASSEMBLYMAN PELLECCCHIA: The other question was, I believe Assemblyman Sinsimer asked you about good faith. You've heard some of the testimony that has been given here and you know or you've heard - whether it's a fact or not is something else -- but, to your knowledge, are there any boards that do not bargain in good faith from the evidence that you've heard here?

MRS. BARBASH: From the evidence I have heard here and from what I've read in the paper, I could conclude that there are boards that do not bargain in good faith. But I have not sat on those boards. I can only speak for the Millburn Board.

ASSEMBLYMAN PELLECCCHIA: Thank you.

ASSEMBLYMAN BLACK: Assemblyman Kennedy?

ASSEMBLYMAN KENNEDY: No questions.

ASSEMBLYMAN BLACK: Thank you very much.

At this point I would like to call Mrs. Helen Fullilove.

ASSEMBLYMAN PELLECCCHIA: Mr. Chairman?

ASSEMBLYMAN BLACK: Yes.

ASSEMBLYMAN PELLECCCHIA: At this point, could I correct something that took place before when Mr. Hin was on the stand and testimony was given to the effect that his board did not have to join the New Jersey School Board Association. He spoke to me later and more or less implied that he interpreted that I was talking about the fact that there were other associations and that they didn't have to belong. But the law does say - and I have the law here, as amended, June 19, 1970, - "all boards of Education of various school districts in the

State shall be members of the State Association". And it goes on to say, in other paragraphs, that they shall pay the necessary expenses to the Association and also it says that dues shall be payable to the custodian of school - moneys of the school district to the Treasurer of the Association.

Just so that the record is correct, he said that he didn't have to belong, but obviously the record should show that it is mandatory.

ASSEMBLYMAN BLACK: Yes. And I believe the mandatory amount of dues is set by the State Legislature, and NJEA can correct me if I'm in error.

Mrs. Fullilove.

H E L E N W. F U L L I L O V E: I am Helen Fullilove, President of the Newark Board of Education.

Chairman Black and members of the Committee, I would like to comment only on the public employees that I am concerned with, the teachers.

Other public employees can, of course, cause dangerous disruptions to health and welfare of our municipalities, but teachers strikes I have seen and been involved with, so I will limit my comments to this sector.

To give teachers the right to strike is to give teachers the right to close schools. Certainly there are other ways to settle inequities.

In Newark, a teacher strike means 4,000 teachers have the right to deprive 80,000 pupils of their right to learn.

The expectation of citizens today is that education solves society's problems, not create them. We all know schools are already shortchanging our students in our cities. We are not getting our tax dollar's worth.

Confrontation, such as we saw in Newark, cannot be allowed to continue or, as this Assembly 521 would do, sanction same. Law and order were indeed brushed aside,

as we all witnessed. Students found their voices and demanded they be able to return to school. However, many of them never did. Parents blocked the school doors after the strike, feeling that striking teachers were not the type of individuals they wanted to teach their children; they wanted professionals; and they felt they had had a very bad example set for their children.

We, the Newark Board of Education, do not think giving teachers the right to strike will improve this situation. We cannot further alienate our students. They are demanding superior service which they are not receiving. Parents also are demanding more service and are becoming more involved with schools, to help in any way possible.

As the Commissioner of Education states in his annual report, "We find ourselves involved in an educational renaissance that has no ending, a ferment of advance that can only produce greater public expectation for further progress." We, of the Newark Board of Education, are asking you not to let New Jersey step backward by enacting Assembly Bill 521. We need the Commissioner's renaissance.

That is what I had prepared but it seems that all morning the Newark Board of Education has been maligned so often, I do have comments that I have jotted down.

We did have, not a 13 week strike, we had an 11 week strike. And I think if you could read our contract you could better understand why we had such a long strike. We have been accused of not bargaining in good faith. The Union, in those 11 weeks, didn't come to the bargaining table; they went to the Mayor, they went to the Governor, they went to every one but the Board of Education. They were demanding \$1,000 pay raise. We didn't have \$1,000. We still don't have it.

Unfortunately, we do not have a public relations expert, because I think so many things that were said were just not true, that binding arbitration was supposed to be

the big factor. We have a labor person on our Board, and we knew that binding arbitration was the thing that had to be. We have binding arbitration. Our hangup was the \$1,000 raise and the nonprofessional chores.

We now have hundreds of aides in our schools because our teachers do not do nonprofessional chores. What the delay was? Spell out nonprofessional chores. What are nonprofessional chores?

In the final contract, at one point, it says that the teachers do not have to lead the children - no, they lead the children to the classroom; they forgot to also see that they leave the school. So we have to have aides. They don't do cafeteria duty. We have aides.

Also our contract says they shall have 15 sick days. 18A says 10 are demanded. We have 15 plus 3 personal days. Each teacher in our system takes almost 18 days a year.

These are the things, if we were not bargaining in good faith, it was only because we saw that this contract was going to ruin our Newark school system and we felt that we should have nonprofessional chores in our contract.

As far as binding arbitration is concerned, we now have 400 cases waiting for arbitration. We have grievances that come in, 20 and 30 a day. Grievances go to four steps and then to binding arbitration. Eighty of those are on teacher transfers.

Our parents would not let some of the teachers in the classrooms. Now, how can we put them in the classroom when the parents are there and the parents say they cannot get there, that they won't allow them to teach their children.

As for violence, the teachers are on the picket lines, the teachers called our parents names as they were going in. You can't expect these parents to want these teachers to then teach their children after they had called them the

names that they called them. And this is why the parents demanded the teachers not go in the classroom.

Now, I was at one of the schools. The parents were in the gym after the strike: the teachers were in the teachers' room. There was confrontation. They wouldn't let them in. Now, what is the Board supposed to do? put the teachers in there? I don't think so.

ASSEMBLYMAN BLACK: Thank you very much. Mrs. Fullilove.

ASSEMBLYMAN SINSIMER: Mrs. Fullilove, did the Board of Education take any steps to restrain the parents from what they were doing to disrupt the class?

MRS. FULLILOVE: I didn't say they were disrupting the class.

ASSEMBLYMAN SINSIMER: Well, they weren't permitting the teachers in the classroom.

MRS. FULLILOVE: They weren't permitting the teachers in the classroom. So they were not in the classroom, they were in the hallways.

ASSEMBLYMAN SINSIMER: Well then they were preventing the classes from being in existence.

MRS. FULLILOVE: Yes. But I was saying, they were not in the classrooms. In fact, they weren't trying to take the teachers out, they were just preventing the teachers from going in.

ASSEMBLYMAN SINSIMER: Well, wasn't it the Board's wish that the teachers return to their classrooms?

MRS. FULLILOVE: It was. I went up there to ask the parents, after having an 11 weeks strike now it was time to let the teachers teach because the 11 weeks could never be made up.

ASSEMBLYMAN SINSIMER: Well, if it was the Board's wish for the teachers to return to their classrooms, why then didn't they take action to prevent the parents from not permitting the teachers to enter the classrooms?

MRS. FULLILOVE: I don't understand.

ASSEMBLYMAN SINSIMER: If the Board wanted the teachers to return to classrooms as a result of the strike having been settled, why then did the Board not take action to restrain the parents from preventing the teachers' entry into the classroom?

MRS. FULLILOVE: I believe the only way would have been to have the police in our schools. Now the police arrested our parents all during the strike. They didn't arrest our teachers. They arrested our parents. So, could we ask the police to go in our schools to arrest our parents more?

ASSEMBLYMAN SINSIMER: Well, I think the police should enter any building where the law is being violated, whether it be a school or any other building.

I have another question too.

This Donald Saunders who was your lead negotiator, I understand, in the Board of Education negotiations of a year or two ago, -

MRS. FULLILOVE: Right.

ASSEMBLYMAN SINSIMER: He stated publicly that the Board of Education did not bargain in good faith in Newark. Now this appeared in the public press.

MRS. FULLILOVE: I understand that statement was also made in December. The Board did not renew his contract in October because we did not feel that he had done any type of job in the negotiations.

ASSEMBLYMAN SINSIMER: All right. Now, we heard testimony this morning about there being violence in connection with the Newark School strike, and we heard Mr. Fiorito give testimony that a number of teachers were hospitalized because of the physical attacks that were made upon them during the strike. Now, were any like attacks made on Board of Education members? Did any Board of Education members suffer any physical harm or any physical disability as a result of the strike?

MRS. FULLILOVE: Not to their person, no.

ASSEMBLYMAN SINSIMER: These teacher transfers that you spoke of before, weren't they a direct result of the parents blocking the doors? In other words, the teachers did not request the transfer nor was it in the mind of the Board of Education. Is that correct?

MRS. FULLILOVE: That is right.

ASSEMBLYMAN SINSIMER: The transfers - the Board felt they were mandatory because the parents were not letting the teachers into the classrooms?

MRS. FULLILOVE: Right. And they threatened to boycott the school if we insisted on them going back into the school.

ASSEMBLYMAN SINSIMER: All right. Thank you.

MRS. FULLILOVE: I would like to comment, since you asked about the violence, since we were accused also, kind of from the back door, of having instigated the attack on the teachers the first day of the strike. I think that's a ridiculous accusation. It has never been proven where those attackers came from. But I can assure you the Newark Board of Education had nothing whatsoever to do with it.

ASSEMBLYMAN SINSIMER: Thank you.

ASSEMBLYMAN DENNIS: How many teachers do you have in the Newark School System now?

MRS. FULLILOVE: 4,000.

ASSEMBLYMAN DENNIS: I know at one point there used to be a shortage of teachers and Newark, I guess because of the pay scale, was unable to get regular teachers and they had a great deal of substitutes or permanent substitutes. Is this still the case now?

MRS. FULLILOVE: We still have long-term substitutes, as we call them. But we are trying to phase them out because there is a surplus and we are getting quite a few applications this year. So that we hope that we will be able to phase them out.

ASSEMBLYMAN DENNIS: And you are an appointed board?

MRS. FULLILOVE: An appointed board, yes.

ASSEMBLYMAN PELLECCCHIA: Just one question.

I am curious. Who did go to jail, the parents trying to keep the teachers out or the teachers?

MRS. FULLILOVE: During the strike, when there was a confrontation at the schools, it was the parents who were picked up and jailed.

ASSEMBLYMAN PELLECCCHIA: For any length of time?

MRS. FULLILOVE: I have no idea how long they were in jail.

ASSEMBLYMAN PELLECCCHIA: Thank you.

ASSEMBLYMAN BLACK: Any more questions?

Thank you very much.

I would like to call Mrs. Alex Gordon.

M R S. A L E X G O R D O N: Mr. Chairman and gentlemen of the Assembly Committee on Revision and Amendment of Laws. I am Mrs. Alex Gordon, Immediate Past President of the New Jersey Congress of Parents and Teachers and present Coordinator of Legislative Activity for that organization of more than 425,000 members intensely interested in the welfare of our public schools and in the education of children and youth.

The New Jersey Congress of Parents and Teachers has always been in the forefront in the struggle for better salaries for teachers, improved fringe benefits such as pensions, greater security, finer working conditions, and more effective financial support, for we believed, in every instance, that such advances made possible a better, broader, and more attractive array of educational opportunities for New Jersey's children.

As an organization we believe firmly in the generative power of public education. It is the foundation upon which our nation has been built, and it must be our chief reliance for salutary progress into our future.

Much of the credit for our present world prominence must be given to our teachers, to our schools, and to the millions of individuals whom they together have guided into productive citizenship.

Our abiding interest, however, must ever be in children--as must also be that of teachers, legislators, and all other citizens. Children have no recognized spokesman, no organization encompassing them and representing them. They too are deserving of fair play. And, believing as we do in the power of education, we as an organization, largely of parents, have grown to lament:

1. The annual bitterness which permeates a community during the negotiations process--a bitterness which is almost visibly felt by our children, and which adversely affects, we believe, the learning process.
2. The growing schism between teachers and school administrators, both of whom we thought were an essential, indivisible team working as a unit in the attainment of educational objectives. The strength of the school system itself--even its ability to survive current crises--is adversely affected by the climate in which teachers and administrators increasingly work, in this negotiations era.
3. Basic and fundamental to all that I so far have said is the elemental fact that educational opportunities have been withheld from our children numerous times in recent years, that children, whom the public schools were built to serve, have been the sufferers and the victims, and that this suggested amendment will sanction acts not in the best interests of children--acts harmful to the minds of children. Safety and health have only incidental relationships to this problem. In the past two years there have been, according to National Education Association

figures, more than 311 teacher strikes in this nation--many of long duration--and New Jersey, as we well know, has had more than its share.

Gentlemen, we plead for fair play to teachers, for fair play to communities, for fair play to parents, and for fair play to boards of education, whose responsibilities become more difficult each year. But we especially plead for fair play to children. We who sit in this room would have believed it to be reprehensible if schools which we attended had been chained shut against the wishes of the supporting community.

There must be better ways to resolve the problems that reside within this situation, ways which encourage harmony rather than disharmony, consensus rather than discord, ways which bring people together rather than force them apart. Children and their education must be protected.

Years ago teacher tenure acts came into being--not to protect teachers but to protect communities and school children from politically-inspired teacher removals. The courts have consistently held that teacher tenure is not a right, is not a possession, of a teacher. It is essentially a protection for the students, an assurance that they will not be deprived of educational services of great value to them.

In similar fashion, Gentlemen, we ask that no legislation ever be enacted that will enable the services of good teachers to be withdrawn from children who are our common trust, from children who are subject to a compulsory education law which will be made inoperative by the passage of this amendment, and from children who, in an era of exploding knowledge and questioned values, need the guarantee of more education rather than the possibility of less.

We, the New Jersey Congress of Parents and Teachers, earnestly request that you consider^{the} the interests of those who are not here today--the children of New Jersey. In the long run, what is fair and beneficial

to them will be wholesome and beneficial for all parties which have a stake in the welfare of public education.

Thank you.

ASSEMBLYMAN BLACK: Thank you very much.

Any questions? (No questions)

The next speaker will be Mr. Larry Archione, New Jersey State Employees Association.

L A W R E N C E A R C H I O N E: Mr. Chairman, I am Lawrence Archione, President of the New Jersey State Employees Association, and unless I just say "hello", speakers 12 to 25 are in trouble.

Traditionally, the New Jersey State Employees Association has been an association that felt that strikes were not the thing for State employees, those covered under Civil Service. This position has changed. And, briefly, it has changed because disputes have not been solved, grievances have not been settled, unrest remains, and we have not maintained parity with wages and other fringe benefits as has the private sector.

In order to be further brief, I would like to say that I feel that all the possible reasons given for the passage of A-521 have already been offered by other public employee groups who have heretofore testified. I can think of no area that has been left uncovered.

Therefore, on behalf of the Public Employees Association, I concur with the amendment and join in urging its passage.

Thank you.

ASSEMBLYMAN BLACK: Thank you very much, sir.

Any questions? (No questions)

Let me just make one statement, sir. It was through my oversight that you were delayed so long.

MR. ARCHIONE: That's quite all right, Thank you.

ASSEMBLYMAN BLACK: Mr. S. J. Williams, Jr.

J A Y W I L L I A M S: I am Jay Williams, President of the Upper Pittsgrove Township Board of Education; Past President of the Salem County Associated Boards; and a Director of the New Jersey School Boards Association.

I would like at this time to briefly express some thoughts on Bill A 521 - the "Right to Strike" bill - and some of its implications for the people of Salem County and the State of New Jersey.

I wish to preface my comments by noting that the problems we envision arising out of this bill are not at present reflected in teacher and community attitudes in my own district where the relationships between staff and board have been amiable, sincere, and, above all, professional.

It is, however, this kind of relationship that we see deteriorating if A 521 should ever become law, and this is a primary reason for our opposition to its passage.

Any legislative action that will tend in any way to widen the chasms already developing between teacher and community in many areas can do nothing but harm to the educative process. It is apparent that the right to strike, if granted teachers, with its resultant immediate harm to children, and its residual effect on the community in general, could further endanger the fragile lines of communication between school and community, between parent and teacher, and between the child and an optimum education.

Our neighbor to the north, Canada, is already beginning to perceive the ill effects of legalization of striking by public employees. For one thing, this action has promoted an alliance of such widely diversified organizations as teacher groups and regular trade unions. Indeed, there is some irony in the fact that as the schools closed, their teachers were simultaneously taking the same action as hospital employees, electric power company workers, personnel effecting liquor outlets, and assorted other groups.

As United States Secretary of Labor James D. Hodgson puts it, "It is not the participants, but the public, that

feels the brunt of the impact in most strikes today." And in the case of strikes by teachers, it is the children, our greatest resource, who stand to suffer the most - in loss of precious hours of instruction, and to an equal extent perhaps, in an erosion of the trust and respect for those who are charged with shaping the attitudes and values that will influence them and our country for the rest of their lives.

It is our sincere belief that the only way to settle the perplexing problems confronting our teachers and boards today is by the consistent use of fact-finding and binding arbitration. This puts the responsibility, in equal measure, on all parties concerned. It is democratic, and it cannot fail to achieve the desired results with a minimum of ill feeling and a maximum of equity for teachers, boards of education, and the public alike.

This is not just a colloquial notion from South Jersey. It is considered so important by greater experts than us that the Ford Foundation has seen fit to furnish substantial funding for research and development of methods aimed at reconciling the limits of municipal income with employee contract demands, and on productivity in the collective bargaining process.

I sincerely thank you for this opportunity to testify, gentlemen, and I urge the Committee to consider all the implications of Bill A 521 before taking action on it.

Now that is the conclusion of my prepared statement. A few moments ago there were two questions brought up here that probably were not answered. Number one, in regard to the gentleman's question about the dues bill, the Legislature passed a maximum which can be charged. However, the delegate body of the School Boards Association establishes the amount of money actually charged as dues.

Another point that has been alluded to a number of times today that I feel has not necessarily been identified or clarified, and that is bargaining in good faith. What is bargaining in good faith? To me, this means

Chapter 303 has demanded or instructed, however it may be phrased, that the Boards of Education and that the Teachers' Association assume the position that at some time they must arrive at a point of mutual agreement, which means to me that they have to accept the fact that a compromise at some point, to a point where a mutual agreement exists, must be reached. Then the orderly process of education can continue throughout the year.

Any questions?

ASSEMBLYMAN SINSIMER: You mentioned, Mr. Williams, that during teacher strikes, teachers were inclined to go to work in such places as hospitals. I sort of inferred from that that you were not in favor of that sort of thing.

MR. WILLIAMS: I think you misunderstood.

ASSEMBLYMAN SINSIMER: May I finish the question? People on strike are people who are going without wages, who have no source of income. So wouldn't it be better for them to work in a place such as a hospital than it would be for them to go on welfare?

MR. WILLIAMS: I don't believe you understood my statement. May I repeat it? (Reading) "Indeed, there is some irony in the fact that as the schools closed, their teachers were simultaneously taking the same action as hospital employees, electric power company workers, personnel effecting liquor outlets, and assorted other groups." That did not say they were assuming those positions.

ASSEMBLYMAN SINSIMER: I'm sorry. I thought you said they took positions there.

MR. WILLIAMS: No.

ASSEMBLYMAN PELLECCCHIA: Let's explore this fair play and bargaining in good faith.

MR. WILLIAMS: All right.

ASSEMBLYMAN PELLECCCHIA: Of the cases that I have had occasion to hear of where the board has taken a position, "this is it and that's as far as we go," what alternative have the teachers after that point?

MR. WILLIAMS: I am not sure. I am speaking from my point of view. As I understand, Chapter 303 says that boards of education shall bargain in good faith, which to me means that at some point boards of education and teachers' associations must agree. I think if this same attitude prevails on both sides, it can be a successful process. I think only under these conditions, accepting the fact that you must reach a mutual agreement and that it can only be arrived at through compromise, will it be successful. I think this is what 303 has told us to do.

ASSEMBLYMAN PELLECCCHIA: Sir, have you heard some of the evidence that was presented earlier today --

MR. WILLIAMS: Yes.

ASSEMBLYMAN PELLECCCHIA: (Continuing) -- which indicated some of the boards took arbitrary positions and said, "You are not going to get anything other than the crumbs off the table - take it or leave it"? Do you believe that is good faith?

MR. WILLIAMS: I have heard that said. If that is accurate, as stated by you, I would say it probably would not be in good faith, the same as the reverse has been said of the other side. I prefer looking at the more optimistic side of this and I accept the fact as a Board member that we must arrive at a mutual understanding if we are going to operate schools. This is our prime responsibility.

ASSEMBLYMAN PELLECCCHIA: I am sure you do. Sir, are you aware of what happened in the City of Passaic where the teachers had negotiated with the school board all the way through for all kinds of hours and then at a given point that particular school board agreed on a contract and that same evening they talked further with other people and then came back and reneged on an agreement? Is this bargaining in good faith?

MR. WILLIAMS: I think we all have to arrive at a conclusion on that on its merits.

ASSEMBLYMAN PELLECCCHIA: Now these same people in Passaic

are going to jail because they did not observe the law. They were provoked into this position. Do you agree that a judge should hear just one side of an issue without the teachers ---

MR. WILLIAMS: That's not the ---

ASSEMBLYMAN PELLECCCHIA: Let me ask the question, please. (Continuing) --- without the teachers having the right to defend themselves at these hearings? Do you believe that this is bargaining in good faith or even justice of any sort?

MR. WILLIAMS: There should be impartial hearings.

ASSEMBLYMAN PELLECCCHIA: Thank you.

ASSEMBLYMAN KENNEDY: In order that we have both sides of this coin, I will ask you a question too, based on Assemblyman Pelleccchia's question. He asked you what the teachers can do if the school board says, "Take it or leave it." I will ask you, if this bill is passed, what will happen if the teachers say, "Take it or leave it," to the school board?

MR. WILLIAMS: This is the point that I am interested in avoiding. I think we do have PERC to work with. I think this is the vehicle.

ASSEMBLYMAN BLACK: I just have one question. I am also from down in Salem County. I personally didn't know what was going on in Passaic. Did you know what was going on in Passaic?

MR. WILLIAMS: No. I think any person who is a member of a board of education and also has the responsibility of supporting a family has pretty much a full-time job, getting those two things taken care of. I think what the other boards do is a little foreign to them in most cases.

ASSEMBLYMAN BLACK: Thank you very much.

ASSEMBLYMAN PELLECCCHIA: Just one minute, sir. Isn't it a fact you also belong to the State School Boards' Association?

MR. WILLIAMS: You mean, a Director of the State School Boards' Association?

ASSEMBLYMAN PELLECCCHIA: Yes.

MR. WILLIAMS: Quite true.

ASSEMBLYMAN PELLECCCHIA: And isn't it a fact that you pay dues into this organization and that they in turn give you all of the information that is required to know what is going on in other school boards?

MR. WILLIAMS: On an individual basis, the answer is no. These are on major issues and principles dealing primarily in broad areas, not specific areas.

ASSEMBLYMAN PELLECCCHIA: Would you consider, sir, a case of teachers' going to jail a serious and important issue?

MR. WILLIAMS: Yes.

ASSEMBLYMAN PELLECCCHIA: Then I think somebody is lacking in their duty.

MR. WILLIAMS: May I ask a question now? In your judgment, have these teachers ---

ASSEMBLYMAN BLACK: This is where we arrive at a difficult situation.

MR. WILLIAMS: O.K.

ASSEMBLYMAN BLACK: In summary, I thank you very much.

I hope that we will bear in mind that we have asked the good people to come and be our guests, to give us their opinion and not necessarily for us to take advantage of their presence to change their minds.

The next speaker will be Mr. William Liebeknecht.

W I L L I A M L I E B E K N E C H T: I suppose it depends on who is wearing the galoshes in a particular instance.

I happen to be an educator of 25 years, a native of New Jersey, and taught and administrated in three different states in seven school districts. I am also the father of seven children and I have raised seven foster children. I think I know something about kids.

I am a Superintendent of Schools in the Woodstown-Pilesgrove Regional School District in Woodstown, New Jersey, in Salem County. I represent my board this afternoon and

appreciate the opportunity of coming before you.

In the communication which our Board received from the New Jersey Boards' Association, on April 12, Assembly Bill 521 would grant the license to strike to public employees.

It is indeed a sad state of affairs when you have to enact legislation to encourage a group to go on strike. No one needs such encouragement. It is the fashion these days, even in sports, to strike. That is a nasty word to many, but the recent strike of the Major League ball players points up its popularity. I am certain you felt the same sorrow I did for a big-name, high-salaried ball player who lost \$10,000 from his six-figure contract during the strike. But don't laugh, for we all lost once again in that strike. He didn't pay income tax on \$10,000. You and I will make up the difference in the national till for those lost tax payments and the ball player will write it off as a tax loss on next year's tax returns.

Enough about ball players - we are here today to talk about today's teachers who are demanding and striking for the same consideration as those of their counterpart in private industry. But make no mistake, when the teaching profession, as we and myself like to refer to it, reduces itself to the same level as its counterpart in industry by striking, something is lost. No longer can the teaching profession ever hope to reach the professional status enjoyed by the medical, legal and other professions.

True, there are many reasons for teachers' rightful indignation when Americans do not consider the education of their children a top priority - and, gentlemen, they do not. We face the trend of spending 40.1 cents for every Federal dollar for defense and only 3.8 cents for education. I wonder what is going to happen if we ever get out of the war situation. Are we going to get that money for education? But striking is not the solution in bringing attention to such inequities.

Until recently, only two states, Hawaii and Pennsylvania,

had legislation that gives teachers the right to strike.

All avenues of negotiation must be used, mediation, fact-finding and binding arbitration, that possess the full backing of every legal means possible. And there are too many loop holes right now in 303 for boards and teachers.

Evidently there are members of the teaching profession that don't want binding arbitration because this procedure will tie their hands in the ultimate right to strike. Have you ever heard of a board of education or an administrative unit calling for a strike? Why must all the cards be stacked by such legislation as proposed in A 521, when the present legal machinery, modified and properly utilized, could force all groups - notice I said groups, not sides - to work together to arrive at a settlement?

I sincerely believe that we are all in this business for one purpose only, to educate children. And what of children? The school boards are here. The teachers want the right to strike. The Legislature drafts the laws. But who speaks for the rights of the very product, the end result that justifies our existence? We tell children they should be good, law-abiding citizens, but pose a double set of standards when teachers defy injunctions against strikes. That certain feeling of respect that most teachers demand from their students is lost and never fully regained after a strike.

In the Philadelphia strike of 1970, a student who passed the picket lines said, "I looked some of my teachers squarely in the eye and they couldn't look back at me."

We believe if A 521 is passed, there will most likely be a flood of legal strikes occurring in the schools of New Jersey in the future. To some members of the profession - and I said "some" - it would be like handing an ice cream cone to a youngster and saying, "Now don't eat it." It is surprising how quickly the strike as a last resort can be reached when it is available. If it still remains illegal to strike, we feel that in all probability most conscientious, law-abiding teachers will think hard and long, more so than the average

citizen, before deliberately disobeying the law.

I concur with Mrs. Bain, the former President of NEA, when she said, ~~when~~ all else fails, somebody has to stand up and fight for quality education and teachers truly believe that as our schools go, so goes America, and as America goes, so goes the world. But a strike, another type of warfare, never solves a thing. Ask anyone who has ever been involved in either a war or a strike and you will get an honest answer.

Therefore, as deeply concerned, involved, equal partners of the educational team, we implore you, as the final authority, to deter passage of A 251 as extremely detrimental to the educational process, ~~in quotes~~, from Title 18, providing a thorough and efficient system of schools for the children in the State of New Jersey. Thank you.

ASSEMBLYMAN BLACK: Any questions, gentlemen?

ASSEMBLYMAN SINSIMER: Do you honestly feel the passage of this law would encourage strikes among teachers?

MR. WILLIAMS: Yes, sir.

ASSEMBLYMAN SINSIMER: I would like to read from some testimony given earlier this morning. The testimony reads: "The record shows that following the passage of the Public Utilities Anti-Strike Law in 1946, there were 22 strikes in 6 years. During the 24 years preceding the law's enactment, however, there had been no strikes at all."

MR. LIEBEKNECHT: Public utilities and teachers are separate breeds.

ASSEMBLYMAN SINSIMER: I would ask the teachers to answer that question.

MR. LIEBEKNECHT: They have a different viewpoint, and I still refer to our teaching profession as a profession.

ASSEMBLYMAN SINSIMER: Well, you expressed some disappointment in your opening remarks about a ball player who took a \$10,000 cut because he had been on strike. Do you follow that same pattern in your negotiations with the teachers? Do you give them more money so they will pay more taxes into the Federal till?

MR. LIEBEKNECHT: I, personally, made a statement just recently - I think it was last Monday - and my Board of Education fell off the bench, when I said, "Gentlemen, I think by 1980 our teachers will get \$25,000 a year, and I think they are worth it." I think there is a way to get it without strikes. That is what I am here for. I don't want to see kids hurt. And every time there is a strike in cities such as Philadelphia, Newark, etc., it's the kids that are finally hurt and penalized and have to make up the lost time, which really is never made up. I think there are other ways of settling it.

ASSEMBLYMAN SINSIMER: Don't you feel that teachers who strike have an opportunity to make up their lost time much more so than any other profession, due to the fact that the schools are closed during the summertime? If time is lost in industry, that time is never made up. If time is lost during a strike, the teachers have an opportunity of making up the time during the months of July and August.

MR. LIEBEKNECHT: I am not talking about making up for teachers. I am talking about making up for kids and hurting kids. I think kids deserve a vacation in the summertime and so do teachers after the year they put in in the class room.

ASSEMBLYMAN PELLECCIA: Only one small issue: I participated in both the war and strikes and I think our country is much better off because of that particular war, especially the one I participated in. And the people who have been on strikes where I participated in strikes are a heck of a lot better off.

MR. LIEBEKNECHT: Well, I participated in two of them, but I am not sure we did a hell of a good job because we are still involved.

ASSEMBLYMAN BLACK: Thank you very much.

Mr. Jack Malone.

J O H N M A L O N E: Assemblyman Black and members of the Revision and Amendment of Laws Committee, my name is

John Malone. I am Acting President of the Education Association of Passaic, which is affiliated with the New Jersey Education Association and the National Education Association. I am Acting President because our President, Nicholas D'Agostino, is currently serving a 90-day jail sentence. Also serving jail sentences are Mrs. Paula Lockwood - 30 days; Miss Rachel Prather - 30 days; Mrs. Audrey Thalsheimer - 45 days; Mr. Irving Goldstone - 60 days; and Dr. Manlio Boverini - 75 days. I am speaking here today in their behalf, to urge you to approve Assembly Bill 521 to amend Chapter 303, P. L. 1968, the Public Employer-Employee Relations Act.

Technically, these teachers are in jail because the Passaic teachers voted in January of 1970 to withhold services. I say technically, because I feel that the Legislature and the Passaic Board of Education put these teachers in jail.

If I may, I would like to go back to 1968 for just a moment. On June 17, 1968, the Senate voted 38-0 in favor of Senate Bill 746. This bill would eventually become Chapter 303, P. L. 1968. On June 24, 1968, the Assembly voted 75-0 in favor of this bill. However, the Governor vetoed the bill. On September 13, 1968, the Senate voted 36-0 to override the Governor's veto. On the same day, the Assembly voted 57-0 also to override the Governor's veto. So, on September 13, 1968, the legislature unanimously agreed that Public Employees should have the right to negotiate terms and conditions of their employment. In the four years since then, it has been shown that this bill, although it gave teachers the right to negotiate a contract, was nothing more than a means of throwing teachers to the lions.

We could negotiate, but had no real power and were virtually at the mercy of the Board of Education, with absolutely no protection. A 521 provides some protection and at least would give us the power to negotiate on equal terms. Surely this must have been your purpose when unanimously enacting Chapter 303.

A 521 provides that injunctions against employees would

be granted if the employee representative group has failed to utilize the mediation, fact-finding, and intervention procedures of the Public Employment Relations Commission. Even under these conditions, the courts would be required to hear testimony and decide on findings of fact before issuing any injunctions. Gentlemen, we complied with Chapter 303 but as it now stands, the court had to issue injunctions and six Passaic teachers are in jail.

The dictionary says to negotiate means to treat or bargain with others in order to reach an agreement, to procure, arrange, or conclude by mutual discussion. In the 1969-70 negotiations between the Education Association of Passaic and the Passaic Board of Education, the Board did not comply with this definition. Under the circumstances, at that time, what could we do? We chose to strike.

The Policy Declaration of Chapter 303 states:

" . . . that strikes, lockouts, work stoppages and other forms of employer and employee strife, regardless where the merits of the controversy lie, are forces productive ultimately of economic and public waste; that the interests and rights of the consumers and the people of the State, while not direct parties thereto, should always be considered, respected and protected; and that the voluntary mediation of such public and private employer-employee disputes under the guidance and supervision of a governmental agency will tend to promote permanent, public and private employer-employee peace and the health, welfare, comfort and safety of the people of the State."

Gentlemen, I couldn't agree more. We tried to exercise our right under Chapter 303 but were unable to do so. The Board did not respond to voluntary mediation. The citizens of Passaic, and the children, were not in danger. The only people who have suffered because of the strike are the teachers. The local press condemned us in the name of the taxpayer and the children, who were supposedly being deprived of an education. The children were not harmed, they received 180 days of education as required by law. We made up the days that we were on strike. If there are inequities in school funding, then these too should be corrected. This isn't the issue here today. The teachers foresaw the problems they

would have to face but still felt that action must be taken.

The Policy Declaration of Chapter 303 also states:

". . . that the best interests of the people of the State are served by the prevention or prompt settlement of labor disputes."

Three months passed with no settlement of our dispute, but in the seven days that we were on strike, our disputes were settled.

The Passaic teachers were trying to exercise their right by law, but the law is incomplete. They have borne the brunt of public ridicule due to illogical arguments, and have been incarcerated unfairly.

Gentlemen, I urge you now to finish what was started on September 13, 1968, by unanimous vote; put A 521 on the floor of the Assembly and vote "yes."

Thank you.

ASSEMBLYMAN BLACK: Any questions?

ASSEMBLYMAN DENNIS: Just one. Are you familiar with A 520, which has passed both Houses and now is on the Governor's desk?

MR. MALONE: Yes, sir, somewhat.

ASSEMBLYMAN EVERS: Mr. Malone, you stated that you were here speaking on behalf of the jailed City of Passaic teachers.

MR. MALONE: That's right.

ASSEMBLYMAN EVERS: And Manlio Boverini is one of them, correct?

MR. MALONE: That's right.

ASSEMBLYMAN EVERS: Is he in jail today?

MR. MALONE: Yes, he is.

ASSEMBLYMAN EVERS: Has he taken advantage of legislation that would permit him to leave jail daily to do different types of work?

MR. MALONE: I do not know.

ASSEMBLYMAN EVERS: I also get the impression from your statement, Mr. Malone, that you feel that the right to strike is a much-needed negotiating tool for teachers; is that right?

MR. MALONE: Yes.

ASSEMBLYMAN EVERS: -- that it would improve your bargaining ability, right?

MR. MALONE: That's right.

ASSEMBLYMAN EVERS: What would you do if you were sitting in this seat and the firemen and policemen were sitting out there, looking for the right to strike? Would you give them the right? Would you put that bill on the floor and ask that the Legislature vote on it?

MR. MALONE: As it states now, yes.

ASSEMBLYMAN EVERS: Thank you.

ASSEMBLYMAN BLACK: Any further questions? (No response.)

Ladies and gentlemen, it is past five and I am going to do this, before you all stir: I allowed for a five-minute recess which took fifteen. I have two people that I would like to ask if they feel they can get their statements in within the next fifteen minutes. Miss Dolores Corona?

MISS CORONA: I will wait until next week.

ASSEMBLYMAN BLACK: Fine.

Anne S. Dillman? Would you like to give testimony at this point? This will be the last speaker that we will have today.

A N N E S. D I L L M A N: Good afternoon, gentlemen. I am Mrs. Anne Dillman of Perth Amboy and this afternoon I am here representing the Middlesex County School Boards Association. I am also President of the Perth Amboy Board of Education and the representative of the Middlesex County School Boards to the New Jersey School Boards Association, and also, I may add, a parent of New Jersey school children.

My testimony at this hearing will concern itself with children - their needs, their interests and their future. My experience as a member of the Board of Education indicates that during the course of events in the operation of a school system, we forget the ultimate goal and objective of education which happens to be the education of our children. This has

come about due to the tremendous amount of pressure brought to bear on members of Boards of Education to satisfy the wishes of the parents, local taxpayers and the employees of the Board of Education. The children, however, lack representation in the lobby groups which may bring about legislation favorable to them. Consequently, few legislators are motivated to speak to their issues. On the other hand, our teachers groups are one of the most powerfully organized groups in the State. They have been heard and continue to be heard loud and clear -- if not, that inevitable weapon hangs over our heads -- Strike!

We have been upset by students calling for a strike or walkout in order to bring their grievances to the attention of the public and administration. Typical remarks made during this period in a school crisis are that the students should go back to school and listen to what the teachers and the administrators have to say. However, in many instances, the children (in these cases) are simply following the example set by striking teachers.

In my estimation, teacher strikes have a very damaging effect upon students. Groups who use the children as ploys for their own gain render a disservice to our children. We can understand the need for public employees collectively to negotiate in order to improve their salaries, fringe benefits, working conditions and other welfare items. It seems to me, however, that since Chapter 303 of the Law of 1968 was adopted there has been tremendous improvement in teachers' salaries, fringe benefits and working conditions. For the most part, these gains have been made without the necessity of a strike. In this sophisticated day and age we should be able to work out a solution which would not necessitate a strike. Unfortunately, however, even though it has been illegal, several teacher groups have resorted to work stoppage in an attempt to increase their salaries and improve their working conditions. We observed that the rising cost of education resulted in opposition to the payment of school taxes by the homeowner.

It certainly is in the interest of our children that

educational services afforded them not be disrupted and that the self-interest of the school employees be taken care of in such a way that the childrens' education is not interfered with. Strikes by school employees do not actually hurt the employer, the Board of Education, financially as is the case with a private employer. When teachers strike, it is deplorable that the education of children suffers. A Board of Education has the legal duty and responsibility to provide a worthy educational program for the students of the community. When its employees make demands that are exorbitant, private employers may close down but Boards of Education cannot and should not close the schools.

I have deliberately refrained in my testimony this afternoon from commenting upon the right of public employees, other than school employees, to strike. Not having been directly connected with these groups I do not feel personally competent to comment on them.

The needs of our children in the 1970's dictate that there be a well-developed, sustained and worthy educational program afforded them. The best interest of our students dictate that they be in school in order to develop the basic skills necessary for employment and to prepare them to take their place in society. The future of our students will be no better than that for which they were prepared during their school years. It is our responsibility to see to it that they are properly prepared so that they will be a credit to themselves and our country. Students' rights are as important, if not more important, than employees' rights.

The school employees can bring their needs to the attention of the proper officials without stopping the educational process. To do so only prevents our children from receiving that which is rightfully theirs, a sound and complete education. Money losses due to strikes can be made up. It is difficult, if not impossible, to make up the loss of education resulting from teacher absence due to a strike.

Gentlemen, in view of the opinions I have expressed, I urge you not to pass Assembly Bill 521. To do so, would be a grave injustice to the thousands of children in the State of New Jersey who, after all, are really what our schools are all about. Thank you.

ASSEMBLYMAN BLACK: Thank you very much.

Any questions, gentlemen?

Now, since I have given an opportunity to a speaker who would normally be speaking in favor of the bill and that speaker has declined, I have been asked if I would allow another to take that speaker's place since we still have five minutes of the period left. Since that person has promised to remark in summary and having polled the five people sitting before you, we will accept one more to round out the day and that is Mr. Robert J. Roggenstein.

Let me state that this is very unusual. I am known as a very strong-willed and bull-headed South Jerseyan.

R O B E R T R O G G E N S T E I N: Assemblyman Black and members of the Revision of Laws Committee, my name is Robert Roggenstein, a member of the Jersey City Education Association executive board, and the Legislative Chairman of that body.

The teachers in Jersey City attended ten, three-hour negotiating sessions with the Board of Education in the months of December 1969 and January 1970. During these sessions, the Board of Education rejected 96 out of 100 proposals.

An impasse was effectuated and we later entered mediation which lasted two sessions. Fact-finding was also utilized but to no avail.

The Mayor refused to add the necessary moneys to the board budget to correct such problems as: lack of chalk, construction paper, textbooks and other instructional materials. The Mayor refused to add additional specialists such as remedial reading,

remedial arithmetic, speech correction, school social workers, psychologists and teachers of the brain-damaged and emotionally disturbed.

After many meetings of somber, serious deliberation, the executive board and membership voted to strike.

On the second day of the strike, 20 teachers were arrested. We eventually served 10-to 30-day terms in the Hudson County Jail.

Our experiences at the jail were far from pleasant. The boredom and lack of contact with loved-ones soon creeps up upon you. The dependence of waiting for people on the outside to do things for you is humiliating and somewhat disheartening.

History is repeating itself with the jailing of the Passaic teachers. Is this Jersey Justice?

Since the inception of the Industrial Revolution in the latter part of the 19th Century, the private sector has had the right to strike. During the Revolution the courts sided with management as they are doing now.

The right to strike has been recognized as an important employee prerogative in the free collective bargaining process of the private sector.

I submit that we are 70 years behind our friends in the private sector in gaining our rights, not as public employees, not as teachers, but as human beings.

No distinction in fact exists between private industries engaged in services which deeply affect the public health, safety and welfare and the activities of public employees to justify the differences in no-strike philosophies.

Each strike day was made up and there was no time lost in school by any pupil. Eighty-five specialists were added to the school system which highly improved the quality of education.

The local paper lauded the Jersey City Education Association for accomplishing what the Central Administration should have done.

A-521 would give a limited right to strike only after certain conditions have been met. A-521 would make it necessary for school boards to prove to the judge that all conditions were met before the judge could issue an injunction.

The judges could not just hand out an injunction without carefully considering both sides.

The only way the unjust jailing of teachers can be stopped is by the passage of A-521. At present, the judges inform us that it is up to the legislature to correct the imbalance.

I respectfully urge that you vote for and pass A 521.

Please return teachers in New Jersey to the status of first class citizens.

Thank you for allowing me to speak.

ASSEMBLYMAN BLACK: Thank you, sir. Any questions?

ASSEMBLYMAN EVERS: Mr. Roggenstein, you are a teacher?

MR. ROGGENSTEIN: Yes, sir.

ASSEMBLYMAN EVERS: Did you serve in jail during the strike?

MR. ROGGENSTEIN: Yes, I did.

ASSEMBLYMAN EVERS: I think we are a little confused on this. I was under the impression that we did have a work release program in the State of New Jersey. It is being checked out right now. I know in Passaic County we don't have the physical

facilities to handle such a program. But if we do have one and if Hudson County where you come from has one, would you as a teacher in jail take advantage of it by going back to the school room and teaching during the day and going back to jail at night?

MR. ROGGENSTEIN: I think if there were no other provisions made, I probably would jump at the chance after experiencing jail. I ran the elevator after spending some 10 days in jail. Boredom kind of gets to you and you need things to do. There are no recreational facilities.

ASSEMBLYMAN EVERS: In doing so though, don't you think you would be defeating your own purpose because then wouldn't you be diluting the bargaining power that would be granted to you by the right to strike? Don't you think, for instance, a Board of Education member might say, "Well, look, if you want to strike, Roggenstein, you go ahead, but you are going to be back in the classroom tomorrow anyway"?

MR. ROGGENSTEIN: Well, it certainly would defeat the purpose. I would rather see a bill such as A 521 passed because then there wouldn't be any clubs hanging over the heads of negotiators. No collective bargaining can take place when one side has all the power. Power is very important at the bargaining table.

ASSEMBLYMAN EVERS: O.K. Thank you.

Mr. Chairman, inasmuch as we have the last speaker here and I have been wanting to ask this question before -- it's a little lengthy. Actually I would like to read just excerpts of a statement that was handed to me this morning and it deals with private employment versus public. It reads as follows and I would like to have your comments on it: It says, "In labor disputes in private enterprise, the ultimate weapon of the employee or his union is the strike, and the ultimate weapon of management is to either relocate or go out of business entirely. Even the lock-out, which used to be a weapon of management, has been neutralized over the years by the National Labor Relations Board.

However, a sharp difference between managing private business and managing government is that government does not enjoy the option of relocating or going out of business. And to grant public employees the ultimate weapon of the strike would create a totally unbalanced situation. After all, the main mission of government is to provide services for people that they cannot provide for themselves. And when we strike against government, we are actually striking against ourselves.

"Another prime consideration is that gains made by private employees through negotiations or by strikes are passed along to the consumer through increased prices. We then, as consumers, may or may not choose to avail ourselves of such goods or services. But this is not the case with gains made by public employees. We have no choice as to whether or not we want the services furnished by government. We cannot shop around for a less expensive school system, police department, highway network, etc."

It goes on and on, but I am sincerely interested in your comments on that. Do you recognize the difference between private and public employees as far as the right to strike is concerned in the light of what I just read?

MR. ROGGENSTEIN: Assemblyman Evers, I don't see a difference. I really can't see a difference. I just wrote an extensive paper on negotiations and Theodore Kheel, I believe, pointed out in Atlantic City in 1969 that there is no difference between agreements made in industry and those made in the public sector. He says that the management in the private sector beats one another's brains out literally all year long on matters of concern which come up in the contract. He also feels that at the bargaining table they beat one another's brains out. But sometimes during the year, there are matters where both parties agree and they do work in conjunction with each other.

To get on with another part of your comment, the economic pie, if the private sector has - well, they do have the right to strike - but if they can strike and prices continually

go up and if public employees cannot strike and have lower salaries and cannot remain competitive in the economic market, I don't think this is very fair either. As prices rise, if we don't have salaries and benefits going up equal to those in the private sector, we are at a great disadvantage also.

I think that would be about the extent of my comment right now.

ASSEMBLYMAN EVERS: Thank you.

ASSEMBLYMAN SINSIMER: Mr. Roggenstein, regarding that same statement that Assemblyman Evers just made, do you honestly believe that anyone in the private sector goes on strike for the purpose of putting his employer out of business?

MR. ROGGENSTEIN: No, I don't think so. I think they would like to get a better share of the economic pie.

ASSEMBLYMAN SINSIMER: If the employer goes out of business, the employee goes out of business too, does he not?

MR. ROGGENSTEIN: That's true.

ASSEMBLYMAN DENNIS: I believe that is exactly the point. When the public employee strikes, government cannot go out of business. A private business can fold but a public business cannot.

We get back to this question of tenure. If you got the right to strike, would you be willing to give up your tenure?

MR. ROGGENSTEIN: Well, that is a matter that is a bit philosophical at this point. I believe a bill is before the Assembly now sponsored by the American Association of School Administrators and I believe that the Superintendents in the State of New Jersey are willing to give up their tenure in order to get certain other concessions. I can't go into it very deeply. I don't even remember the bill, but I know there is a bill before the Legislature.

I don't know whether teachers would be willing to give up their tenure. What is happening now statewide with

teachers who don't have tenure is they work for two years and many boards are just letting them go, because the supply of teachers is so great at this point. We have quality teachers. It is just a matter of finding them and hiring them.

ASSEMBLYMAN BLACK: Are there any further questions, gentlemen? (No response.)

At this point, I have an announcement. Walter O'Brien would like to have the teachers testifying meet with him after adjournment up at the front of the Chamber.

Ladies and gentlemen, that concludes the first day of the public hearing. Let the record indicate that we recessed at 5:20 on the 3rd and plan to reconvene on the 10th of May, at 10:00 A.M. in this Chamber.

(Hearing Adjourned)

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KENNETH A. GIBSON

MAYOR

NEWARK, NEW JERSEY

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M E M O R A N D U M

TO: Assembly Committee on Revision and Amendment of Laws
FROM: Kenneth A. Gibson
RE: STATEMENT BY THE CITY OF NEWARK ON ASSEMBLY BILL 521

My name is Kenneth A. Gibson and I am here today as a representative of the City of Newark. After considerable study of Assembly 521 and the ramifications of its enactment, the City of Newark is in total opposition to the passage of this bill. Mayor Nardi in his statement on behalf of the New Jersey State League of Municipalities and the League's Public Employees Labor Relations Study Committee has eloquently outlined many of our reasons for opposing this legislation. It is not my intention to reiterate the arguments he made but to expand on one of his points and to examine briefly three other negative aspects not only of Assembly-521 but of much legislation in general that is aimed at reforming Chapter 303.

Mr. Nardi stated that the procedure for determining whether a strike poses a clear and present danger to the public health or safety "is an absolute violation of home rule." We are in complete agreement with this statement. In a city of 400,000 people who desperately need improvement in services, we are hamstrung in our efforts to provide them by an increasing erosion of our powers. This bill would add to the list of legislative changes over the past several years that has depleted Newark's ability to control its own destiny. Municipalities provide services that the community cannot do without. Conflicts over the allocation of resources are resolved through the political process by the Mayor, Council and Courts.

This bill would allow one pressure group to supercede present political mechanisms and impose its demands on the community by a crippling yet legal strike. This bill represents a distortion of the principles of local government and a violation of the mechanisms of home rule.

Assembly-521 also is an example of what is wrong with most current attempts to reform Chapter 303. Chapter 303 is not a good public employment labor law. This is something I think we can all agree on. It contains many defects and deficiencies and has served to add even more confusion to an already muddled public labor situation.

However, Assembly-521 is entirely the wrong approach to use when attempting to improve current public labor law. It is piecemeal legislation and it only serves to worsen the present situation. There are presently at least five (5) other of these piecemeal attempts at reform in the Assembly and each evokes its own peculiar type and amount of controversy thereby adding to the confusion. Assembly-521 increases the tensions and mistrusts between employers and employees in the public sector by forcing them to line up opposing one another on proposed legislation. It takes attention and energy away from what is really needed in this area; major reforms in PERC legislation that are acceptable to both labor and management.

To effect responsible progressive change it is important that all interested parties take a long hard look at all aspects of Chapter 303. We need a far reaching bill that can be acceptable to all interested parties in the public employment area. As Mr. Nardi has pointed out many organizations have presented comprehensive recommendations for reform. This is what we should be discussing today and not a piecemeal bill that aggravates our current problems.

We in Newark, realize there must be some recourse if current provisions for collective bargaining, mediation and fact-finding fail. However there are alternative ways of settling labor-management disputes rather than legalizing costly and bitter strikes. The City of Newark is prepared to support provisions for compulsory arbitration in the event all other means for reaching a settlement on a new contract have failed. We would support this measure as part of a comprehensive reform bill which includes members of the PERC commission drawn from the public generally, which clarifies and strengthens the definitions of what contract terms are negotiable and which are not, which defines unfair labor

practices, erases deficiencies in the definitions of "supervisor" and "professional" employee and provides increased funding for the PERC commission.

There is a second negative aspect of Assembly-521 which is typical of a general problem that exists in public employment labor law today. Chapter 303 is a vague and ambiguous statute which fails to establish definite guidelines. Assembly-521 continues in this tradition. It is difficult to determine the exact meaning of the wording in Assembly-521. The following phrase from paragraph 1 of Section C is an example:

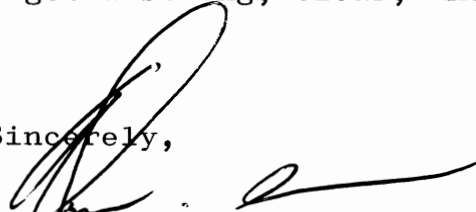
the commencement or continuance of the strike poses a clear and present danger to the public health or safety which in light of all relevant circumstances it is in the best public interest to prevent

Mr. Nardi has demonstrated the deficiencies of the wording "clear and present danger to the public health or safety" in this bill. It would also be useful to know just what "relevant circumstances" are. Also does the section quoted mean that in some cases a strike that posed clear and present danger would be permitted because in the "light of all relevant circumstances" it would be in the best public interest NOT to prevent it? It seems unlikely but what alternative meaning can this clause have?

Assembly-521 is a vaguely worded piece of legislation which makes it difficult for labor and management in the public sector to determine their legal position. It will serve to increase the confusion that surrounds Chapter 303.

This second general negative aspect will lead to a third that is also typical of current public labor law. That is, Assembly-521 will aggravate the necessity for lawyers' opinions, lengthy litigation proceedings and judicial opinions. New Jersey's public employment labor law should not be decided in the courts. It is the task of the State legislature to set up a public labor law that will enable employers and employees to resolve their differences without strikes. To that end, the City of Newark is prepared to assist in any way we can to get a strong, clear, and fair public employment labor law.

Sincerely,



Kenneth A. Gibson
Mayor
City of Newark

STATEMENT

Gentlemen:

I speak in opposition to the passage of A.521. I oppose the principle that public employees should have the right to strike, for I believe: (1) the protection and benefits afforded them by the Civil Service Regulation obviates the need for a striking power and; (2) the harm that would be inflicted upon the public by such strikes can not be justified. I oppose A.521 specifically because: (1) its language is too vague to provide the court with adequate guidance in determining what endangers "the public interest" and; (2) it permits strikes for any reason, not solely contract negotiation impasses.

I shall elaborate on these points.

The vast majority of public employees are protected by Title 4 of the New Jersey Administrative Code, the Civil Service Rules. I am sure you gentlemen are familiar with the Civil Service Rules, but permit me to refresh your memory on some of the specific provisions of Title 4.

All positions are filled from an eligibility list based on open competitive examinations; all positions are classified--fixing salary ranges and specifying duties; paid vacations, jury service and sick leave are provided for; working hours are prescribed; employees must give their consent to transfers; employees have seniority rights; employees have the right to organize; grievance procedures are prescribed; there are career development programs and award programs; and the employees have a right to a hearing on disputes, grievances and complaints. These are by no means all the rights of a civil service employee, but I feel this partial list is adequate to demonstrate my point.

Civil Service employees are well protected by the laws of this state; they are not subject to the harsh working conditions of the "sweat shops" of the 1930's, they are not in constant fear of losing their jobs and they are not kept in the dark as to their salary ranges. In essence, they have already secured the rights and benefits the strike has traditionally been used to obtain.

I turn now to those who will suffer the most from a public employee's strike; the public. I can think of no service that my City provides to its citizens, the suspension of which would not result in serious harm to the public interest. However, you gentlemen must enlist your own value

judgments as to the value of these services to the public when voting on this bill, so permit only to raise some questions and leave the answers to you. How much harm is done to the public interest when the police or fire departments do not respond quickly to emergency calls? When a blind man must wait to have his welfare claim processed? When a child is denied his education? When garbage remains uncollected? When a street goes unrepaired? When libraries are closed? When litter accumulates in our parks? When playgrounds must be closed? When a City Hall ceases to function?

Addressing myself to A.521, I believe the bill is fatally defective because of its vagueness. The bill provides that a court may only issue a restraining order against a strike when "clear and present danger to the public health or safety" is shown.

I submit to you the terms "clear" and "present" would give little guidance to a court in making a determination. Does "clear" mean facts which can be proven by scientific evidence? by statistics or probability? by expert opinion? by general belief of the public? Does "present" mean immediate? within a reasonable period of time? a week? a month? What exactly do these terms mean? What does "danger to the public health and safety" mean? Must there be an epidemic in progress? Or a crime wave sweeping the city? Or does it mean a likelihood of such events taking place? Or may it be interpreted to mean the parks are becoming unattractive and, therefore, disturbing to the mental health of ecologists?

I feel this bill is an attempt by the legislative to push into the courts highly volatile political issues it does not care to confront directly. If the legislature believes certain public employees should be able to strike, then why not specify them? Let the people of the state know what services you feel they can do without and for how long.

Lastly, A.521 would permit a strike for any reason, at any time. The strike need not be on a contract issue, any disagreement on any issue is sufficient reason to authorize a strike. A strike may take place at any time with little or no warning, not just when negotiations reach an impasse. At the very least, the right to strike should be limited to contract impasse situations.

I call for the defeat of A.521 for the reasons I have just outlined.

ASSEMBLY BILL NO. 521

MEMORANDUM AND STATEMENT ON BEHALF OF NEW
JERSEY AMERICAN CIVIL LIBERTIES UNION

By Morris Stern, Esq.

My name is Morris Stern. I am an attorney speaking on behalf of the New Jersey American Civil Liberties Union. At present strikes by public employees are deemed to be illegal, as a matter of common law, by the New Jersey Supreme Court. In the absence of legislative enactment the injunction has become the enforcement device for the common law strike ban. The contempt proceeding (or threat of it) is the ultimate weapon now used in New Jersey to prevent public employee strikes. The strike ban appears to be absolute. Thus a public employer, at least to date, can feel secure that the usual economic weapon — the strike — will not be lawfully wielded by the designated representative of the employees. The resulting imbalance in bargaining power could make collective bargaining a sham. The power and control over livelihoods, working conditions and other such subject areas thus reside in an agency, board or other bureaucracy, all of which cannot be viewed as always reasonable. There is a great potential for arrogant use of power and unreasonable exploitation of public employees. On the other hand, some public employee strikes can have devastating impact on the

public at large and could result in great waste of resources. Moreover, the economics of the public sector differs from that of the private sector, and dollar burdens are not necessarily passed along to the "ultimate consumer" as is the general case in the private sector. The resulting problem of protecting the public at large while providing basic due process for the public employee is staggering and requires Solomon-like approaches. The problem is highlighted by the growth of municipal, county, state and federal government as an employer and by the growth of unionization in this area.

To date, the New Jersey answer to this difficult social problem has been simple. Over 200 teachers were jailed in 1971 for striking in the face of broad injunctions resulting from the common law strike ban. (This is probably the largest number of people ever jailed in this country —for any reason— following criminal prosecution and conviction.) Yet strikes continue. Thus the simple answer has resulted in continued striking with its attendant waste and hardship, and severe punishment for the weakened partner in the collective bargaining relationship. Neither basic fairness to employees nor avoidance of strikes has been accomplished.

Any studied effort to ameliorate the problems in this difficult area should, in my opinion, contemplate, among other things, the following: (1) the due process protections for employees offered by the Norris-LaGuardia Act and its New Jersey

counterpart (N.J.S.2A:15-51 et seq); (ii) obligation on both parties to the negotiating process to bargain in good faith; (iii) an apparatus to separate the "critical" strike from the more ordinary strike; (iv) penalty for those who strike where forbidden by law, (v) the experience value of the Newark teachers' strike and other recent strikes; and, (vi) the draftsmanship necessary to alter the New Jersey common law in such a way as not to run afoul of prerogatives of the Judiciary as embodied in the New Jersey Constitution. Assembly Bill No. 521 is a welcomed effort in this area which requires legislation. It is respectfully submitted that the following suggestions, embodying a mix of the abovestated areas of contemplation, would improve the bill (and correct it where necessary).

Norris-LaGuardia Generally

Since 1941 New Jersey has protected the rights of private sector employees against arbitrary and unwise use of the injunction process in labor disputes. Prior to this period (and the enactment of the Norris-LaGuardia Act at a federal level) judicial power was unwisely used, and abused. Frankfurter and Greene documented this amply.

More of the protections there embodied should be added to the bill in question.

Limited Duration of Injunction If Allowed

The duration of a "permanent" injunction must be fixed. All too frequently fact situations change from year to year and bargaining period to bargaining period. Recognizing this, N.J.S.2A:15-55(b) limits injunctions to 6 months, once renewable for 6 months if all burdens of proof are carried by the employer. A521 ought to embody the same limit. Note that in Newark, the 1970 teachers' strike ban was called "permanent" and was carried forward to 1971 without a hearing. Fifteen teachers face prison now for violating a year old injunction, notwithstanding their argument that circumstances surrounding the 1971 bargaining were vastly different from 1970. The use of such dated process was deemed to be less than the best practice by the Appellate Division (which nonetheless affirmed the convictions).

Obligation Of Both Parties To Bargain In Good Faith

A.521 is one-sided to the extent that it fails to put the burden of exhausting post-impasse procedure now in being on both sides. What if the union representative offers to use the procedure, but the employer refuses? Note that N.J.S.2A:15-54 prohibits the private sector injunction when the "plaintiff...has failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or who has failed to make every reasonable effort to settle such

dispute either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration." In Newark, for example, in 1971, it was reported that the chief negotiator for the Board of Education stated flatly that the Board failed to bargain in good faith. (A.520, if adopted, would create a mutual good faith bargaining requirement, and could be mated with A.521.)

Penalty

In New Jersey, public employees have recently been jailed for as long as 3 months for denying their services to a public employer. Moreover, fifteen teachers now face jail terms running from one month to six months (with fines of up to \$1000). N.J.S.2A:15-57 limits punishment in the private sector to 15 days imprisonment or \$100 fine, unless there be a second act of contempt against the same injunction. Exacting of harsh penalties such as is now done in New Jersey does not recognize the wisdom of the 1941 Act. A.521 ought to provide a strict limitation on penalties.

An End To The Absolute Strike Ban — A Standard For Determining Critical and Ordinary Strikes

Beyond the actual content of the stated "clear and present danger" formula of A.521, the mere existence of such a formula would bring to an end the absolute strike prohibition

of the recent New Jersey common law. This change in concept is the single most important and laudable aspect of A.521.

The standard itself is a generality which requires a case by case determination. This might be a workable approach and deserves implementation.

Draftsmanship

A.521 would signal an end to the absolute strike ban of the recent New Jersey common law. Yet the language of its paragraph (b) is not sufficient to overcome the common law ban. Moreover, paragraph (c), though limiting the issuance of injunctions in public employee strike situations, may not be explicit enough to establish the right to strike — a concept basic to A.521. Finally, to the extent that the bill does not talk more in terms of "substance", the Court might view the limitation of its equity powers as "procedural" — and thus not within the Legislature's province.

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