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

before

SENATE AND ASSEMBLY COMMITTEES ON STATE GOVERNMENT

on

PUBLIC EMPLOYER-EMPLOYEE RELATIONS LAW
(Chapter 303 - 1968)

Held:
June 17, 1970
State House
Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Senator Willard B. Knowlton (Chairman)
Assemblyman Walter L. Smith, Jr.
Assemblyman Joseph Hirkala

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I N D E X

SENATOR WILLARD B. KNOWLTON (Chairman): Ladies and gentlemen, may we call this hearing to order.

I am Senator Willard Knowlton, Chairman of the Senate Committee on State Government, to which the various amendments to Chapter 303 have been referred for hearing and study and, if necessary, preparation of new legislation.

In order to expedite matters, I would like to say that we will run through until 1 o'clock, recess for lunch, and reconvene at 2 o'clock and go on until 5 o'clock.

I would appreciate it very much if you would, unlike most Legislators, keep your remarks brief and file whatever written statements you have with the Clerk.

The first witness is Mr. Pease who is Chairman of the Public Employment Relations Commission. Mr. Pease?

W A L T E R F. P E A S E: Senator Knowlton and members of your Committee, we are delighted to be here today and delighted to testify before you.

First of all, I would like to say that we have prepared a statement, which has been handed to you with sufficient copies. I do not intend to read this statement but I am just going to talk. (For statement - see p. 121 A)

SENATOR KNOWLTON: Thank you, Mr. Pease.

MR. PEASE: As I understand it, this Committee is charged with the responsibility for inquiring into the effectiveness of Chapter 303. Now it seems to me that the first question we have to decide is what is meant by

the effectiveness. Does it mean the workload that the Commission has carried? Does it mean the number of strikes we've had? Does it mean the number of impasses which might have led to strikes which PERC has settled? Just what does it mean?

It seems to me, it means all of these things. And I don't think you can judge the work of the Commission or whether the law is satisfactory or not until you know all of the facts and take them all into account.

First of all, I want to say that we don't say that Chapter 303 is a perfect law. We do say, it's a good law. We do say that we think it has been effective. Nor does the Commission claim that we're almighty.

We have done, I think, as you will see, an honest and a diligent job, and we intend to do this and continue to do this. But we can't do these things all at once.

Now there seems to be a feeling abroad that if you pass a law you are not going to have a strike. Well, history has disproved this, I think, over the past few years.

Somehow, also, information has gotten abroad that PERC, Chapter 303, is a no-strike law. It's not a no-strike law. It's a law which was passed more as a public relations law to enable people to utilize the facilities of PERC to reach an agreement. We have no power to force the parties to agree. We have no power to force them to do anything. All we can use is our

persuasion and our good offices. And I am sure, history proves again, that if parties get stubborn and their blood gets boiling, you are going to have strikes. I hate them as much as anybody does. I wish there was some way we could avoid them, and I will dwell briefly on this later on.

Now, with regard to the Commission itself and its workload. I think probably I should give you a little history of the Commission.

Chapter 303 was passed in September, 1968, retroactive to July 1, 1968. Now, as far as I am concerned, that was the first mistake that was made. It put the Commission in an impossible position. As a matter of fact, we weren't sworn in until December, and then there were only six of us sworn in. It put us in an impossible position. We should have had at least a year in which to find space in which to operate, to hire a staff, to get rules and regulations, but we had no such time. We were sworn in in December. We didn't even have a telephone, we didn't have a scrap of paper, we didn't have a place to sit, we had nothing. This is another mistake that I think was made.

It does seem to me that in a state like New Jersey, a big state and a fine state like New Jersey, that if you appoint a Commission somebody should come to you and offer to find you space, and adequate space. But as far as I know, there was no such organization in New Jersey. I

would sincerely hope that some day the State would have such an organization, because we had to rush around and try to find a place to meet. We utilized the Princeton Inn for a long time. Finally, Ray Male gave us a room up on the 13th floor of the Labor and Industry Building with a telephone. And that's all we had. Now, what were we faced with? We were faced with demands for mediation from teachers and boards of education all over the State. We had no staff. We had nothing. So, what happened?

Thanks to the dedicated members of the Commission, they took their coats off and acted as a staff. And I say this to Tom Parsonnet, to Professor Rees, to Ruth Page, to Dr. Hipp, and to Bill Druz, that we owe a great deal to them because I am sure that for two months, during January and February of 1969, they did nothing but work for the Commission. We settled some 75 or 100 mediation cases during that period without a single scrap of paper and without a staff of any kind.

And I must say that I want to pay tribute to Tom Parsonnet and Professor Rees, particularly, because they were the people who were expert in this field and they were the people who guided us greatly. Unfortunately, neither one is on the Commission now, but they did a great yeoman service and I am sure that I will be greatly indebted to them because I'm not a labor lawyer, never have been, and I never want to be again.

Well, we finally then, during the process, held

meetings twice a week and sometimes all day Saturday, at Princeton Inn, interviewing staff. Now we had a very difficult time engaging staff. First of all, you can't find people who are expert in this field. This is a new field. This is a developing field. Public employment relations is different from private employment relations. There is a different expertise needed, and it's hard to find them. Number two is that the salaries that we were offering were much lower than the salaries being paid in New York and Pennsylvania, and we were having difficult times trying to find people.

With this in mind, I remember, I went to Governor Hughes and I said, "Governor, I cannot hire an executive director of this staff for $20,000 to $25,000 a year; I've got to go to $30,000 to $35,000 and maybe $40,000." He said, "Well, you can go to $35,000 if you want, but try to keep it at $30,000 because I'm only getting $35,000." But this is what we're up against.

Well, we finally persuaded Lou Wallerstein, who had been head of the Federal Mediation Service in Washington, to come up as our first Executive Director. He was a tremendously able man, a tremendously fine man. Unfortunately, he only stayed with us for about two years and left. But, due to his efforts, we secured Mr. Aronin, who was then the Deputy Director and is now the Executive Director.

Both of these men had vast experience in private employer relations, public relations, and they had been

through the gamut of NRLB for years and years. Mr. Aronin was head of the Baltimore office of NRLB for many years, and he was on many state commissions in Maryland studying the law. Both of them were fine and devoted people, able people.

Through their efforts, we gradually developed a set of rules and regulations. And I am sure that they worked Saturdays and Sundays and nights and holidays to work them up. We held two public hearings and we promulgated the rules.

And I must say that, if you read the rules or hand them to anybody who is expert in this field, you will find it's a complete and fine job.

Now, while this was going on, we also had to get space. Well, finally, Ray Male offered us space on the 13th floor of the Labor and Industry Building. It turned out that we couldn't use it because of the vents and the lighting. He finally gave us a small space on the second floor and there we are today. It's not adequate at all and we have been looking for space ever since, and we were about to engage outside space, and I understand that Mr. Serraino, who is now a Commissioner with us, is going to find us adequate space in the Labor and Industry Building.

So, after a year and a half, I hope we are going to have adequate offices.

However, we did have trouble hiring people. We did hire, finally, - I think we hired the man sitting next to

you, Mr. Winard. We finally hired Mr. Howard Golob and Mr. Jeffrey Tener. Unfortunately, Ted Winard left us and went back to the Attorney General's Office, so that left us only with Mr. Golob and Mr. Tener. And then, when Mr. Wallerstein left us, Mr. Aronin selected his Deputy Director, Mr. Maurice Nelligan, who is very experienced in the field and is with us now.

Since that time, we've hired two additional people. So we have only a staff of six at the present time.

Now, let me give you some figures. Since December, 1968, PERC had conducted 95 hearings. Now some of these hearings would last a week and some of them last two months.

I just had the privilege of reviewing a report of a hearing of some 2,000 pages of testimony and exhibits, which lasted two months. Now, this is a difficult undertaking. We've had 96 hearings. We've had 86 representation elections and issued 71 certifications of representation.

During 1969, there were approximately 300 written agreements executed between employers and employees on terms and conditions of employment.

During 1970, we estimate that there are 500 written agreements executed between employers covering terms and conditions of employment, and many more agreements probably that we don't know about.

We also handled 400 mediations. Now, if you consider that each mediation might have been a strike, if we didn't

mediate, you can see what a mess the State would have been in. I don't claim that this would have been so but I do know that if we hadn't been in some of these situations there would have been a lot more strikes. We have had strikes, yes; we've had some one-day strikes and we've had two or more long strikes.

The strikes that occurred, for instance, in Newark and in Jersey City this year, were not labor relation strikes at all; they were strikes in order to force the State Government to give them more money. I went into Newark to settle the Newark situation and they told me this. I went in and talked with the Mayor of Jersey City in order to get him to negotiate, and they told me this. So, you can't classify these as labor relation strikes; they weren't; they were promoted for other means.

Now, when you go into a situation like this, - when I went into Newark, for instance, -- now, I may say that during 1968-69 I settled five myself. We had nobody to go in so I went in and settled strikes, mediated.

In the Newark situation, they didn't want us to come in but I finally decided to go in anyway, and it took me a whole day to get those people to agree to meet and where to meet. First of all, one of them said, I want to meet in the Holiday Inn,and the other said, I want to meet in the Board of Education and we won't meet anywhere else. I finally got them to meet in a hotel downtown if I would pay the room rental for the meeting. And when I

went in to see them, some of the words they used about the State and about myself are not fit to be printed. However, this is a situation where the blood was boiling. Fortunately, I got Ted Kheel to go in and, with his efforts and the efforts of his assistant and with the efforts of a lot of good citizens in Newark, that strike was settled.

The next day I tackled Jersey City. I went in and talked with Mayor Whelan in Jersey City. I spent a whole morning with him, aruging with him to finally get him to meet with the other people and discuss ways and means of settling it. We finally entered into a written agreement with regard to negotiations. We appointed a mediator and Jersey City was settled.

Now these are things that PERC has done. We say that, if you take into account all of the things under this law, it has been most effective. And I hate to think of what would happen if you hadn't had it, because in many states where they don't have such a law they have had many more strikes and troublesome situations than we've had in New Jersey.

Now, with regard to the Commission itself. Some commissions, as you know, meet once a month or once a year. This Commission, during the first year, met every week and sometimes twice a week, for all-day sessions and sometimes afternoon and night sessions. During the second year we met practically every week for afternoon sessions. It's a working Commission. It isn't just a stylist or high-hat commission

at all; it's a working Commission. And we have fine Commissioners and we have a fine staff of dedicated people.

Now, in the process of our negotiations and wanderings in 1968 and 1969, we had to prepare a budget for 1969-70. We had nothing to go by, really. We didn't know how many mediations we were going to have; we didn't know how many hearings we were going to have, or fact-finding; we couldn't tell; we had no experience. So, we took what we thought was a realistic look at the situation and we put in a budget. The budget was for $350,000. Well, as we came into the spring of 1970, we found that we were running out of money because our workload was so heavy in January and February - 250 mediations that we handled. Now this was a terrific load. People say that we shouldn't have handled mediations, we shouldn't have had so many. But what are you going to do when a school board or a county or a city calls up and says they are at an impasse and won't you send somebody to help us? Are we going to sit by and say we are not going to send a mediator? It would be the worst thing in the world that we could do. If a strike resulted, we'd be blamed. The best thing to do is to send in a mediator if they want this. So, we sent in mediators at their request. But there were so many impasses and so many trouble situations that we used a great many more mediators than we thought we would.

Now, with the small staff that we have, we couldn't possibly handle these mediations. So, consequently, we

have to go outside and hire professional mediators, and there are a lot of them available in New York, New Jersey and Pennsylvania. We had to go outside and hire these people.

Now, first of all, they are not easy to find because they are very busy people. And, secondly, they cost money. There is a scheduled rate and we have to pay the scheduled rate to get them. But, through these efforts, as I said, I think we successfully averted - I wouldn't know but I would say 50 or 75 strikes, without a doubt, in my opinion.

So I think that over-all it has been very successful.

Now, with regard to the staff itself - no, let me finish on the budget item - I get wandering. When we came up into April, we found that we were running out of money, that we had just enough money to carry the staff through to the end of the year but we had no money in which to hire ad hoc hearing officers, mediators and fact-finders. So we put in for a supplemental appropriation, immediately, of $36,000. It was denied. So, what did we do? We had to stop and postpone all hearings and we had to postpone some 25 hearings over into July. We took our staff which, as I say, was small, and put them into mediation. And during this period the staff has acted and handled some 65 mediation cases. And I may say, it has done so very successfully. But this has put a tremendous load on the staff because they have had to work nights. Mediation takes place, often, in the evening. So they have been

in the office during the day and they've gone mediating at night. And the staff has been overworked and overloaded, and I think it's underpaid, myself.

But, what could we do? Now, we've received complaints and I'm sure people over the State are complaining that we didn't do this one and we didn't hold a hearing. We couldn't. We had no money to pay them. We couldn't do it, and we were told not to contract for one cent over what we had. And we couldn't do anything, our hands were tied. All over, what I say, a measly $36,000.

Now, we also had to prepare a budget for 1970-71. And looking over the whole situation, from our past experience, and looking at what New York had and other states, we figured that we needed 18 staff positions. We put in for 18 staff positions. We put in a budget of $575,000, which is about one-third of the New York State budget. We were cut to $373,000, and we were cut from 18 staff positions to 12 staff positions.

Now, this, to me, is just poor logic and poor management. I can't understand it. I've tried in every way possible to move the Governor and to move the Budget Director, but I have not been able to do so. It has been very disappointing to me. And I think the people in the State have a right to complain, complain about us, because we haven't done what we should have done. But we couldn't do it. And this is where I welcome this opportunity today to explain to the people of the State

of New Jersey what our problems are. We have had very difficult problems and I don't know how we are going to come out of them and do the job we ought to do unless we're given adequate office space, adequate staff, and adequate money.

And I can assure you, I've been associated with businesses for some 50 years and worked with businesses for 50 years, and you know, as well as I do, that if you want good people, if you want to do a good job, you've got to pay the people the going rate. And this is what we've got to do; this is what New Jersey has got to do if you want this Commission to do an important job.

Now, through these struggles and trials and tribulations, I have a personal matter. I am not a politician; I've never run for public office; I've never held public office; I never want to hold public office. I took this job from Governor Hughes because I have lived in New Jersey since 1929 and had never done anything for New Jersey. I am 68 years old, semi-retired. I figured that here was an opportunity maybe for me to do something for the State of New Jersey. I had served with Governor Hughes on the State Commission for Capital Needs and have been Chairman of the Transportation Commission. And I may say that through their efforts we saved our transportation system. I'm a commuter; I've been a commuter; and the railroads were falling apart. They are better now. They aren't what they should be but

they're better and I hope that they will be made a lot better.

But I got to know Governor Hughes here and when he asked me to do this, I said, no, I'm not qualified, I don't want to do it. He bludgeoned me into doing it and I finally said I would take it for two or three months until I got things going.

Well, when I got into it, I found it wasn't as easy as he said it was. I found it was interesting. I found it presented a hell of a challenge to me, really. But here was an opportunity, I thought, to develop for New Jersey a commission which would be a real businesslike commission which would do a tremendous and outstanding job for the State of New Jersey. This was what I wanted to do. And so, rather than resign at the end of three or four months, I decided that I would stay on until the Commission was fully organized and set up not as another government bureaucracy but as a business commission which would do a businesslike job for the State of New Jersey. This was my aim and this was my dream. Unfortunately, the dream has been shattered. I was denied the $36,000; my budget has been cut; and, consequently, I have resigned as of July 1 of this year.

Now, I regret to do this but I cannot go on, I could not go on with a straight conscience and a straight face, representing the people of New Jersey and trying to do the job that I thought should be done when I wasn't

given the cooperation and the help that I needed to do it. So this will probably be my last appearance before you. I know it will be my last job for the State of New Jersey. I will go back now and be a commuter and complain about the Republicans and the Democrats doing nothing for the State of New Jersey - and I am a Republican.

I thank you very much.

SENATOR KNOWLTON: Thank you very much, Mr. Pease. May I just ask you a few questions.

MR. PEASE: I will say this, if you want to ask me questions, I'm here and I will be glad if your Committee would like to meet with me at any time. You just let me know and I will come and meet with you and give you the benefit of all the knowledge and advice that I have.

I may say that I've learned a lot. I've met a lot of fine people in New Jersey. I've been to a lot of fine places in New Jersey, where I had never been before. As a matter of fact, I had only been to Trenton once in my life before I came down here to see Governor Hughes, and that was when I played in the State Amateur Golf Tournament in 1942 at the Trenton Country Club.

So, I have seen some of New Jersey. I've had the privilege of meeting some wonderful people on the Commission and I have met wonderful people all over the State. So it hasn't been a loss. I've been delighted to do it and I will be delighted to help your Committee in any way that

I can.

SENATOR KNOWLTON: Thank you very much, Mr. Pease. Would you please remain seated, I would like to ask you a few questions.

Incidentally, to my immediate left if Assemblyman Walter Smith who is Chairman of the Assembly Committee on State Government; and, over here, to my far right, is Assemblyman Joe Hirkala who is a member of the Assembly Committee on State Government; and to my immediate right is Mr. Theodore Winard, Deputy Attorney General of the State and formerly assigned to PERC.

Mr. Pease, I just might say, at the outset, that I certainly congratulate you on offering your services to the State of New Jersey. I'm sorry that you see fit to resign as of July 1. I think all of us here wish that more citizens would come forward and aid the State in various capacities.

Do you have any suggestions, sir, as to how the law could be amended to make it a more effective act?

MR. PEASE: I have quite a number which I will be glad to review with you quickly, as quickly as I can.

First of all, under the present law it is provided that in order to send a mediator we have to have a request from one of the parties. Now, we think that we should be able to send in a mediator at any time that we want to.

Now, you take in the Newark situation, this year. They never requested a mediator. In fact, they didn't

want us to go in but we knew, a month ahead, that there was trouble brewing and we should have been in there a month ahead. And I think that the law should be changed so that we can send a mediator in at any time we think an impasse is threatening or trouble is threatening. This is number one, that I think we should do.

Number two. There is a provision or some thought that mediation should be paid for by the parties. We don't agree with this. Mediation is offered to the parties by the State as a means of reaching an agreement. It's being offered to them and the State should pay for it.

Now I don't believe there is any other state in the Union that I know of where the parties pay the cost of mediation, because this is something that's offered to them and they will not avail themselves of it if they have to pay for it.

Now we have had this experience in fact-finding, where they've had to share the cost, and we've had great difficulty in collecting the money on fact-finding.

I do feel that it's proper to charge the parties on fact-finding but we do not feel that it would be proper to charge people for mediation.

There has been a great dispute in the State on what is meant by the "terms and conditions of employment." Various people have offered definitions. I worked for two nights, at home, trying to write a definition that would be logical and would mean something, and I couldn't

come up with one. I am sure you will hear today people say, something should be done, these ought to be defined. Well, what we propose is this: When a dispute occurs on "terms and conditions of employment," - what is included in it, whether it's classroom size, number of teachers, or whatever it is, that that be lifted right out of the impasse, sent right to PERC itself, and let PERC decide whether it is a term or condition of employment. In this way, it allows the party to go on and negotiate; it does not hold up their negotiations but it permits a quick decision by PERC on what is meant by the "terms and conditions of employment."

Now this system operates in New York City and it works very successfully there. And we feel that this system could be employed and should be employed in New Jersey.

Also we feel that there should be a definition of "good faith negotiations" in the act. And you will find in our statement, page 6, we propose the definition as follows: "To negotiate collectively is the good faith performance of the mutual obligation of the employer and representative of the employees to meet at reasonable times and negotiate regarding terms and conditions of employment and to participate in the impasse resolution procedures with the intent of arriving at an acceptable common ground; however, the obligation does not compel either party to agree to a proposal or to make a concession

so long as such refusal to agree or concede is made in good faith and based upon reasonable grounds."

Now, we think this would aid the parties and facilitate their reaching agreement.

Now you also will hear, and I am sure there is a fear particularly on the part of the State, that there will be fragmentation of the employees. Whether or not this occurs, I do not know; you can't tell and no one can tell. However, we feel that in the present statute the criteria is "community of interest." Now, "community of interest" is widely used in many states as the criterion guide. However, we think that it might be well to add to that criteria. So the additional criteria which we propose are as follows: "The authority of the public employer to negotiate terms and conditions of employment" and "the joint responsibilities of the public employer and public employees to serve the public." This would give us other criteria and we think they would be very beneficial in resolving disputes.

Now we have had a lot of cases on what is a supervisor and non-supervisory employee. This is quite an area of dispute. So we propose that there be a definition of what is meant by this. And I think you will find this on page 9. On page 9 there is a definition of "supervisory employee," right at the bottom of page 9: "The Commission, after due consideration, has concluded that the term "supervisor" should be defined as meaning anyone having

the authority to "hire, discharge, discipline or evaluate employees or to effectively recommend regarding any of the foregoing."

This gives us a basis on which to determine, it seems to me, what a supervisor is, and I think it would be very helpful in the law.

Now also there's a question of whether or not a supervisor should be in the same unit with a non-supervisor. This has been a great area of dispute. We propose the following addition, which is on the bottom of page 7: "If the Commission finds that established practice, prior agreement or special circumstances dictates a unit of both supervisors and non-supervisors a majority of such supervisory employees must vote for inclusion in such unit." This, to us, is a democratic way of doing it and it gives that party the right to choose whether or not the supervisor will be with the non-supervisor.

I think over a course of time we will find that supervisors will not want to be with non-supervisors, but at the present time this situation exists throughout the State and I think we feel that this is the way to handle it and let them vote on whether or not they want to be included in the unit.

The Assembly Bill also proposes that"new rules or modifications of existing rules governing working conditions shall whenever practicable be announced in

advance and discussed with the majority representatives before they are established."

If this were done, this would mean that they could adopt any kind of rules and regulations that they wanted to. All they would have to do is discuss them. Under the present law, they have to negotiate with them. We feel that there should be no change in the present law. But, if there is to be a change in the present law, we would propose the following: "proposed new rules or modifications of existing rules governing working conditions may be instituted by a public employer and shall thereafter be negotiated with the majority representatives provided that if the parties are unable to agree upon such new rules or modifications of existing rules within 30 days after they are announced the original rules shall be reinstated."

In other words, this gives the parties the right in an emergent situation to change the rules, which I think probably they should have in some emergencies. But it will not relieve them from the duty to negotiate and bargain and reach an agreement. If they can't do it, then the original rules are reinstated.

The present law does not contain a definition of "craft employees." We believe that there should be a definition of "craft employee" in the act.

I have already covered the question of supervisors.

We agree with A-498 in substituting the word

"commission" for the word "division" throughout.

We specifically wish to note our objection to the amendment proposed in A-498 which provides: "Nothing in this Act shall be construed to abrogate or modify in any way the provision of Title 11, Civil Service, of the Revised Statutes, or any rules or regulations promulgated thereunder." This provision could give the Civil Service Department or Civil Service Commission the authority to effectively nullify and void the provisions of Chapter 303 by rules or regulations thereafter promulgated. We would find this provision acceptable by the insertion of the words, "heretofore promulgated thereunder." In other words, any rules or regulations they have to date are all right, but if they are going to change them hereafter, no, they can't, because, otherwise, you would undermine the whole fabric of 303.

Now I am sure there will be discussions here about passing a law saying that public employees can't strike. Our Commission is divided on this. We submit no recommendation. However, I have found that there should be something done with regard to the issuance of injunctions and with regard to the fining and imprisonment of teachers and public employees.

The lawyers in New Jersey tell me - this is not so in New York but they tell me it's so in New Jersey - that all they do is go into court and get an injunction. There is no hearing, there's no opportunity to appeal

the order that's issued or anything else. The court does not take into account mitigating circumstances or the fact that maybe the employer himself was responsible for the strike.

I know that in Newark, in Jersey City - when I went into Jersey City in the spring of 1969, the Board was responsible for that strike, not the teachers, the Board was responsible because the teachers had said, we want to discuss wages, and they said, we aren't going to even discuss it, you're going to take what we give you. Now, is that negotiating?

But this is what would happen. Now what were the teachers going to do, what could they do? The Board could sit there and say we're going to do nothing and if you strike we're going to enjoin you. And that's just what happened.

Now it seems to me, if I had been a judge sitting there I would want to hear the whole story. It's only fair, it seems to me, fair and equitable, that when a judge is doing these things he should take into account mitigating circumstances because, otherwise, you have an imbalance here, an unfair imbalance which I don't think should be countenanced, I really don't.

We have proposed, on the bottom of page 10, that the Legislature consider the passage of appropriate legislation or resolution requesting or requiring that the courts consider (1) the equities of the situation,

(2) any mitigating circumstances, (3) whether the public employer by its conduct has provoked a work stoppage, (4) the employee organization's efforts to prevent or terminate a work stoppage, and (5) the respective positions of the parties in meeting their obligations under Chapter 303.

This, to me, would balance it. It would make it fair and equitable. And it comes right back, as a lawyer, to the doctrine of clean hands. I think they should come in with clean hands, if they're going to come in for an injunction.

This not only goes, as I say, to the granting of the injunction, but for the fines or penalties that are going to be imposed for a violation.

Now I don't like strikes, and this is not on the agenda here, this is my own personal observation. I don't think the public is going to countenance strikes of public employees very long. I would feel that there must be some way that you could end these situations. Now there are only two ways that I know that this can be done - one is compulsory arbitration; two is the setting up of special labor courts in order to determine the disputes.

Now, I don't care which route you go, myself, but I think eventually you're going to go one of these routes. Now the Federal Government had to do it recently and I think you will find that the Federal

Government will have to do it again. And I think that we're all coming to this because I don't think the public is going to put up with these strikes. But there should be some fair way of settling this, some means, like a law suit. In other words, what would happen to the private litigants if we had no courts to determine disputes between litigants? What would happen? There would be chaos. Well, I think we've got to have the same thing with regard to public employers and employees, some sort of arrangement where a final settlement is reached. And these are the only two proposals that I've heard.

Now, the question of compulsory arbitration, as I say, has been done by the Federal Government; it's being tried in New York City. And Judge Rosenman, in New York, is a great advocate of the court system, he has great experience in this field. Now, there are two methods of doing it, and these systems have been tried in other states and I would urge this Committee to study from all angles and, if necessary, send people out in the field and find out what the experience has been in this field before you do anything on it because this whole field of public employment is moving fast, it's changing, and there are a great many things going on which you should know about and I think you would want to know about before you pass any laws.

Now, during the past year and a half, I spent a great many of my evenings reading up on these things,

and there is a great mass of law, and it's moving fast. And I would like to see New Jersey in the forefront. I would like to see New Jersey take the lead in these things; not to hang back, as has been done in many things I think, but take the lead in this thing and be a lead state in doing something. I would be greatly overjoyed if that could be done.

Now, there is one large area which I think you should seriously consider. I have believed that the act permits us to handle unfair labor practices. Now, I think it's essential for the Commission to do this. I think there is language in the act which covers this. However, the case is now before the Supreme Court and it may be decided one way or the other. I don't know how it will be decided. The simple way of doing this is to add to Chapter 303 an unfair labor practices section. This should be done, by all means, it seems to me. It would obviate the necessity of court tests and everything else. And, certainly, if the Commission is going to be useful, it ought to have powers to enforce its judgments. Of course, it can always be appealed, so there would be no harm done. But I do think that we should have the power to enforce the judgments that we make. And we have set forth on page 11 the language that we would like to see inserted.

Now, in closing, again I want to thank you very much. Oh, there's another thing that's important and

I'm sorry that I missed it, which is the composition of the Commission. At the present time, you know, we have a tripartite commission. Personally I found that the tripartite commission was of great help,and it has been a great help to have people like Tom Parsonnet and Fred Hipp and Ruth Page and Professor Rees and Bill Kirchner and Charlie Serraino on the Commission, because it gives you all points of view and gives you chance to make a good judgment. However, they claim conflicts of interest and these things, and I believe there is a proposal, maybe, that it be made all public, that they be all public members. That's all right. I don't object to it. But I do say that if you do that you are losing a great deal becausing you're losing the benefit of the representatives of public employers and public employees.

Now, a way that can be found to handle that would be to have, say, a commission of three or five public members and have four or five, or whatever number you want, representatives of public employers who would sit in on mediation, who would be there on the mediation because that's where they are most valuable. And I can give you, probably, if I took the time, 15 or 20 cases where,due to the efforts of Tom Parsonnet or Dr. Hipp or to Ruth Page, we were able to settle matters just because they knew the people and because of their individual interests. Now, I think you shouldn't lose that. I don't think you should lose that by putting

on the Commission all public members. I think you would lose a great deal if you do not have the advice and assistance of these people. And I would certainly urge that something along these lines be followed.

My boss, back here, Mr. Aronin, says that I have covered it. I rely on him a great deal, as you can see. I think he's an able fellow; he knows this field; and I appreciate his help and I appreciate speaking to you.

Now, are there any other questions that you would like to ask me?

ASSEMBLYMAN SMITH: I have a few. With respect to the Civil Service problem, your recommendation is that you would accept the provision honoring Civil Service rules except that you would not want any new ones promulgated.

MR. PEASE: Yes, that's right.

ASSEMBLYMAN SMITH: Well, wouldn't that result in the stagnation of Civil Service and replacement by 303 of the Civil Service?

MR. PEASE: No, I don't believe so, sir. They can always negotiate the rules.

ASSEMBLYMAN SMITH: Well, isn't that the eventual result of 303 anyway?

MR. PEASE: What do you mean?

ASSEMBLYMAN SMITH: Replacement of Civil Service?

MR. PEASE: Oh, I don't think so. No, I don't

think so. There is no intention, as far as I know, of replacing Civil Service, no.

ASSEMBLYMAN SMITH: Well, it would be relatively ineffective if 303 is permitted to expand and grow and the other one isn't.

MR. PEASE: I think a lot depends upon what Civil Service does.

ASSEMBLYMAN SMITH: Well, they are sort of limited too, as to what they can do.

MR. PEASE: Well, we have sat down with Civil Service, trying to harmonize. I think we can harmonize. I don't think there is any harm.

ASSEMBLYMAN SMITH: Now, also with respect to your recommendation of being able to go in without a request. Now, you say, you need a request from either party?

MR. PEASE: Yes.

ASSEMBLYMAN SMITH: Well, I know the Commission has done many good things and I want to join, with Senator Knowlton, in complimenting you for your dedication, but we have had complaints also, I guess as well as you have, and one of the complaints that was brought to my attention was that many times you go in prematurely, before they've had a chance to negotiate freely on their own, both parties. What do you have to say to that?

MR. PEASE: We may have. I don't deny it. We may have in certain situations. But we have always had a request to go in and we have checked to find out what the

situation was. Now, quite often I found this, when I was doing the mediating. I would get a request from a teachers' association to go in and I'd call the board of education and they'd say, "we're ready to meet, we're ready to meet anytime." I'd say, "How many meetings have you had?" They'd say, "Well, we've been meeting for six months." I've said, "What have you agreed on?" and they've said, "Practically nothing."

Now, you know something is wrong when you can meet for six months and not agree on hardly anything. I'd send in a mediator.

Now there may be times when we would be in too fast but I would rather be quick in going in than too late because if you go in too early, you get in before the blood is boiling, before the parties get heated up and are calling each other names. And if you ever sat in on some of these negotiations, as I did, and heard some of the names that were called, they're not pretty names, I can tell you this. So the idea is to get into the situation before the blood gets boiling and before they get too stubborn. Then you have a chance to settle it. But once they get in and positions harden - I know up at Ramapo Hills when I got in there, all there was was $8,000, that's all there was between them, and they had been fighting for two weeks on this thing, $8,000.

ASSEMBLYMAN SMITH: Well, what recommendations would you have to try to prevent a premature entrance?

MR. PEASE: I would hope that we would have more time to investigate the situation before we went in. But there again, you see, they don't come to us in November or December, they come to us in January. The budget deadline is the end of January or the end of February. We're right up against the wall. So we don't have much time to act. If you could make it some way so that all their negotiations would terminate, say, December 1, and if they hadn't reached an agreement by December 1 then we could send a mediator in. That might do it. We might try that. But I don't think that would work. I think you've just got to rely on the judgment of the Commission when to go in. Now it may make mistakes, one way or the other, but I would much rather go in too soon than to go in too late.

ASSEMBLYMAN SMITH: Your primary concern is the strike, is that right?

MR. PEASE: This is what we're here for. This is what we want to prevent. This is the mechanism for preventing strikes.

ASSEMBLYMAN SMITH: Then you would prevent strikes at any price, would you say?

MR. PEASE: Any price? No, not necessarily any price. But, as far as money is concerned, I certainly would spend some money to prevent a strike. Because if we spend $500 for a mediator and you have a strike for two days, the cost to the community is much larger than $500.

ASSEMBLYMAN SMITH: OK. Thank you.

MR. PEASE: Does that answer you, sir?

ASSEMBLYMAN SMITH: Yes, sir.

ASSEMBLYMAN HIRKALA: Mr. Pease, you mentioned that you had complained to the Governor and to the Budget Director regarding your budget allocation. Now at what point did you complain to the Governor and the Budget Director? Had they cut you more than you finally achieved or had they just cut you and that was how it remained from first to last?

MR. PEASE: Well, maybe I better give you the sequence. I think I can give it from memory.

ASSEMBLYMAN SMITH: Maybe you better say which Governor.

MR. PEASE: Well, I met with Governor Cahill and some of his staff, right when the Newark Strike was on, in order to discuss the Newark strike. At the end I saw the Governor and I said, "Governor, I want to resign, I'm going to resign because I only intended to be here a month or two, in the beginning. It's a lot of work. I think I've done my duty." He said, "No, I don't want you to resign. I want you to stay. You've done a great job and I want you to stay." I said, "Well, Governor, I will stay on two conditions, the same conditions under which I took the job from Governor Hughes." One was that I would receive his support and number two is that there would be no political interference with the work of the

Commission.

Now I said that second one for two reasons, because I feel very deeply that this Commission has to be independent, it has to be if it's going to function and be worth anything.

I will say, as far as Governor Hughes was concerned, he lived up to these commitments.

After I had received this request from Governor Cahill, I then went into Newark, - I then went into Jersey City and Newark, and left on a month's vacation in Florida. When I came back I was advised that our supplemental request for $36,000 had been refused.

ASSEMBLYMAN SMITH: When was this?

MR. PEASE: This was probably in April. I was in Florida for most of the month of March so it was early in April. I have the dates in my briefcase and I will be glad to give this to you.

SENATOR KNOWLTON: April of this year.

MR. PEASE: April of this year, yes. I then attempted to get in touch with the Governor and I was unable to do so. I wrote him a couple of letters. I wrote him three letters, as a matter of fact, about it, sending him this information. I then called his appointment secretary for an appointment and I got no appointment. I then sat down and wrote the Governor a personal letter on my personal stationery and marked it "personal and confidential." The next day I got a telephone call,

"Walter, I want you to come to Trenton tomorrow. I'm sorry, I've never seen any of these letters that you wrote me." I came down. He apologized to me and said, "I'm sorry. These letters, I've tracked down two of them, I can't find the third but I have tracked down two of them. But I've never seen them." He said, "This has never happened to me before and it's never going to happen again. And I apologize to you, and I'm sorry." Well, I said, "Governor, I thought something was wrong because I knew your request for me to stay here was sincere and I wanted to help you out. But," I said, "this makes it impossible. If this Commission can't have this $36,000, then we can't function, it's impossible." He said, "Well, I'll see if something can't be done." I heard nothing. Then PERC got word that our budget for 1970-71 had been cut. I wrote him about that and I talked with him, and I said, "Governor, my resignation is in as of July 1." I said, "Apparently, there is something going on that I don't know about. Maybe you don't like me. Maybe you don't think I've done a good job. But, anyway, I can't operate this Commission and I can't face the people of New Jersey and not do a workmanlike job. So my resignation is in as of July 1." And I have a very fine letter from the Governor accepting the resignation with regret and telling me how much he appreciates what I've done.

Those are the fact.

ASSEMBLYMAN SMITH: Well, wasn't that budget cut

prior to the new Administration?

MR. PEASE: No. What was the question?

ASSEMBLYMAN SMITH: The question is, wasn't that budget cut prior to the new Administration? In other words, that was the recommendation. The Governor came in --

MR. PEASE: No, this was cut, this is the 1970-71 budget.

ASSEMBLYMAN SMITH: I understand. But the hearings were held in the fall of the preceding year.

MR. PEASE: Yes, I appeared before the Committee.

ASSEMBLYMAN SMITH: Isn't that when they were cut?

MR. PEASE: No. We didn't receive word they were cut.

ASSEMBLYMAN SMITH: Well, you may not have received word.

MR. PEASE: We didn't receive word of a cut until May.

ASSEMBLYMAN SMITH: OK. We can check on that.

MR. PEASE: Does that answer your question?

ASSEMBLYMAN HIRKALA: No, not entirely, Mr. Pease. I would like to know when you were notified that your $575,000 request would achieve a $375,000 allocation.

MR. PEASE: In the budget book, when the budget book was written.

ASSEMBLYMAN HIRKALA: And did the Budget Director give you an adequate opportunity to explain your request?

MR. PEASE: We had a hearing before the Budget

Director and I requested an appearance before the Legislative Committee but never appeared before the Legislative Committee.

ASSEMBLYMAN HIRKALA: I see. So, subsequently, your budget request was cut by 35%. Now, in what area of your Commission do you think this would cause a serious, critical situation?

MR. PEASE: Well, up to date it hasn't caused any serious situation. The $36,000 supplemental request was the one that caused a serious situation right now. As of July 1, we will be out of that. But it means that we aren't going to have an adequate staff to do the job that we have to do. It means we're being cut from 18 staff positions to 12.

ASSEMBLYMAN HIRKALA: Primarily then, the lack of funds will result in an inadequate staffing to carry out the work of the Commission.

MR. PEASE: In our opinion, yes, sir.

ASSEMBLYMAN HIRKALA: Now, one final question, Mr. Pease. As the law now stands, without any amendment, do you feel that there is a proper balance,under the provisions, as it relates to employers and, on the other side, employees, or do you think there is an imbalance favoring either of the parties?

MR. PEASE: No, I think there is a fair balance. You have three public members, two representing employers and two representing employees. And the three - if there is a partisanship - and I didn't always find this

to be so in their voting on this - I didn't always find that the employer representative voted as you'd think he would vote, he quite often would vote with the public representative; and the same way with the employee representative. They didn't always vote the same, by no means. But the three public members can generally carry the day, and they have, as far as I know.

ASSEMBLYMAN HIRKALA: Thank you very much.

SENATOR KNOWLTON: Thank you, Mr. Pease.

Mr. Aronin?

L O U I S A R.O N I N: Mr. Pease's statement will suffice, I believe, on behalf of the Commission. I want to only state that we do have copies of the full statement with appendices for whoever would like a copy of it.

SENATOR KNOWLTON: Thank you.

Mr. Parsonnet?

T H O M A S L. P A R S O N N E T: Senator, if I may introduce Mr. John Brown, Secretary-Treasurer of the New Jersey State AFL-CIO, he will speak shortly, first, and then I will take over, if I may.

SENATOR KNOWLTON: Thank you, sir.

Mr. Brown.

J O H N J. B R O W N: Senator Knowlton and members of your Committee, on behalf of President Marciante and the State AFL-CIO, I appreciate appearing before you representing the State AFL-CIO and the Labor Movement in

New Jersey.

We have presented a statement to your Committee on PERC, what it entails, and some of the bills that we feel would be objectionable as far as labor within the State of New Jersey. (For statement - see p. 161 A)

At the outset, may I respectfully suggest that the one bill before the Legislature - and I will have to beg your indulgence because there are parts that I would like to read from my statement that highlight the many things that we want to discuss. And the one bill that we are talking about, which is Assembly Bill 1049, has as its purpose the inclusion of public employee disputes under the provisions of the Anti-Injunction Law.

You might remember, in our last appearance on the question of public employment disputes, we pointed out the undeniable fact that every case in the last two years of a stoppage of work by a group of public employees has resulted from the refusal of the public employer to comply with the requirement of the law to negotiate collectively in good faith.

SENATOR KNOWLTON: What bill are you referring to now, Mr. Brown?

MR. BROWN: A-1049.

SENATOR KNOWLTON: Thank you.

MR. BROWN: The courts, we believe, have disregarded this obligation of the employers but have landed like a ton of bricks upon employees who are forced to protest a

violation of their rights. Our Anti-Injunction Law provides, among other things, that no injunction shall issue unless the employer has complied with its obligation to negotiate in good faith and to use all available governmental services for mediation and fact finding.

The New Jersey State AFL-CIO wishes to submit to you, in the most certain terms, that not until employers have been forced to recognize and comply with their obligations under the law can we expect a reasonable and effective result from the Public Employment Relations Act. This is the reason we urge you to pass Assembly Bill 1049.

Maybe, going back over the years, we recognize the private employment in which we thought we had come a long way, but did not recognize the public employer that they did not and had no idea - and this is not said with any caustic attempt whatsoever - to basically negotiate in good faith. And the many problems that we have seen with the public employee has come about because of this.

Now we have before your Committee certain bills that we object to, and in our statement, - I would only like to highlight them rather than go through the whole thing for you.

Senate Bill No. 537. This was just discussed and we think it's important. We cannot understand why the public employees or public employers should be required

to pay for either state mediation or fact-finding. We have it set up on the Federal level. It's now been set up, and has for many years, on the state mediation level where the State Mediation Board provides the free mediation service. And why at this time we expect either the public employer or the public employee to pay for the same service rendered to private industry is beyond us. And we object to this bill on that basis.

On Senate Bill 564, which is the same as Assembly Bill 498, we find the same objection. One of the most serious objections that we find, which was discussed by the previous speaker, - and, again, I speak as a business representative before assuming the job I am on now - and that is the slowness of getting into where you have a problem. We just heard it discussed. We say there is a lack of adequate appropriatons. And the basic part, where an impasse is reached, - and I think the previous speakers words "where the blood is boiling" are so darn effective. I have negotiated many contracts and many times you are better off where the mediator can come into the picture, after reviewing the facts, rather than wait until everybody is ready to hit the bricks and we find ourselves obstinate on both sides of the fence.

Under Bill 564, to negotiate, by the Legislature, legal jurisdiction we find is beyond all reason. And I think if you examine the facts that were set up many years ago, which have worked throughout this country

of ours, - where a bargaining unit can be composed, in many areas, of people with the same skills and who have the same "bread and butter" lines - let me put it that way to you.

For instance, you might have in a large industry four engineers in a total plant of 10,000 people. Their interests are common. They are subject to the same supervision of one supervisor. But that man doesn't fix holidays, vacations and wage scales. You have the same thing with machinists, in many areas.

To say now that the Legislature should fix and negotiate a unit, a legal negotiating unit, we feel is wrong. And I think it will lead to many problems that neither the State nor our own public employees need.

We object to Bill 498, an Assembly Bill, and under the same circumstances in that we feel it is definitely anti-labor and anti-public.

The problems that we have faced and I have negotiated against public employers, and the basic fact that we run into possibly because of appointed or elected officials, where they take the obstinate view that the public employee has not the right to negotiate, it is on this basis that we say to you that Assembly Bill No. 810 is a bill which gives the right of collective bargaining to public employees unions and the right to join in a concerted economic action in support thereof. In other words, it is a bill to permit strikes in public

employment.

For many years organized labor in this State refrained from taking a position as to the right of public employees to strike. Recent developments, however, have indicated that public employees are at present as determined to prevent and interfere with collective bargaining on behalf of public employee unions as were private employers before the Wagner Act. We did not expect that public employers would take this type of position. We did not expect them to refuse to bargain in good faith and we expected that the public employers would make every possible effort to comply with the law.

The law was written, and again going back to the previous speaker, - stop something before it happens, to give the public employee the right to sit down and negotiate in good faith. And too many times, throughout the past couple of years, and previous to when the law was written, we found the public employer would not do so, he refused to bargain in good faith.

You might have this in private industry and there are ways and means within the Federal Government to correct it. And we say it should be corrected as far as the public employee and the public employer are concerned.

And this is why we take the position that we are in full support of Assembly Bill 810.

I think it's on this basis that we appear before you today. Also Tom Parsonnet, General Counsel of the

AFL-CIO and a former member of this Commission, who has done so much to effectuate it and get it started and get it going and to make it live, - we feel in many areas that if there are changes to be made within 303, then we suggest to you, in good faith, that Assembly Bill 1049 is the one to do it.

Mr. Tom Parsonnet, General Counsel, AFL-CIO.

SENATOR KNOWLTON: Thank you, Mr. Brown.

Mr. Parsonnet?

MR. PARSONNET: Thank you, Senator.

Members of the Committee, let me first say this, I did not know until today that Bud Pease was resigning from this Commission. It's a real shock to me. You have had, as Chairman of this Commission, a man who, I think, is one of the finest men that could possibly have undertaken the enforcement of Chapter 303 of the Laws of 1968. I admire him enormously. I felt, when I first went on the Commission with him, that not being a labor lawyer or experienced in labor law that I was going to have great difficulty with him. I found, on the other hand, that he was an enormously interesting, active and decent person who really did a job for the State of New Jersey and did succeed in settling disputes that I honestly believed could not be settled without strike. I think the State owes him a true expression of gratitude and the Labor Movement, through me, expresses that sense of gratitude toward him. Sorry I can't talk any

further about it. I think he's a very fine person.

Before going into the recommendations made by the Commission, which I think might well constitute a basis for your consideration, I think I owe the obligation to explain to it three things which have not been fully explored.

Our State Supreme Court, two months ago, came down with an opinion which I think is must reading for anyone who gives any consideration to the rights of public employees. That's the case of Lullo vs. International Fire Fighters, decided by Mr. Justice Francis. That decision really amazed me, at its depth of understanding of labor problems, far more than I expected, frankly.

One thing was said in the opinion that I think is of extreme importance in considering any legislative approach. There have been attempts made and there will be attempts made to persuade you to define specifically certain language contained in the Act so as to hamstring the activities of the Commission. I wonder if you would permit me to read just one sentence or two from Justice Francis' opinion on that:

"Obviously, the Legislature envisioned a gradualistic approach with decision both by PERC and the courts awaiting presentation of individual problems. We agree that in this untilled area expertise is distilled only from experience."

Now, this Legislature is not developing that

experience, it's being developed by PERC, it's being developed by the courts. And for this Legislature to accept the pressures of either side, in attempting to define that which PERC and the courts may be many years in the course of defining, would be to reach incorrect decisions and to bind the hands both of PERC and the courts in their attempt to reach proper definitions. And I am particularly thinking of two major areas:

First, a decision as to the appropriate unit for collective bargaining; and, second, a decision as to what issues are negotiable.

The National Labor Relations Board has existed now for 35 years. It has not yet decided in full what are, what they call, "mandatory issues" for collective bargaining. It takes years to discover, from case to case, what may or may not be an appropriate issue to present as a bargaining issue between the parties.

Mr. Pease has suggested the possibility that such a question could be presented to PERC as a side issue while bargaining is going on. Frankly, I have grave doubts as to the wisdom of that approach because, if PERC makes the decision, it is subject to appeal to the courts and it will go through to the State Supreme Court long after the negotiations should have been settled and a contract signed. I think it might develop an incorrect approach to allow a separate issue of that sort to be presented to PERC for determination while

the negotiation is being undertaken. I have grave doubts as to that wisdom.

In general, I am in thorough accord with what the Commission has recommended, as I will indicate later, but that to me offers a disturbing element.

Second, with respect to the Commission's recommendation on appropriate unit. I think the law now is vague and intentionally vague, so that the Commission can, on a case to case basis, determine what is the best or an appropriate unit to bargain collectively for employees of a particular group.

If you try to define it any more, what you are doing is ultimately to deprive the Commission and the courts of their expertise which they have developed as a result of year-in-year-out dealing with this subject matter. And, frankly, I am not in agreement with the recommendation of the Commission that there should be any reference to the authority of the public employer to negotiate the terms and conditions, because that isn't true.

Mr. Brown has mentioned, for example, a group of engineers, of four in number, in a plant of 10,000 people, who are in a separate bargaining unit. Now their employer is technically the supervisor of the boilerroom. He has no authority to negotiate anything. He may be the one who is designated to negotiate but he will be told by the Board of Directors or the

President or the Chairman of the Board how far he can go. In that way, we've got to distinguish between appropriate unit of employees and who the employer will designate as his representative for bargaining.

Our Act does not in any way tell the employer whom he must designate to bargain with the union. He can use anyone. The Governor can come in on a negotiation himself, if he wishes, - with great respect to Greystone Park or any other state agency. He will always designate somebody, but he will inform that somebody how far he has the right to go in reaching agreement.

That's all we ask. We say, do not concern yourself with the area of who should represent the employer. That is done outside this Act. What we are asking for here is which group of employees is appropriate to bargain for separately. And I think the Act is adequate as it now reads in that respect because it allows the Commission to reach its conclusion based upon its experiences without being bound by language.

Now, let me come to this question of compulsory arbitration for labor courts. In that I also find myself in disagreement with Mr. Pease. And we have the best example in the world right before your Legislature as to what compulsory arbitration does. And that is with relation to the Public Utility Anti-Strike Law.

Let me point out that from 1922 until 1946, 24 years, there was not one single strike in public utilities

in the State of New Jersey. In 1945, in the Christmas season, there was the possibility of a strike in Public Service, as a result of which the Governor at that time demanded the adoption of a Public Utility Anti-Strike Law. The strike didn't occur. It was settled before the contract expired, the old contract. But, as is usual, it came right down to the end of the wire before it was settled, and that is frequent in negotiations, it's to be expected.

As a result, a bill was introduced in 1946 but public hearings showed that it was so wrong that Walter VanRiper, who was then Attorney General, even came to me and said, "Tom, you draw a bill to prevent strikes." And, of course, I couldn't. He then took out the punitive elements of that bill and it was passed merely as an expression of desire that no strikes should happen in public utilities. We opposed it because we were afraid that, if a strike did occur, teeth would be put into it immediately. That happened the next year.

In 1947, there was a nationwide telephone strike, including New Jersey. Our Governor, then Governor Driscoll, called the Legislature into special session and put back the teeth that were removed the previous year.

As a result, the strike in the nation lasted between three and four weeks and was settled; our strike in New Jersey lasted for seventeen weeks before it was

settled, because of the disputes arising as a result of the law.

And in the next six years, from 1947 to '53, twenty-one more strikes, twenty-two in all, in public utilities, occurred in the State of New Jersey. All because of the compulsory arbitration feature contained in this law.

A Commission was formed in 1953, led by the famous Dave Cole, whom you've all heard of as being an outstanding neutral in labor matters, and that Commission unanimously found that this Act was the cause of these twenty-two strikes, and recommended its repeal.

Now, why does compulsory arbitration force strikes? It's very simple, and it's true whether it's a labor court or an ad hoc arbitration board.

When I know that I am going to be compelled to appear before a court or a board to justify my position as demanding, say, $2.00 an hour increase when the employer is offering nothing, I will not attempt to reach an agreement by reducing it from $2.00 to $1.00; nor will the employer bring his offer up from nothing to $1.00, because when he gets before the arbitrator he wants to have his original position, he doesn't want to lose it. Technically, it's very bad to come in with a lower position. As a result, you don't change your position in bargaining, you destroy bargaining by compulsory arbitration. You force everything into a strike in order

to get your arbitration. And I think compulsory arbitration, for that reason, has failed wherever it has been tried. It is not a success anywhere.

Now, coming to the recommendations of the Commission, if I may, for a moment. I am thoroughly in agreement that a mediator should be available to be sent in at any time, not only when an impasse occurs. The result will be a lessening in the use of mediation.

And let me point out this to you, gentlemen, if I may. We have had a Mediation Board in private employment since 1941. I am proud of the fact that I prepared that law and had it adopted. We have had a provision permitting the Mediation Board to send in a mediator at any time it found wise in any private dispute.

You will, I am sure, admit that the number of private disputes that could occur during a year is far more than the number of public disputes because there are far more private employers and far more private unions than there are in the public domain. And yet they have only four, five or six mediators in the State Mediation Board that cover the entire situation. Why? Because it is known that they are ready; it is known that they will come in whenever they think it's wise; and there is a sort of pressure, knowing that the mediator is waiting in the background to come in whenever he thinks it's proper, there is a pressure brought upon the parties to reach agreement without some third party

coming in.

I believe you will find a lesser expense if you make it possible for the Commission to intervene when they think it necessary, rather than to wait until an impasse occurs.

As far as charging for the mediator is concerned, why should you charge either the public employer or the public employees union when you don't charge the private employer or the private employees union? Is the public going to pay a tax for the mediator in public employment - is the public going to be relieved of that and require the parties to pay it out of their own when in private employment the public supplies this mediator without charge to the parties?

I think it's a perfectly absurd thing to suggest that in public employment the parties pay whereas in private employment they shouldn't. The fact of the matter is that the attempt here - I charge the persons who drew that bill, I charge them with an attempt to destroy public employee organization because, if the public employees are required to make payment for these mediators, they will not have the money to function. And I submit that it is utterly improper to do so.

As to the definition of "negotiable issue" I have discussed that before and I've read you Justice Francis' opinion in which it is indicated that we ought to leave this to the expertise of the Commission and

the courts. They may completely decide against us in some of these issues but they will have the knowledge as to what they should or should not do, far more than the members of the Legislature which does not live with this problem. I think it should be left to the Commission and the courts to do so.

They have suggested a definition of "good faith negotiations." If you will be kind enough to look at the Taft-Hartley Law, you will find that their definition of "good faith negotiations" conforms completely to the definition contained in that law. We're in agreement with it. We don't think it's necessary to include it in the law because the regulations of the Commission, together with the partially ambiguous language of the act itself, do make such provisions. But we would have no objection to it being included in the act. Their proposal for the definition of "good faith negotiations" would be acceptable although we don't think it's necessary.

As to the fragmentation of employees, I've already discussed that and I have said to you that I sincerely believe that it ought to be left entirely within the discretion of the Commission and the courts on the basis of community of interest of the employees. And, beyond that, the employer has the right to make decisions as to who represents it, regardless of what the Commission may do. So that we need not worry about

the authority of the employer. The employer makes that decision for himself.

We agree with the proposal on the inclusion of supervisors. I won't go into it further except to agree.

I also agree that there should be no change in the requirement that rules and regulations of employment must be negotiated. I don't mind the suggestion of the Commission that where you have an emergency rule it could take effect but must be negotiated. That would be all right. But, certainly, if you are going to have collective negotiation, it should be concerning rules and regulations of employment because that is what they're bargaining about. And if you deprive the employees of the right to bargain about that, you might as well repeal the whole law.

As to the question raised by one of the members of the Commission, as to Civil Service, I don't know whether you are acquainted with one of the sentences contained in Section 7 of Chapter 303 which, I think, gives you all of the protection you need on Civil Service. It reads as follows:

"Nothing herein shall be construed to deny to any individual employee his rights under Civil Service Laws or regulations."

Now, I think, if you add what's included in 498, you will limit this power, rather than expand it, because it does say "under Civil Service Laws or regulations." And if you do anything more than that, what you're attempting

to do is to limit this sentence. We don't attempt, we don't believe in attempting to undercut Civil Service. We are doing something for persons beyond the limits of the Civil Service Laws. And that's the function of Chapter 303.

I think that if you will read that sentence in Section 7, you will find that there is no need for further discussion of Civil Service in this act.

As to injunctions, Mr. Pease was very expressive on this score. Frankly, I am not as familiar as I used to be with the occupations of the members of the Legislature, and I am not acquainted with how many of the members of this Committee are members of the Bar or have practiced before our Court of Chancery. But one of the basic concepts of the Court of Chancery, in every single instance except this, is that "he who seeks equity must do equity." I am sure all of you have heard the expression. That is not required when it comes to this law. There is no requirement when I go to a Judge of the Chancery Division and ask for an injunction against public employees striking. There is no requirement that you, the employer, must, yourself, comply with the law by negotiating in good faith or by complying with the contract that you have made.

There was a case of the Welfare Board in Essex County signing a contract and then refusing to comply with it. The employees of the Welfare Board were enjoined

from striking but the employer was not required to comply with his contract.

What you are doing is provoking strikes and not providing any fairness in encouraging the elimination of strikes. That's the reason why Mr. Brown has referred to Assembly 1049, because one of the sections of our Anti-Injunction Law, in private employment, provides that no injunction shall issue unless the employer has complied with all of his obligations under law and has mediated before any mediation supplied by any State agency.

Now, if you require that, and the injunction act does require it, then you are requiring fairness and equity. And, if you did, there would not have been one single strike of all those that have occurred - and there haven't been too many - because in every single instance the strike occurred either because of a refusal to bargain in good faith or because of a refusal to comply with a contract already made.

That's the reason why we asked for an amendment of the Anti-Injunction Law to include public employers and public employees under the provision of that act, so that the employer may be required to comply with his obligations, as well as the union.

I have already discussed compulsory arbitration. I am in respectful disagreement with Mr. Pease on this subject, based upon my experience over a period of forty years of representing labor unions and seeing what

compulsory arbitration does. It destroys collective bargaining.

I agree that there should be an unfair labor practice section of the act and I support the position of the Commission on that.

May I say that I believe, as the Commission has, that its rules and regulations, which contain the language that they suggest be included in the law, would be enough because I think the law, as it's written, supports it. But there isn't any reason why it shouldn't be clarified by including it in the law and thereby making it perfectly plain without waiting for court decisions.

Now just let me make one further comment, if I may, as to the membership of the Commission.

Mr. Pease has said, and I think it's true, that the existence of labor and employer representatives on the Commission has been of help in forming a rounded opinion of the Commission as a whole. But remember one thing, if you will, that public officials, generally, have a curious attitude with respect to labor representatives as compared with business representatives.

I was put on that Commission as a labor representative. I didn't represent any single public employee union at the time. But since I represented the State AFL-CIO, I was a labor representative, representing public employees. I have no objection. I was delighted and honored with it. But at the same time, subsequent, Charlie Serraino, for

whom I have the utmost affection and regard, was put on the Commission as a public representative at a time when he was a labor representative of J&J. He occupied an employer position identical with mine in the employee group but he was considered a neutral; I was considered a partisan.

I don't understand this sort of thinking generally, but it exists. And if you are going to have all neutrals on this Commission, what you're going to have is no labor representation and a majority of people who are representing employers. This is what's going to result. And you will have a lopsided, biased commission, if you do it that way.

It is, therefore, my recommendation that you continue the Commission as it is, on a tripartite basis, so that it can have the rounded approach of all.

Thank you for the opportunity of talking. May I say, when I have talked about "I", as General Counsel of the State AFL-CIO, I think I am authorized to say that what I have said represents their thinking as well.

Thank you.

SENATOR KNOWLTON: Thank you very much, Mr. Parsonnet.

Assemblyman Smith, do you have any questions to ask Mr. Parsonnet?

ASSEMBLYMAN SMITH: Yes, I suppose I do.

I don't want to turn this into a hearing on the right of public employees to strike but is it your position

that all public employees should have the right to strike, police, firemen, teachers, everyone else?

MR. PARSONNET: Mr. Smith, let me say this. This is a matter on which I must reach personal conclusions because there is no formal statement made by the AFL-CIO on this subject.

My personal conclusions are somewhat different than the State Organization might approve, so that I hope that you will consider these purely personal, rather than representative.

I have always believed that it's perfectly ridiculous to prohibit park employees, who clean the park, from striking while you permit bus employees to strike. It just doesn't make sense to say that some employees who are of enormous importance to the public economy should have the right to strike because they're private, whereas others who have very little importance to the public economy can't strike because they are employees of the public. This does not make sense to me.

So that, generally speaking, I believe that public employees should have the right to strike. There is, in my mind, one doubt, with respect to police and fire. I regard them as in the capacity of paramilitary rather than purely employees. If I am correct in that approach, then there might have to be some different approach with respect to them. Just what that approach could be, I don't know. I am opposed to compulsory arbitration because

it doesn't work; I am opposed to labor courts because it doesn't work. But I think it could be that, where you have a paramilitary organization, their right to refuse to work should be conditioned upon some method of giving them fairness of treatment, which doesn't exist today.

And I am not prepared to offer a conclusion without consulting with their representatives to see what they would have to say about it. There is some problem in their connection, but certainly it doesn't apply to all public employees. And, to be perfectly honest with you, I believe the existence of a strike in a school is a teaching of democracy, not a denial of it; is a teaching to the children that all people have freedom in this country, not only some.

So that it does seem to me that the right to strike should be extended far beyond the limit to which it now exists. I have some question as to --

ASSEMBLYMAN SMITH: You would agree to some limitation somewhere.

MR. PARSONNET: I don't know where, and I don't know how.

ASSEMBLYMAN SMITH: I don't think anyone else would know where, on that basis.

MR. PARSONNET: Except for the fact that that limitation should be purely with respect to cases in which the absolute public safety, not health, public safety, is involved.

ASSEMBLYMAN SMITH: Well, one other question. With respect to your compulsory arbitration, I think there is a lot of merit to what you have said but doesn't this whole program react in that way?

MR. PARSONNET: I think not. Bear in mind --

ASSEMBLYMAN SMITH: You think both sides would negotiate freely if they know an arbitrator is coming in eventually?

MR. PARSONNET: Oh, no, they would not. Neither side would negotiate freely.

ASSEMBLYMAN SMITH: In other words, you feel that an arbitrator must be in ab initio.

MR. PARSONNET: Oh, please don't misunderstand the distinction between mediation and arbitration. Mediation has no authority whatever. And this may be where some of the people who have complained to you have misunderstood the situation too. A mediator who comes into a picture has no authority except the power of persuasion. He can't tell them to do a thing. He has no right to give them any instructions.

Arbitration is where an issue is presented to an arbitrator as a judge for a decision. That is not mediation. Even fact-finding is not arbitration. A fact-finder comes in after a mediator has failed to reach a successful conclusion, hears the facts, all that he can get together, and then makes a recommendation for a settlement. And that is not binding. There is no

means of compelling either side to accept his recommendation, except the power of public persuasion, which I believe will work in most cases.

But, you see, you have three things, you have mediation, where it's purely an effort, on the part of someone who is experienced in the field, to get them to agree. That's all he does. Then there's the fact-finder who finds, after the mediator has failed - the fact-finder comes in and finds the facts and makes a recommendation for settlement. That, again, is not binding. But, if there's an arbitrator, then whatever decision he makes is a binding decision. And that's where I go off from Mr. Pease. I don't think anyone should be empowered to make a binding decision because, if you create such power, you destroy collective bargaining.

ASSEMBLYMAN SMITH: OK. Thank you.

SENATOR KNOWLTON: Mr. Parsonnet, with respect to the prohibition against strikes in the public sector, don't you think that this had its genesis in the idea that the public employee, because of the fact that he's covered by tenure, - his position is much more stable, his position of employment is much more stable than that of a private employee?

MR. PARSONNET: Sir, I would suggest to you that it goes far back from that. It goes to the time when a public employee was a slave to the king, in England.

The concept of sovereignty is the thing that creates this disability of public employees, not the concept that they have other successful protections but the concept that they are defying their sovereigns. And it goes back to the ancient kings. That's where it comes from.

SENATOR KNOWLTON: But does not the public employee today, unlike the slave under the kings of England or France or wherever, doesn't he have tenure and his position is secured?

MR. PARSONNET: No, he has not, only if he's protected by Civil Service or the Education Laws. I wouldn't be surprised if there are not more than 40% of the public employees in New Jersey who have no tenure. In the first place, municipalities are not covered by Civil Service unless they vote to be covered by Civil Service. Many of them have not voted to be covered by Civil Service. Many of them employ and fire at will. Some of them give 30 days notice and I know of cases where there have been discharged at once. Civil Service doesn't protect everyone.

ASSEMBLYMAN HIRKALA: Mr. Parsonnet, Mr. Brown referred to Assembly Bill 810 as the Right to Strike Bill.

MR. PARSONNET: Yes.

ASSEMBLYMAN HIRKALA: How many states have a right to strike law?

MR. PARSONNET: I am not at present prepared to give you that information. I believe there are one or two, either judicial or legislative, I am not sure.

ASSEMBLYMAN HIRKALA: Now, Mr. Parsonnet, getting back to your references to your appointment to the Commission, on which you were appointed as a representative of public employee organizations and you state that at the time you represented none; since the appointment is made by the Governor, with the advice and consent of the Senate, I would like to know whether you were called in by any committee of the Senate or the Senate as a whole and were asked that question.

MR. PARSONNET: Let me explain myself there. Perhaps I should explain it more fully. There are public employee unions that are affiliated with the State AFL-CIO. As General Counsel for the State AFL-CIO it could be said that, since those unions are affiliated with that organization and since I'm General Counsel for it, I could be considered a representative of public employee unions.

What I meant was that in my private practice of law I represented none.

ASSEMBLYMAN HIRKALA: In other words, we could stretch it a little.

MR. PARSONNET: Yes.

ASSEMBLYMAN HIRKALA: Now, getting back to my original question, were you called in --

MR. PARSONNET: Yes.

ASSEMBLYMAN HIRKALA: -- by a Senate Committee --

MR. PARSONNET: Yes.

ASSEMBLYMAN HIRKALA: -- and asked that question?

MR. PARSONNET: I don't think I was asked that specific question. Very frankly, the Senate Committee did ask me not to discuss, what I had said before them, on the outside. I want to comply with that request. But I think it was known that I represented the State AFL-CIO, which itself represented public employee unions, and that was enough for them. I don't think there was any further question.

ASSEMBLYMAN HIRKALA: Getting back to Mr. Serraino and not forgetting you for the moment, Mr. Serraino's appointment, which was made as a member representative of the public, who at the time had a responsible position with Johnson & Johnson. Subsequently, both of you were confirmed in your appointment, with the advice and consent of the Senate. What would any citizen of New Jersey - what recourse would any citizen have if they wanted to contest these appointments?

MR. PARSONNET: Number 1, I don't think either of these appointments could be contested because, by a stretch, it could be said that I was representative of public employee unions. It is perfectly clear that Mr. Serraino was not representative of public employers at the time, because of his connection with J&J. That was a private employer.

What I was simply pointing out is the curious attitude on the part of public officials that labor representatives are considered labor, no matter what,

but people involved in employment relations for a large employer are generally considered neutral public representatives.

I don't think there could be any contest over it at all. That isn't what I intended to point out. I intended to point out simply the curious public attitude. We are not smeared. I'm delighted with the designation of labor representative. But we are considered that in all of our capacities, and everything we say is judged from the fact that we represent one side, while a representative of a large corporation, which represents the other side, is considered a neutral.

ASSEMBLYMAN HIRKALA: Mr. Parsonnet, how do you feel the PERC act has worked, on balance. Do you think it has worked? Do you think there are some serious deficiencies? Do you think we have to strengthen it? On balance, under our experience, how do you feel it has worked?

MR. PARSONNET: Let me say this to you. I think PERC has worked admirably well. I think it is fantastic, the results it has accomplished in the short time it has been in existence. On balance, it has done the job that it was created to do, beyond all question. It could be improved, I think, in one major particular, giving them the right to send in a mediator when they think necessary. I don't see that it needs any further improvement, although, technically, there are some

improvements that could be made. For example, use of the phrase, division and commission, interchangeably in the act is rather silly. That could be changed. There are technical changes that could be made but, on balance, I think it has done a magnificent job. It could do a better job if, first, it is given the opportunity to send in a mediator whenever they think it's necessary, and, second, either the court or the Legislature makes it clear that it can enforce unfair labor practices against either side.

ASSEMBLYMAN HIRKALA: Mr. Parsonnet, do you think the cutting of the budget request will seriously impede their work?

MR. PARSONNET: It has. It not only will but it has. I can say this, that I have tried in the past three months, or two months, to secure some action from the Commission which they told me they could not perform because of lack of funds. And in one instance it created a one hour stoppage of work yesterday. I am not at liberty, because of the fact that I am Counsel in the case, to divulge anything further. We stopped it. But I am saying to you that more money is utterly essential for PERC to do the job that it was given to do.

ASSEMBLYMAN HIRKALA: Thank you.

SENATOR KNOWLTON: Thank you very much, Mr. Parsonnet. Ladies and gentlemen, we will take a ten minute break to allow our staff over here to recover a bit. We will come back at 12:20.

(After recess)

SENATOR KNOWLTON: The hearing will reconvene, please.

Mr. Schultz, please?

Mr. Schultz, will you please give your name and whom you represent.

E D W A R D S C H U L T Z: My name is Edward Schultz, Representative of the Communications Workers of America, AFL-CIO.

I wish to thank this Committee for the opportunity to appear before you to present the views of the Communications Workers of America, AFL-CIO as to the need of changes in both Public Employment Relations Commission Law and in the rules and regulations that have been established.

SENATOR KNOWLTON: Excuse me, just a minute, Mr. Schultz. Do you have copies for the Committee of your statement?

MR. SCHULTZ: Yes, I do.

SENATOR KNOWLTON: May we have them before you start?

MR. SCHULTZ: Certainly.

Before starting with my prepared statement, I, too, would like to express our appreciation for the job that Mr. Pease has done in behalf of the Public Employment Relations Commission, and I regret his resignation. We are aware of the vast amount of time, energy and devotion which he has given to see that the law was implemented as it should

be. And his loss will be a very deep void in the workings of this Commission

We feel that the most significant factor which this Committee must accomplish is to provide a budget for the Public Employment Relations Commission that will be adequate to enable the effective and swift administration of all petitions for employee elections and hearings that come before the Commission. In the present fiscal year the Commission ran out of funds and the result has been to postpone hearings which should have been processed. We recommend that an adequate budget for the upcoming year should be the sum of $800,000. This sum would enable the Commission to catch up on an immense backlog of petitions presently before it.

We recommend the following changes in Chapter 303 of the Laws of 1968. Under Section 34:13A-3, paragraph F, a new paragraph for the definition of "Good faith bargaining." We would recommend that that language be: "All parties must bargain with effective give and take and with the desire to reach meaningful agreement. All parties present as agents of the parties should be able to have proof that they can effectively recommend contract agreement which they are reasonably certain will be ratified by the respective parties."

I would like to explain a little our reasoning behind this. We realize that,when both the representatives of management and employee organizations sit down at the table,

they can't make absolute statements on what will or will not be ratified by the parties. But we feel it is highly immoral when one party sits there on the opposite side of the table and bargains for a substantial period of time only to let you know that they can't proceed further without authority from someone outside of the agent or agency that they represent. And this has been occurring in public employment.

Under Paragraph 34:13A-5.3 Public Employees' organizations; authorization, membership, representation, written agreements, grievance procedures - A sentence should be added whereby present Civil Service Laws and Regulations shall not limit the parties to modify or change the existing conditions. Without this change, true collective bargaining cannot take place. We are in agreement that negotiations should not restrict the rights of employees under Civil Service Rules and Regulations but at the same time the Civil Service Rules and Regulations should not restrict the power of parties to negotiate additional benefits.

Section 34:13A-6 Powers and Duties, Paragraph B. A phrase should be added to include the right of the Public Employment Relations Commission to order mediation regardless of whether the parties themselves make the request for mediation, if it deems that there is an impasse and that mediation should be entered into.

I believe Mr. Parsonnet expanded on this viewpoint

very thoroughly and his arguments are the arguments that we would give, the same arguments for including such a clause in the law.

We request the following changes in the Rules and Regulations that have been established: On Section 19:11-6, the section dealing with the number of copies to be filed. At present you must file five copies of every petition or letter or request that you make to the Public Employment Relations Commission. This should be reduced to two.

Under Section 19:11-8 - processing of a petition. There should be a statement added to that section that a time limit of no longer than one month should be placed upon the Public Employment Relations Commission to start processing any petition submitted. By this we mean there should be a meaningful processing of petitions, where they can't be allowed to backlog for three and four months so that it may sometimes take you a year to get an election where half of the employees may have left the employment by the time the election comes up and the people who originally wanted the union no longer are in the place of employment.

Regarding Section 19:11-15 - timeliness of petitions. Inasmuch as the date of the budget submission and the contract expiration may differ, it should be possible to proceed with an election whenever an employee organization has filed a petition for certification immediately after a timely petition has been determined to have been submitted.

The election should proceed within the 120 days to 150 days period regardless of the date on which the present contract should expire.

And I refer to here, specifically, many boards of education have a budget submission that comes up in February. Under the present rules, you submit your budget 120 to 150 days prior to that. Excuse me, you present your petition 120 to 150 days prior to the final submission of the budget in February. This means that you must present your petition somewhere in October or November.

However, when agreements are negotiated and the budget has been submitted in February, it does not take effect, usually, until the upcoming July. A contract may be another year or a year and a half before you are able to hold an election as the rules now stand, and this should be changed.

If this rule is not changed, then the rights of the public employee to choose their representatives within a reasonable time are negated.

Section 19:11-19 - the election procedure. There should be inserted a sentence which would allow for the use of absentee ballots in an election when an employee is able to produce a bona fide proof of illness or other approved leave of absence.

At present, the elections being conducted by Public Employment Relations Commission do not allow absentee ballots. And as employees really can't tell how long it is

going to take for the election to take place, they may have a very active interest in wanting to vote in an election but at the same time have no way of determining when that election is going to come about. So if they are on scheduled vacations or sick they are denied the right of the ballot which they shouldn't be.

Section 19:14-13 - continuance or adjournment. A sentence should be added stating that no hearing shall be adjourned for any longer than a week; that all hearings should be completed within a month. With the mutual consent of all parties to hearings, this time limitation may be extended for no longer than one additional month.

We have been involved in a particular hearing to decide the proper bargaining unit and to decide an election, our petition, that is proceeding into its first year's anniversary of just trying to find out what the proper bargaining unit may be. By the time a date will be set for an election, again many of the employees will have left employment, will have lost interest in organization. This works to an unfair disadvantage of an organization to try to bring about effective representation. If an employee sees a hearing lasting a year or a year and a half, then they begin to wonder just how effective any employee organization can be in representing them across the bargaining table, and with a good deal of reason and cause I would say.

SENATOR KNOWLTON: May I interrupt you just a minute.

Are you talking about a collective bargaining procedure involving a public employer and public employee?

MR. SCHULTZ: Yes, I am.

SENATOR KNOWLTON: In what field?

MR. SCHULTZ: Within the State.

SENATOR KNOWLTON: Is this a State agency that you're bargaining with or a county agency or a municipal agency?

MR. SCHULTZ: This is a State agency that we're bargaining with.

SENATOR KNOWLTON: What is it? Is it all right for you to tell us?

MR. SCHULTZ: Yes, it's Institutions and Agencies. We've had a number of petitions pending for hospitals or institutions within Institutions and Agencies, and it has taken us over a year to have the hearing completed.

SENATOR KNOWLTON: What category of employees are you representing?

MR. SCHULTZ: Non-professional hospital employees. And for this we feel there should be some limitation. I would say that many times there has been postponement of a meeting and the next meeting is scheduled a month later. Then, again, there was a period where a hearing was scheduled and it was postponed because funds ran out for the Public Employment Relations Commission. It had to again be postponed until the next budget year in July.

We also recommend that a section be added which

would mandate that the employer named in the certificate of election be the party with whom the public employee representative negotiates the contract. If the employer claims he is not able to effectively negotiate because other parties must be involved in either the negotiating process or implementation of any agreement, then the employer must show proof of the need of the additional parties to enter into the negotiations. Once such proof is established, other employer parties must then enter and be part of all negotiating sessions in person or else submit a statement to the employee organization that they agree to invest their power of negotiations in the employer representative sitting at the bargaining table.

May I clarify or explain the situation in this area. Our Union represents welfare board employees. These employees find that they are neither county employees, state employees or federal employees. We have been bargaining with the Welfare Board only to find that the State is saying, after a contract has been negotiated and ratified by the membership of the union and the Welfare Board membership that the State has certain requirements that they will insist upon. They have told us that they have been insisting upon certain requirements but they have been unwilling to sit at the bargaining table to find out why these requests were made, to realize where the give and take has been in the negotiations. They are asking for further negotiations after negotiations have

been completed. And it's not just the State, the county enters into the picture after the State gives approval and the county wants further reductions. And frequently the reductions that the county requests are different from what the State requests. And the employee is not able to get a fair shake in collective bargaining. And we feel that this recommendation would change this aspect.

SENATOR KNOWLTON: Again if I may interrupt you, Mr. Schultz, just for the purpose of clarification of this last paragraph on page 3 of your statement. You say, "If the employer claims he is not able to effectively negotiate because other parties must be involved in either the negotiating process or implementation of any agreement, then the employer must show proof of the need of the additional parties to enter into the negotiations. Once such proof is established, other employer parties must then enter" and so on. Before whom would this proof be adduced? Would it be before the Commission or what?

MR. SCHULTZ: Before the Commission. The Commission may determine that other parties must legally have a right to be involved and if they don't have this legal right then they should not be a party to the negotiations. But if they are a legal party to the negotiations then they should sit at the bargaining table, they shouldn't be apart from the bargaining table.

Now, one section that I missed. Section 19:12-3, the mediator's function. A sentence should be added to

request that the mediator make all effort to keep negotiations moving for a sustained period of time and on as a continuous daily basis as possible.

Without this, the beneficial effect of the mediator in being able to produce movement in negotiations is often lost if there is a substantial time lapse between sessions and if sessions do not last for a significant length of time.

We have found that on occasions mediators have been very helpful and the session looks like it's moving fast only for there to be a scheduling of the next mediating session possibly a week later and by that time the parties may again be back to the former positions that they had been in. Had negotiations continued into the following day, maybe an agreement could have been reached in a more substantial period of time. Though it shouldn't be an absolute requirement, it should be placed there as a reminder to the mediator to try to make it on a continuous basis, a daily basis.

We would like to add also our emphasis to the need of the public employer to prove that he has exhausted all efforts of equity, and to agree with Mr. Parsonnet's statement that the Anti-Injunction Act should also apply to the public employer as well as to the private employer.

In conclusion, I would like to state that despite the many troubles which may have arisen during the present life span of the Public Employment Relations Commission, the

Communications Workers of America, AFL-CIO believes that Chapter 303 of the Laws of 1968 is on the right track and has been working substantially well. The biggest problem that it has encountered has been the lack of sufficient staff making it difficult for proper and timely administration. The only way to overcome this obstacle, again we must emphasize, is by providing sufficient money in the budget.

I wish to thank all of you for the time you have given me.

SENATOR KNOWLTON: Assemblyman Hirkala, do you have any questions to ask?

ASSEMBLYMAN HIRKALA: Yes. Mr. Schultz, you are a Representative of the Communications Workers of America, AFL-CIO. Are there any public employees who are members of your organization?

MR. SCHULTZ: Yes, there are.

ASSEMBLYMAN HIRKALA: Where are they located?

MR. SCHULTZ: We represent a number of Boards of Education school custodians, three welfare boards within the State of New Jersey that are public employees. We are involved in a hospital campaign. Court clerks in Middlesex County.

ASSEMBLYMAN HIRKALA: Under your paragraph relating to the Civil Service Rules and Regulations, do you think that the present Civil Service Laws are restrictive as far as negotiations under this Act are concerned?

MR. SCHULTZ: Yes, I do, at times, particularly where it involves State employees. There is a little more leeway given where the Civil Service Rules and Regulations involve county or municipal employees but there they sometimes set minimum standards for vacations, for leaves of absence, etc.; but in State employment it's a regular rule and the employer will say, well, we can't go beyond this.

ASSEMBLYMAN HIRKALA: Thank you.

SENATOR KNOWLTON: Mr. Schultz, you say that you represent non-professional people employed by boards of education and by the Institutions and Agencies Department?

MR. SCHULTZ: That's correct.

SENATOR KNOWLTON: How do you think that we can prevent fragmentation of non-professional employees into a multitude of bargaining units? Could you give us some advice on that? You see, the problem here is this, that a public employer in many cases is a board of education. These people serve without pay and they meet at night, they have to work for a living during the day. And one problem that we've heard is that the fragmentation of non-professional employees divide themselves up into a myriad of bargaining units which places an almost insuperable burden upon boards of education. Do you have any answer to that problem?

MR. SCHULTZ: Well, I would submit that the Public Employment Relations Commission Act went a great ways in

changing the fragmentation that takes place. Prior to the Act every public employee could represent himself or a group of employees, and if there were five or ten people they could have represented themselves.

I think there has to be some sort of logical bargaining unit. I don't think this should be placed, per se, into the law because circumstances sometime differ. Logically, there are usually four or five logical bargaining units for public employees in the school field, I would think. Teachers would be one; custodian and maintenance employees would be another; a logical bargaining unit would be clerical employees; and there may be one or two other areas that would be bargaining units. But I can't see a myriad of bargaining units at present being effectuated under the law because it says there has to be a substantial community of interest. I could see at most five or six bargaining units in any board of education.

SENATOR KNOWLTON: Thank you very much, Mr. Schultz.

Lt. Stevens. May we have your name in full, please, Lieutenant, and whom you represent?

F R E D E R I C K W. S T E V E N S: I am Lt. Frederick Stevens of the Jersey City Police Department; President of Police Superior Officers Association of Jersey City, Inc.; and President of the New Jersey Association of Police Superior Officers, Inc.

In line with what organization I represent and the people I represent, our Association, the Jersey City Police

Superior Officers Association, was incorporated in 1950 and, as such, we have since then represented the ranks in the Police Department of Sergeant, Lieutenant, Captain, Inspector, Deputy Chief and Chief, in dealings with the City.

We have had lengthy discussions among our membership about P.L. 303, and the enactment of P.L. 303 in 1968 was seen by the membership of this Association as the greatest forward step for public employees since the establishment of the Civil Service system.

After working within the framework of this new law, for one and a half years, we are firmly convinced of its value in augmenting Civil Service - augmenting, not replacing.

PERC, with all of its faults, is definitely on the right track toward establishing a smooth working mechanism for the monitoring of agreements and disputes between public employers and organizations of public employees. In Civil Service such a machine, if you will, is already completed for the handling of grievances on an individual basis or as related to classes of public employees. Since it's beginning, Civil Service has established an untarnished reputation and is very highly respected by public employees. The functions of the Civil Service Department should not be abridged to any degree by PERC.

In line with that, I heard quite a bit of discussion about the budget for PERC, which I have no knowledge of, but I would like to assure that public employees up in the

northern part of the State would be very much distressed to find that PERC would become another bureaucratic quagmire for lack of funds, because everyone in public employment looks to it now with great respect, especially because it has been fast acting and it has worked out much better than most people thought. Lack of funds would be a real shame, to let the thing be destroyed for that reason.

There are parts of the PERC Act which we strongly feel should be amended.

1. The composition of the Commission, we feel, is not truly representative of the citizens of New Jersey. The two members "representative of public employers" and the two members "representative of public employees," as Mr. Pease said, have, over the year and a half that the law has been in effect, offset each other and the balance of power, so to speak, has always been with the three public members. And we feel that putting two members from so-called labor, and two members from management or employers, is merely an attempt at pacifying these two elements in society. And, since the three remaining members are, in effect, the Commission, we feel that if all members were public and chosen from the public at large it would be accurately representative of the citizens of New Jersey. It was, basically, to serve them that the whole thing was put into effect. The fact that persons might be in private life employers or professional people who have various interests

wouldn't, to us, seem to necessarily influence their opinions and actions anymore than the fact that public officials are elected from the public at large and supposedly represent the good of the public and not any particular faction.

So, following this line of thought, there would be an equal number of representatives for each possible opposing faction which would be absurd in the creation of the Commission to have everybody represented. Therefore, we feel that all members should be chosen from the State at large. Seven unprejudiced citizens should bring a wider and more realistic perspective to the Commission.

Number 2, and probably our main objection to the PERC law. Many interpretations have been along the lines of the term "supervisor." That's in 34:13A-5.3. The term is not clear as evidenced by varying interpretations by learned persons in labor law. Especially as concerned with law enforcement agencies, this term should be very specific.

The law, we note, takes the trouble to specify who constitutes management in the board of education, and we feel that because public safety is the first function of government it's necessary - and that extra line could be typed in there to specify in police departments that the common ranks of sergeant, lieutenant, captain, inspector, deputy chief and chief are, in fact, supervisors in the

truest sence of the word. The nature of police work involves, literally, life or death decisions on the part of supervisors. From police sergeant to chief a very grave responsibility for the very lives of the public and his subordinates weighs upon the police supervisor. His classification as a leader, as a supervisor, should not be couched in namby-pamby, vague terminology. In the Civil Service job description for police sergeant, we find "Supervises patrolmen;" for Lieutenant, "Supervises sergeants." Identical phrases are used all the way up to Chief of Police. A position as a police superior officer is not easy to come by. Long and hard work and study is required in preparation. To water down the authority intrinsic to the position is an insult to any police supervisor. It would not be superfluous to spell out the actual titles in police service which would be considered supervisory. If not right in the act itself, such a delineation should be made in the PERC Rules and Regulations.

Another point: Because of the military nature of a police organization, it is not possible for supervisors and their subordinates to share completely all interests. This is in line with being represented by the same organization in bargaining with the employer. I say because of the military nature. I noticed that a couple of previous speakers, quite a few people, used the expression paramilitary or quasi-military when referring

to police. But to me it is now military. You have policemen who are killed by gunfire throughout the State, in Camden, Newark, Jersey City, and other places. And these are not administrative errors or, as previously referred to, in the constitution of the supervisor that is not clerical. It definitely is not clerical and is not administrative. At three o'clock in the morning, out in the middle of the street, when an officer can give an order to one of his subordinates which would possibly cost him his life, and the subordinate obeys that order because of the position held by the giver of the order, that is supervision undiluted. And to say that a person is not a supervisor because he can't effectively hire or fire, as it relates to police work, is ridiculous. A police sergeant can disarm a police officer below him, a subordinate, if the case warrants it and he is, in effect, suspending him from pay, duty, and relieving him of his position as a police officer, in so doing.

In the police service there isn't time to have a hearing on each and every specific violation of the rules or alleged violation. So we feel that definitely a sergeant, lieutenant, and so on, up the line, are all supervisors in every sense of the word. Also that there is nobody under Civil Service, the municipal or county police, or whatever organization it happens to be under Civil Service jurisdiction - there is nobody in the uniformed force who has the right to hire or fire or

otherwise discipline without a hearing by the appointing authority. So, in that case, nobody would be considered a supervisor in the police department, which is ridiculous.

And to get back to the organizations which represent police officers in bargaining, there are many reasons why, for example, the PBA Local cannot adequately and impartially represent the superior officers of the police department, number one, because the superior officers have agreed, every one I've ever spoken to, that under no conditions would a superior officer participate in a job action, which would be a sick-out or strike or a slowdown, or anything of any nature intended to deprive the citizens of full service. The Patrolmen's Benevolent Association just recently changed their name, I understand, to become the Policemen's Benevolent Association. Prior to that - what the reason was for the change, I don't know, but prior to that the Patrolmen's Benevolent Association was just that, represented the rank and file of the patrolmen of the police department. Superior officers, further, if they do belong to the PBA, have no vote in PBA matters. They are barred by the bylaws from being privy to all of the business of the association, and there is a rule in the bylaws that says that what goes on at a PBA meeting will not be disclosed to a superior officer.

Now, to have this organization which has such a rule, represent someone, when he is not permitted to know

what's going on at meetings, is not proper. And once the rank of sergeant is attained, the PBA becomes a fraternal and social organization and most members, who are officers, who do stay in the PBA, do so for the insurance and for the social and fraternal benefits.

And the police department, being a military organization, as I pointed out before, requires a certain separation of the hierarchy from the rank and file. It's very difficult, if not impossible, to maintain discipline after having been buddy-buddy during labor-management dealings. To try to run the organization efficiently is very difficult when your subordinates may possibly determine how much your salary will be next year, and so on.

The approach to seeking benefits is different for each group. Most officers feel that it's beneath their dignity to picket and otherwise go hat-in-hand begging for a salary increase from government agencies.

Many job factors are peculiar to officers only and, therefore, are of no interest to the patrolmen, working conditions and so on. The working conditions of a desk officer, for instance, are of no concern to the average patrolman because he is not involved in the thing, and his organization wouldn't be concerned about it either.

I can finish up here. So, basically, we feel that any organization which represents subordinates should not be permitted to represent supervisors, or superior officers.

And the last point. The educational program and facilities required at the tail end of 303 should also be extended to public employee organizations.

I understand it is PERC's policy to run these seminars and classes and invite both employers and employees. However, the law only requires that they have it for employers and they should have it for employees as well.

SENATOR KNOWLTON: Lieutenant, with respect to your statement concerning the composition of PERC, your organization feels, as I understand it, that it should be composed entirely of at-large public members. Am I correct?

LT. STEVENS: Yes, sir. We feel that as it is presently constituted the whole thing is too education oriented - boards of education, teachers groups. The teacher groups probably were instrumental in having this legislation enacted. But now that it is enacted, we have the impression that they dominate the operation of the law.

SENATOR KNOWLTON: Without settling upon a precise number of the entire membership of the Board, would you agree with Mr. Parsonnet that the inclusion, in the Board membership, of public employers and representatives of public employees and representatives of private employees is an aid to the working of the board?

LT. STEVENS: I don't pretend to have anywhere

near the knowledge,of labor and things of this nature, that Mr. Parsonnet has. But I know people like police and fireman are completely ignored in the whole setup of the Commission and I feel that that's the first and foremost function of the whole of government. And then to have us completely ignored and no representation whatsoever doesn't seem realistic. I would say it would be better, if you have only two members say representing public employees the most you can represent is two segments of public employees. You cannot possibly cover the whole gamut. So I would rather have two people, fairminded people, and the influence of a courtroom, have a judge to sit in judgment, and not to be so concerned with their own particular - not that each member of the Commission should have an ax to grind, who can outhit the other one, it should be five or seven or whatever number the Legislature decides upon, but it should be not with individual causes to espouse.

SENATOR KNOWLTON: Would you be happy with a board or a commission that had, as its members, five public members and four members representing the public employee groups?

LT. STEVENS: No. I don't think, as I mentioned, in my uneducated opinion, that it should go on and on and make it larger and larger. If you divided all government workers into four major categories or six, there is always going to be someone who will be left out.

I would say that the public at large could find people who would fairly administer the entire thing.

SENATOR KNOWLTON: Well, with respect to the first item on your outline you state, "The fuctions of the Civil Service Department should not be abridged by PERC." Does this mean that your organization is entirely satisfied with its relationship in connection with the Civil Service Commission or do you feel that they represent your interests sufficiently with respect to representing you in bargaining and things of that sort?

LT. STEVENS: No. As it is now, as it was before the PERC law there was no such thing as collective bargaining. I was trying to bring across the fact that all policemen or most policemen have great respect for the Civil Service Commission and they feel that it's above reproach, which it has to be in order to settle such things as promotions, and so on, which are vital. Promotion is the life blood of any police department, probably the most important thing to any policeman. And to have it entrusted to Civil Service has always been very satisfactory and they have never betrayed that trust. And most people, I think, would be very leery of a new commission being formed which would take over those functions of testing and determining rights and wrongs in different grievances. But I think that the PERC Commission should deal with the bargaining agents, with groups, and leave the dealing of individual cases

to the Civil Service Commission, as they do know.

SENATOR KNOWLTON: Any questions? (No questions)

Thank you very much, Lt. Stevens.

We will break now for lunch and return at 1:15.

(Luncheon recess)

SENATOR KNOWLTON: This hearing will please come to order.

Is Mr. Patrick Ferrante here, please? Mr. Ferrante, will you, please, state your name in full and the organization which you represent.

P A T R I C K J O S E P H F E R R A N T E: Patrick Joseph Ferrante. I am a firefighter from the City of Hoboken, President of the New Jersey State Firefighters' Association and a President and member of the Executive Board of the State AFL-CIO.

I have submitted no brief. The views of my membership have been submitted to you in the brief Mr. Brown and Mr. Parsonnet have. I would just like to more or less emphasize a few of the points and I will be very brief and to the point.

SENATOR KNOWLTON: Please proceed.

MR. FERRANTE: As I said, I am here in an effort more or less to support the views of Mr. Parsonnet, which to my amazement were in concurrence with the views of Mr. Pease.

The basic problems actually are the funding and the staffing. It must be sufficiently funded and staffed. Otherwise, the Commission itself would be to no avail.

The definition of the "terms and conditions of employment," the definition of "negotiating in good faith," the definition of "craft employees," and the problem of unfair labor practices have all been covered very, very well,

also the number and makeup of the Commission has been covered.

I would just like to emphasize the fact that the legislators of the State should not attempt or should not allow themselves to be pressured by either side to make decisions related to Chapter 303 that should be made by the Commission or specifically by the courts of the State. We should allow the law a little time. Right now, it is two years old or less than two years and it is still in its infancy. It hasn't had a chance to prove itself with many public employee organizations and it should be given this chance before any specific changes are made in the law itself.

The points I would like to emphasize again are: one, the fragmentation of employees which seems to concern most of you gentlemen. This is based, I would say, mainly on the definition of "supervisor" or "non-supervisor," the split, so to speak, of certain units. I would go along with the definition as it is now in the law. Any change in the definition would broaden it and would further tend to fragmentize the units. The definition as it is now is strictly confining and I would tend to go along with it.

The problem of the right to strike is naturally the most controversial one when it comes to public employees. But I don't see how you could possibly negotiate or collectively bargain without this right to strike. You need some type of vehicle behind you when you are bargaining across the table. Otherwise, there is no possible way to bargain. It is just one-sided. If I am bargaining with

you and you sit there and listen, fine, the law says you have to sit there and listen. To a certain degree, fine, you may agree, you may not agree, but you know in the back of your mind that there is nothing I can do when you disagree but accept your disagreement. This is where this right comes in. Possible ways and means of avoiding a strike or how drastic strike action would be - there are statistics right now throughout the country that could verify either how often it would occur or whether it would occur at all.

Again with respect to Mr. Pease's statement where he suggests compulsory or binding arbitration, as you are aware, labor is strictly opposed to compulsory arbitration. But in the public employment sector, this may have to be the answer. I don't know. I wouldn't say. But most of my people have been discussing it very seriously in an effort to find some means of ending these collective bargaining sessions. I have been in a session that went on for 19 months. Where could it end? There is no end if you don't find a means to end it.

As far as the citizens go, they have a definite responsibility to themselves and to the people they employ as employers because they are employers. And if they do not wish to allow their employees the same rights, the same basic rights, that they are allowed, then there is something wrong with the system and the system has to be changed.

Again the subject of civil service was brought up.

Civil Service has been very effective and possibly will continue to be effective as a testing agency. But with the adoption of Chapter 303, the men can now represent themselves by people of their own choosing and this is an important factor in the law, a factor that we cannot fail to lose sight of. Civil Service is good. It has done a job. It sufficed when actually public employees were restrained from even affiliating, much less striking. Changes are necessary. Changes have been made and will continue to be made.

I will just ask you once again to seriously consider and weigh the testimony of Mr. Pease and Mr. Parsonnet prior to any action being taken on any legislation whatsoever pertaining to Chapter 303. Thank you.

SENATOR KNOWLTON: Assemblyman Smith, do you have any questions?

ASSEMBLYMAN SMITH: Just one, Mr. Ferrante: It is sort of one-sided if the firefighters stand by and watch a building burn down too while they are on strike, isn't it?

MR. FERRANTE: Yes. I would like to thank you for bringing that up. Prior to 1968, the firefighters through self prohibition would not strike. It was a part of our by-laws and constitution that we could not strike. But we found that the self prohibition restrained us so much that we were so far behind other employees, it would take us years and years to catch up,and this is the basic problem. Public employees are crying so much today because they have

allowed themselves to fall so far behind. Now it seems - this guy wants $1000 - this guy wants $2000 - it's quite a bit of money. Sure it is. But look proportionately how far behind he has been allowed to fall. If, let's say, back in the days of Gompers when affiliation was denied, if affiliation were allowed then, possibly this situation would not exist the way it does today. Then, looking forward 20 years from today, rather than having the same situation exist, if we are allowed the right to strike - I don't say they will strike - or some type of a final binding arbitration, if necessary, some type of a way to end a grievance -- we must be allowed this.

ASSEMBLYMAN SMITH: Then you are not really advocating the firemen go on strike.

MR. FERRANTE: No. It is not the actual strike that I am interested in. It is just the right to strike. That's all I am interested in.

ASSEMBLYMAN SMITH: If you give the right to strike, the strike has to follow as a natural course.

MR. FERRANTE: Not necessarily.

ASSEMBLYMAN SMITH: -- at some time.

MR. FERRANTE: At some time, yes. I don't deny it. But take the situation right now in Newark - no law, no nothing - and they went out on strike. There are other instances throughout the country that I could point out if I had statistics before me. Take your teamsters, as an example. I don't think they have struck since '48, but they

have the right to strike. This is the basic principle, the basic concept, of bargaining. You can't bargain without it.

ASSEMBLYMAN SMITH: The teamsters and firemen and police are a little different.

MR. FERRANTE: Definitely - no getting away from it. I was just giving you an instance of how long a time can lapse without a strike. But as long as the actual threat, the actual need, is there - the occurrence, this has to be proven. This I couldn't say yes or no. I doubt it. I seriously doubt if a policeman or a fireman would stand by, but yet it has been done, in Toronto, for example, where they watched two city blocks burn. But these are matters that would have to be worked out.

ASSEMBLYMAN SMITH: Thank you.

SENATOR KNOWLTON: Assemblyman Hirkala?

ASSEMBLYMAN HIRKALA: Mr. Ferrante, I would like a clarification of your position. You say that you agree with Mr. Pease and Mr. Parsonnet. At the same time, you ask the Legislature not to make any changes in the present law. Now it seems to me that Mr. Pease on behalf of the Commission and Mr. Parsonnet on behalf of his organization have recommended some specific changes. Now if you call on the Legislature not to change anything, where do you really stand on this law?

MR. FERRANTE: Well, their changes wouldn't actually be changes, but additions. As far as the law as it stands now, I don't believe any specific recommendations for change

have been made, except where changes were recommended through bills that have been submitted and Mr. Pease did state, "Rather than this, I would suggest this."

ASSEMBLYMAN HIRKALA: He has covered quite a few areas.

MR. FERRANTE: That is true. As I said, there are definitions that are needed. This would in effect be a change, but not an actual change by the Legislature, a change by the court. The only change that I understand from the hearing this morning would be how to handle unfair labor practices, and this is an area where something is definitely needed, some type of fine or something that could be levied on either side where an unfair labor practice does exist. But as far as actual changes, I don't recall any being suggested.

ASSEMBLYMAN HIRKALA: Do you feel that there has not been sufficient time elapse for a fair evaluation under the present law?

MR. FERRANTE: Yes, I do, definitely. We haven't had the time. As Mr. Pease pointed out, he doesn't have the staff to get out in the field and prove these cases where you have situations existing in communities that are similar or dissimilar. But you can't actually work on them because you don't have the experience to go back and look in the files and see what happened in Hoboken to find out what we are going to do in Jersey City. This is the experience you must compile in order to prove whether a law is feasible

and workable or not workable.

ASSEMBLYMAN HIRKALA: Even though you feel there has not been sufficient time for proper evaluation, how do you feel on the general tenor of the law? Do you think it has been working for the good of New Jersey and its employers and employees or do you feel that it has not worked well?

MR. FERRANTE: I think it has done a tremendous service for every citizen in the State. I know for a fact in our community, it tends to more or well weld your relationship between your employee organizations and your employer, who is the actual community. Realistically speaking, prior to this law, you went with your hat in your hand or with a bag under your arm if you wanted an increase in salary. But today you don't have to do this. Today you have a little prestige behind you. This is what the law has given us. I think - I am almost positive - the citizens realize this and more or less it has welded a better relationship between all parties.

ASSEMBLYMAN HIRKALA: Thank you.

SENATOR KNOWLTON: Mr. Ferrante, would you not agree that we could borrow on the experience in other states dealing with public employees --

MR. FERRANTE: Yes, I would definitely agree.

SENATOR KNOWLTON: -- New York State under the Condon-Wadlin Act and then subsequently under the Taylor Act as amended today?

MR. FERRANTE: To a degree, yes.

SENATOR KNOWLTON: We have a body of experience in

other states.

MR. FERRANTE: Definitely, we do have experience in other states that we can reach out to look to.

SENATOR KNOWLTON: Thank you very much, Mr. Ferrante.

MR. FERRANTE: Thank you for allowing me to speak.

SENATOR KNOWLTON: Professor Marcson. Doctor, may we have your name in full and your affiliation.

S I M O N M A R C S O N: My name is Simon Marcson and I am Chairman of the Joint University Faculty Committee on Public Law 303, involving Rutgers and Princeton, of which some of the members of my committee are testifying today and tomorrow before your committee.

All the members of my committee are individuals who have considerable expertise in this particular area of problems of public employees under various categories of industrial relations - civil service problems.

SENATOR KNOWLTON: As I understand it, that is your particular field, is it not?

PROFESSOR MARCSON: My particular field is industrial relations and problems of professional people.

I want to address you, Mr. Chairman, in terms of two areas of the problems before you: one, some general comments on 303; and, secondly, raise a couple of questions which are kind of addenda to the written statement that I have.

It is my feeling, and one shared by many, that the present Act and Commission structure is inadequate. It is

highly questionable for the members of various interested organizations to serve on a Commission which, in a sense, is making judicial decisions in which they are interested parties. The result of this kind of commission composition results in consistent charges of conflict-of-interest and threats of suits against PERC.

A more adequate commission composition would be one consisting of 9 members appointed for two or three year terms and drawn from the public at large rather than from the leadership of organizations involved in disputes under the PERC Act. By this, I don't mean to exclude members of organizations; I am talking about officers who therefore have special interests in disputes.

The criteria for Commission membership should include the following:

Firstly, established New Jersey residents and distinction in their fields.

Secondly, Commission members should have backgrounds in arbitration, Civil Service, some aspect of academic service, some aspect of public education, law, or a background in either public service in the State Legislature or municipal government, and industrial relations.

It would not be expected that all members of the Commission would have all of these criteria, but each member should have a background in at least one of the above listed criteria.

The Commission should employ an executive officer with

a small permanent staff. It should also have the appointive power to form panels consisting of three members at a time to arbitrate disputes brought before it in various areas. I am very much concerned with the adequate realization that there are a vast variety of areas which fall under the concerns of this law and there sometimes appears in some of the discussions the assumption as though we were talking about some homogenous, unified kind of problem. The panel members as well as the Commission members would be paid a per diem fee while on Commission work.

A basic issue involving the present functioning of Law 303 is that pertaining to the permissibility of strikes by public employees. There seems to be no question that attempts of legislators to outlaw strikes on the part of public employees has not worked. It also is clear that when collective bargaining involving public employees breaks down and results in a strike, that it is disastrous both to the community and to the public employees. As a matter of fact, a case could be made out that when a no-strike provision is present, and when weakness on the part of public employees is added to their usual weakness, the result is so formidable in collective bargaining relationships between the two contending parties, that this, in itself, may encourage strikes. It is, however, necessary to keep both parties talking and negotiating and, therefore, it would seem that the remedy would be one of instituting compulsory arbitration, and I don't see compulsory arbitration a diminution of freedoms

or of the workings of democracy. As a matter of fact, we sit in a room which is dedicated to the system of parliamentary procedures which no one has claimed is a diminution of the freedom of the individuals abiding by those procedures or to the workings of democracy. A system of compulsory arbitration would force both the employees and employers to negotiate and arbitrate, rather than to resort to a cataclysmic public strike, or to an illegal strike under a no-strike provision. Such compulsory arbitration could be imposed as a result of a cooling off period. My own preference would be a cooling off period of about 50 days, not more, not less, and the institution of compulsory arbitration on that.

The enforcement of compulsory arbitration findings requires the application of sanctions. Adequate and meaningful sanctions must be available to apply equally to both employers and employees when they fail to abide by compulsory arbitration findings. If the failure is due to the inability of a school district to abide by arbitration findings due to inadequate budgetary support by the voters of that district, then the State must be in a position to apply adequate sanctions to that school district. In other words, you cannot have a system of compulsory arbitration, you cannot have a system of sanctions, for employees and public employees without adequate provision of responsibility on the part of the State in making these sanctions meaningful and making the functioning of negotiating process meaningful. One of the problems right at this moment, especially in the area

of education involving public employees in that area, is that it is not clear who has the final decisive responsibility for negotiation and for decision-making.

On one basis, one might say that it is the Legislative Appropriations Committee which has the final decisive power with respect to negotiation and decision especially in salary areas. However, is the Appropriations Committee of the Legislature going to assume that responsibility? If they are, how are they going to do that? If they assign that responsibility to the Governor and his administration, then how is that to function? It isn't clear at the moment what the relationships are, say, for instance, between the Department of Higher Education and the administration of the State. It certainly is not clear what the relations are between the Appropriations Committee and the Department of Higher Education. And it isn't clear as to who is responsible for negotiating in this area of public employees, involving a vital area of thousands of employees.

Similarly, failure on the part of employees to adhere to an arbitration finding needs the support of compelling and meaningful sanctions in PERC law.

Mr. Chairman, that is my statement. If there are any questions, I would be happy to respond to them.

SENATOR KNOWLTON: Thank you very much, Doctor. I do have a question or two.

First of all, I might say that the responsibility of the Joint Appropriations Committee is to formulate an

Appropriations Bill after considering the Governor's Budget Message. We formulate that bill, but in the final analysis it is up to both Houses of the Legislature to make a determination. We have enough to do on the Appropriations Committee not to get into this field of collective bargaining.

I might also ask you, however, what kind of sanctions do you think should be imposed against a recalcitrant public employer who refuses to bargain in good faith or who refuses to abide by the decision of an arbitrator having authority to determine, this is this, in other words, binding arbitration?

PROFESSOR MARCSON: The State has many mechanisms for compulsion of public bodies. For one thing, the State is involved in contributing various forms of aid to various kinds of units. In the area of education, it contributes aid to school districts. That is a powerful compelling means which the State can exercise by slight changes in the Education Law where any failure, failure on the part of a public body, might find a sanction of certain percentage diminution in State aid. There is no reason why a factor like that cannot be put into the formula which is under consideration presently with respect to revisions in State aid. That is one kind of example in which the State can function. I think this would be a very meaningful one for a school district which was not abiding by either the legalities of a new 303 or the spirit of a new 303.

SENATOR KNOWLTON: Dr. Marcson, you are on the

Rutgers faculty, are you not?

PROFESSOR MARCSON: Yes, sir.

SENATOR KNOWLTON: What would you say would be within the purview of collective bargaining specifically in the field of working conditions, such as class room size, number of hours a week, topics of that kind? I am not referring to salary now. I am talking about working conditions other than salaries and fringe benefits.

PROFESSOR MARCSON: The present law has a very adequate statement in which it states that public employers shall negotiate written policies, setting forth grievance procedures, by means of which their employees or representatives may appeal the interpretation, application of violation of policies, agreements and administrative decisions affecting them, provided that such grievance procedures shall be included in any agreement entered into between the public employer and the representative organization.

A grievance procedure is essential for the implementation of collective bargaining arrangements because, as, I think, implied in your question and certainly in my views, all the issues are not purely salary issues. Sometimes they become salary issues because grievous issues have not been dealt with, and this is perhaps sometimes the only way it can be brought to a head, by raising a salary issue. Anyone in personnel management knows this as a basic rule in law.

So grievance procedure, grievance machinery, adequate grievance machinery, is absolutely necessary.

However, it it is not clear who the public employer is, then how in the world are you going to have grievance machinery and grievance procedures? Who is one going to "grieve" to if it is not clear? Is it a college? Is the college the unit? Is the university the unit? Is it the Department of Higher Education or is it the Governor's office? It is not clear. I think one of the problems that this committee has to address itself to is clarification in this area.

SENATOR KNOWLTON: Doctor, we have heard some reports that teachers, especially in the public school system, have deemed it to be within the purview of working conditions the size of class room, curriculum content and, indeed, teaching methodology. Should these be in your opinion negotiable items or do these come under the framework of the system of education, whether it is higher or lower? Do these come within the framework of respective departments handing down policy which is adduced by their respective boards, the Board of Higher Education on the one hand and the State Board of Education on the other?

PROFESSOR MARCSON: The issue you raise is a terribly complex one and there are a variety of differences. The customs and traditions and the practices are widely different for universities and colleges than they are in the public education sector. In general, in universities and colleges class size is not negotiated. It is subject to the demands of supply and demand in terms of student enrollment. So I

as a faculty member don't negotiate or don't make any declarations as to my class size. I can express preferences within my departmental structure. However, if the student demands are such, then no limit is placed on a particular class in a particular semester.

In public education, you have much different problems. There is a general understanding that the very large classes for children have an impedence in terms of teaching effectiveness and I would in general agree with that. My own inclination, my own experience, my own study of these matters, lead me to believe that there is a limit to class size in terms of effectiveness for grade school children and high school children - teaching effectiveness and learning effectiveness. This factor changes very much on college and university level since we are dealing at that level with nearly adults and with adults with entirely different spans of interests, with entirely different kinds of disciplinary problems. The high school teacher has again much different problems.

I think there is sufficient knowledge in this area and sufficient practices and traditions that it is not usually placed a subject of grievance or of bargaining or negotiation, although one cannot rule out the role of teachers' expressing themselves on these matters and certainly they would want to express themselves and should be free to express themselves. I think in terms of management, the school administration should have the final say if this

is the thrust of your question.

SENATOR KNOWLTON: Doctor, when I asked you the question about sanctions against the public employer, you gave us an example of a public school district or town which refused to honor a binding arbitration decision. Now suppose that school district just couldn't possibly honor that binding arbitration decision because it was unable to raise sufficient funds out of existing tax revenue. What then would be the answer?

PROFESSOR MARCSON: I would expect that the arbitration board would have taken that into account. I would not expect an arbitration board to come to any decision which did not also take into account the tax base of that district and the ability of that district to abide by its decisions. It couldn't possibly make a decision without taking into account the economic factors involved.

SENATOR KNOWLTON: Assemblyman Smith, do you have any questions?

ASSEMBLYMAN SMITH: No.

SENATOR KNOWLTON: Assemblyman Hirkala?

ASSEMBLYMAN HIRKALA: Dr. Marcson, you say the present act is inadequate and then you say, under the present setup, there have been charges of conflict of interest. Do you know of any specific instance when the Commission as a whole or any individual Commission member was motivated not for the public good but was motivated in his decisions by a conflict of interest?

PROFESSOR MARCSON: I have not suggested that. I

have simply reported what I think is common knowledge, that such charges have been made, and I believe that one member resigned due to such charges. I am not impugning the honor or the motivation of any member of the Commission, past or present.

ASSEMBLYMAN HIRKALA: You call for a makeup of a nine-member Commission, two- or three-year terms, all to be selected from the public at large and then you set forth some definite criteria. Will you please read that criteria again?

PROFESSOR MARCSON: Right. Backgrounds in arbitration, Civil Service, academic service, public education, law, or background in public service in the State Legislature or municipal government or industrial relations.

ASSEMBLYMAN HIRKALA: Well, your criteria today fit most of the members of the Commission, I am quite certain. However, one thing disturbs me and, that is, by limiting this criteria, you might be giving appointments to a segment of the population which might reach 50,000 people in a State where there are over 7 million people, and I feel that your criteria is actually an instrument to preclude people from serving. Would you like to comment on that?

PROFESSOR MARCSON: Yes, sir. I don't know the size of the population represented in terms of these criteria. Obviously what I am emphasizing is experience, commitment and dedication to the problems involved. I think this is an area we are kind of innovating in. There has not been

much experience, much work, done in this whole arena of public employees and collective bargaining, especially in the area of professional persons in public employment. Therefore, I think we need individuals who know how to go about examining, analyzing, working out, the many problems that are here and we haven't touched on them so far today, a good many of them, in arriving at rational bases for approaching these problems as over against the constant threat of self-interest and pressures for various kinds of groups.

I think because we are meeting in a room like this, we are meeting in an atmosphere dedicated to a concept that a rational process and a rational approach can meet, can solve, problems, can come to adequate decisions, in dealing with humans, fellow humans.

ASSEMBLYMAN HIRKALA: Dr. Marcson, one of your recommendations was that the Commission have an executive officer and a small permanent staff. What do you consider a small permanent staff and would you advocate any other staff members who would not be full time?

PROFESSOR MARCSON: Yes. I imply that the hearing panel members would not be full time. They would be appointed in given areas. If it was a Civil Service problem, if it was a problem in the area of municipal employees, in the area of education, different kinds of panels would be appointed. They would be temporary for the hearings of those kinds of cases as over against the permanent staff.

ASSEMBLYMAN HIRKALA: But how many members would you recommend for your small permanent staff?

PROFESSOR MARCSON: Offhand, I would say somewhere between 20 and 30 would be my conception of a small permanent staff.

ASSEMBLYMAN HIRKALA: Would you then feel that the present makeup of the employees that are hired by the Commission is woefully inadequate under the present circumstances?

PROFESSOR MARCSON: In terms of numbers?

ASSEMBLYMAN HIRKALA: Yes.

PROFESSOR MARCSON: Yes.

ASSEMBLYMAN HIRKALA: Do you feel that there should have been a larger budgetary appropriation given to the PERC organization to continue their work?

PROFESSOR MARCSON: I see no purpose in spending all of this time of valued members of the Legislature and the public and members of my committee in producing an effective law without the adequate budgetary support for the conduct and the implementation of a high level of performance.

ASSEMBLYMAN HIRKALA: One last question, Dr. Marcson: You mention that attempts to outlaw strikes have not worked. Do you feel if there were a law in New Jersey which permitted public employees to strike, that system would work better?

PROFESSOR MARCSON: I didn't say that. I implied exactly the opposition.

ASSEMBLYMAN HIRKALA: I am asking you a question. I didn't say that. I am asking you a question.

PROFESSOR MARCSON: I implied the opposite in my remarks. I distinguish very sharply between the public sector and the private sector. In the private sector, there are the means and the resources and the basis for contention between employers and employees on a collective bargaining process in which the results depend upon the resources of private employers in strike settlements of economic gains.

In the public sector, you are dealing in an entirely different area. There is no profit enterprise in the public sector. I think it is a great error that is made in discussions about linking together the public sector and the private sector as one entity. The public sector has to go each time to the taxing body. It involves also areas of employment which we had described this morning as paramilitary and, therefore, essential, and, therefore, would be excluded from public strikes as over against public employees who are not excluded. Now this kind of hairbreadth distinction in public areas is further reinforced with the rationale that the elimination of strike permissibility is somehow a diminution of freedoms. If it is so, it is also a diminution of freedom for paramilitary. Therefore, to be logical, we have to permit strikes in any area for anybody, any group of employees in any kind of service.

If we are going to make distinctions, I think the

way to draw the distinction is between the private sector and the public sector. The public sector cannot make the same kind of economic decisions as the private sector can because I have just mentioned the fact that it has to go to an Appropriations Committee and the Appropriations Committee in turn has to make decisions about tax sources.

The result is, therefore, that I cannot see the efficacy or the meaningfulness of strike permissibility in the public sector, no matter what part of the public sector, plus the fact that there is really no clear-cut evidence that compulsory arbitrary fails and strikes win. If you lump together the public and private sector, you can make generalizations like that, but you cannot make a generalization like that if you are talking just about the public sector. It is true that in the public sector only a small proportion of conflicts reach strike basis. But we don't know all the consequences of new legislation in the public sector. What the Legislature has been doing and is doing now is opening up a new area of concern for which we don't have all the answers. I would, therefore, at this time strongly recommend that we move in the direction of compulsory arbitration, again accepting the rationale that I think that reasonable people, using reasonable methods, on a rational basis will arrive at fair and equitable judgments, both to the public and to the public employees.

ASSEMBLYMAN HIRKALA: Thank you.

SENATOR KNOWLTON: Thank you, Doctor.

Chief Di Costanzo.

S A L D i C O S T A N Z O: I am Sal Di Costanzo, Chief and Director of the Irvington Fire Department.

Senator, I wish to thank you and your committee for allowing me to barge in unannounced here today, but I felt that management's side should somehow be heard.

I listened to several speakers here today, particularly Lieutenant Stevens from the Jersey City Police Department, and I basically want to reaffirm for the Fire Department as he affirmed for the Police Department, that for the most efficient operation there should be a definite unit distinction and separation of supervisors and other personnel. Supervisors, as he adequately stated, as per the definition in PERC, are those who are empowered to hire, fire and promote. We know in the police and fire sector that subordinate officers cannot do this and yet nonetheless, we consider them to be supervisors as such. I also feel that the term "supervisor" should be redefined so that it will encompass all officers in the Police and Fire Departments.

I also agree with most of the speakers here today that Civil Service has been a great organization and has personally been most gracious to me over the years. And I feel that the rules and regulations as promulgated by the Civil Service Department should be continued and that there should be no encroachment upon same by PERC. I feel that PERC should be confined basically to those areas not covered by Civil Service, areas such as salary negotiations, fringe benefits, etc.

It comes to our attention that from time to time wherein PERC has been utilized or attempted to be utilized in some communities, police and fire, they have attempted to walk into the appointing authority and dictate such matters as transfer, promotions, assignments to duty, etc. We feel that these are managerial controls, administrative controls, and that these controls to promote the most efficient operation must remain in the hands of management and not labor per se.

These are some things that we in the State Fire Chiefs Association are quite concerned about and we sincerely hope that some method is entertained wherein, again to repeat, managerial controls are maintained.

We heard of a case only last evening from the Civil Service Commission wherein a temporary employee was employed four months and under Civil Service regulations had no right to appeal. During the temporary four-month employment, this lady in question attempted to organize the group with which she was working. At the end of four months she was released by Civil Service. She attempted to appeal to Civil Service but had no appeal. She then took it to PERC who attempted to rule in her favor that she should remain employed and the case is now in litigation. Here is a clear-cut case wherein an attempt has been made to abrogate the functions and duties of Civil Service.

To repeat, Civil Service rules have been proven efficient and I think that they should remain without

encroachment by PERC or any other organization or establishment in the State.

I am not entirely certain in the unit separation that the Chief Executive Officer of either Police or Firemen should be considered in the same unit as supervisors, and this is a personal thought, because the Chief Executive Officer must from time to time rule upon members in his unit. I just throw this up as a balloon. I am not certain that he should be in any other unit.

The word "strike" has appeared here several times today, and I personally and my organization are definitely opposed to the strike mechanism by police and firemen. We feel that this is a detriment to the public sector and the public welfare. We feel although this may be a tool of the private sector, we certainly when we assume these jobs and when we took our oath of office, took an oath that we would at all times protect the life and property of the citizens in our communities. I, for one, and my association, for two, feel that strikes should not be permissible where police and firemen are concerned.

Again I wish to thank you for giving me the opportunity of making my position known and the position of my organization and I would like to listen to some more. Thank you.

SENATOR KNOWLTON: Assemblyman Smith, do you have any questions?

ASSEMBLYMAN SMITH: I was just wondering if you speak for a majority of your organization when you say that

you are opposed to strikes for police and firemen.

MR. DI COSTANZO: Yes, sir. As far as the paid Fire Chiefs of the State are concerned, yes, sir.

ASSEMBLYMAN SMITH: I didn't think they made them like you any more.

MR. DI COSTANZO: Thank you.

SENATOR KNOWLTON: Assemblyman Hirkala?

ASSEMBLYMAN HIRKALA: Chief, I would like to go into the area of this lady whom you said was a temporary employee. Would you tell me what title she had?

MR. DI COSTANZO: I am sorry, sir. I tried to give you as much of the story as I recall. This was only given to us by Civil Service last evening.

ASSEMBLYMAN SMITH: I think that's a Burlington County case and I'll be glad to brief you on that afterwards.

ASSEMBLYMAN HIRKALA: I would rather go into it since Chief Di Costanzo brought it up.

MR. DI COSTANZO: If I may throw a name up here ---

ASSEMBLYMAN HIRKALA: I don't care about the name. I want to know what title.

MR. DI COSTANZO: Mr. Mangione of Civil Service has the details on this case and he, in brief, gave this to us last evening. I do not know the details of same. I believe it is in South Jersey somewhere. I do not know the particulars.

ASSEMBLYMAN HIRKALA: All right. If you don't know the details, I will get it from the gentlemen here.

SENATOR KNOWLTON: Thank you.

Mr. Robert Chanin. Will you please give us your name in full and your affiliation.

R O B E R T C H A N I N: My name is Robert Chanin. I am General Counsel for the National Education Association.

The National Education Association is the parent body of the New Jersey Education Association and I appear on behalf of our New Jersey affiliate.

The NJEA has not prepared a detailed statement suggesting specific changes in the law nor have we submitted to you a revised statute. This is not meant to suggest that we are perfectly satisfied with all aspects of the operation of Chapter 303. We are not. If we were now in the posture where this Legislature was considering the drafting of a statute for the first time, there are many things we would like to see handled differently. We feel, however, that we had this opportunity in 1967 and again in 1968. As we understand it, the purpose of this hearing, as reflected in Senate Resolution 6 and in other statements we have read, is to consider - and this is the quote from the Senate Resolution - "the effect and results of Chapter 303." This means, it seems to us, to identify the problems that have developed and to consider necessary changes based upon two years of experience. The crucial question, as we see it, is how has Chapter 303 worked?

In light of this purpose, we have some difficulty with the various positions reflected in the statements that we have heard and the multitude of bills that have been

submitted to the Legislature. The bills would change virtually every aspect of this statute. For example, they would change the structure of PERC. They would go to all impartials, a greater number of impartials or they would split its functions into the dispute settlement and the negotiation resolution. They would change the criteria for unit structure. They would add different criteria as to legal jurisdiction of the employer - joint responsibility to serve the public. They would change the definition of "supervisor" and change the definition of "professional."

There are bills in which would increase the rights of minority organizations in grievance processing. They would define what "good faith" negotiation means. There are proposals to specify the subjects of mandatory bargaining. Some would eliminate the obligation of the employer to negotiate about changes in working conditions and merely make it an obligation to discuss. There are those who would limit the grievance procedures simply to disputes as to working conditions. There are proposals to authorize early entry by PERC at its own initiative. Others would require the parties to share the expenses of mediation. Some would include specific unfair labor practices in the statute. There is a bill to clarify the relationship between Chapter 303 and the Civil Service Act. There are proposals to expand the training program at Rutgers to include employee groups as well as employer groups. Others would deal differently with the strike. Some would totally legalize

it; others would partially legalize it; some would impose more restrictions with stringent penalties.

In short, the proposals advanced would completely redo the legislative structure which this State has set up. If the experience of the last two years has indicated that all of these areasare problems, we can only conclude that Chapter 303 has been a total and dismal failure. And I think that is not the case.

Several suggestions for change are in the area of criteria for unit structure. We ask ourselves the question of why. Has this been such a problem as to warrant this committee and this Legislature, based upon two years of history to modify the statute? In education,alone, there are over 400 units already agreed upon. Fifteen of those in the entire life of this statute have required PERC intervention. Thirteen have been resolved. Two are still pending. Unit problems are a one-shot deal. They are not recurring. They are resolved now and forever. Why change the statute? The problem, if there ever was one, is behind us.

There are proposals to change the scope of negotiation. In education alone, we have over 400 contracts. Of those 400 contracts, only two have required PERC intervention in determining what is the mandatory scope of negotiation. One of those is now in litigation. We hope that as a result of that litigation before PERC, we will have guidelines which will avoid the few problems which might arise in the

future.

As you look at the scope of negotiations based upon comparisons to other states, it has proceeded exactly as we would have anticipated, no different than that in any other state and with no undue or unexpected disruptions.

I think the same type of statement might be made about many of the proposals that are put before you today. We think that the explanation for this lies in the fact that many of the groups have ignored the purpose of this hearing. They have seen it as just another attempt to come in and air their particular legislative preferences. It sounds to me like a replay of the hearings that I sat through in 1967 and 1968. We hear the same arguments and the same theories. This is not to suggest that all of the proposals made are bad. We think many of them are excellent and in another forum and at another time, we might well support them.

For example, we think the definition of "good faith negotiation" in the statute would be helpful. It might avoid unnecessary disputes over a basic point. We would probably also favor the inclusion of specific unfair labor practices in the statute. We don't think it is legally necessary but it might help. It might avoid a dispute at some future date.

Similarly we think the early intervention of PERC might help retard a developing problem in certain cases.

On the other hand, if we were to look at the substantive

merit, we think some of the proposals we have heard are just as bad now as they were three years ago when we heard them and on substantive grounds we would vigorously oppose them. To share the cost of mediation - if we have learned anything, we have learned that mediation has been an invaluable tool. Why should we impose a deterrent which would cause parties perhaps not to use this tool which we have seen is a workable one?

Expanded rights for minority organizations in grievance procedure - we think this would undermine the whole concept of exclusive recognition and it would be totally inconsistent with the system of stable labor relations. We would oppose other suggestions on substantive grounds as well.

But our primary objection today is not to the merits of these proposals; it is to the purpose and their appropriateness before this group and at this time.

What have the problems been over the past two years? Where have the trouble spots come? And in light of this test, in light of this context, we think the proposals put before you are inappropriate. Although we differ in some respects with the statement made by PERC - and we will indicate shortly what the nature of those differences are - we generally agree with the tone of its position. The statement appears to reflect a blending of various interests of the various groups involved in the preparation of that document. It indicates some areas of dissatisfaction. It

shows some problems that they have encountered. But I think the conclusion, with which we agree, is that the law is basically soundly conceived and has worked and has moved us in the direction we have chosen to move and it has basically done the job it was intended to do.

Now this is not to suggest that we feel it has worked flawlessly. It has not, and I would suggest to you that our organization probably has been involved in more of the problems than any other. We have been involved in more unit disputes. We have been involved in more impasse procedures. We have been involved in more strikes than any other employee group in this state. And at times we have been frustrated and greatly disillusioned. But we think the thing to do is not simply run out to change the statute. We think we must look to the cause of our frustration, to the cause of our disillusionment, and see what must be done.

We think the problems we have encountered over two years come less from inadequacies in the statute than from problems of administration. And this is not meant as critical of the existing PERC staff or the PERC body itself. We would strongly say there is a need for more staff and there is a need for more money. And to the extent we have had many problems over the years, it has been because of this inability to implement what is already on the books.

When we turn to the legal framework, itself, we really find only one significant problem. What happens when the

impasse machinery is exhausted and the problem is not satisfactorily resolved? Stated more bluntly, the problem of the public employees' strike. I think this is evident. If there were no strikes in New Jersey for the last two years, you would not be having hearings today. We would all be out hailing 303 as a national model.

So I would suggest to you that if the Legislature wants to do something, it should not be a wholesale revision of a law which has proven generally acceptable. It should focus on the one problem which has gathered national attention and which has caused community concern within this State and that is the problem of the public employees' strike.

PERC cites in its document various statistics to show that there have not been an excessive number of strikes in light of the number of negotiations and in light of the number of contracts resolved. And this is true. But we don't think it is the proper test. The numbers are interesting, but we think you have to look to the tough case because it is the tough case that tests the soundness of any law. The fact is that under a legal system which bans all strikes and which ends up with an impasse procedure which only has non-binding recommendations, an employer can, if he chooses to, take an intransigent position during the negotiation, knowing that if he is patiently firm in exhausting the impasse procedure, he can ultimately impose a unilateral settlement.

We think that strikes are unfortunate. I think strikes by teachers are unfortunate and by any public employee

group, whether in the public sector or the private sector. Indeed, the ones who are usually hurt most by a strike are the employees, themselves. Nor do we believe that the strike should be the primary determinant of public policy. We recognize that we operate in a different sphere. Public employment is in a sense unique. Government cannot go out of business as can the private sector employer. So that suggests to us that you cannot just lift what we have learned in the private sector and without modification apply it to the public. It simply won't work.

The problem, as we see it, is to achieve a proper balance, to develop a system that provides for the prevention or prompt resolution of public employee disputes, to avoid strikes and to make the need for strikes disappear and to protect the public interest in those situations when a strike does occur, if it does occur.

This is an extremely difficult and complex problem, not only in New Jersey, but in every state in the country. As I listened to the statements of the other speakers and as I read the documents and position papers, I am always amazed because there is such certainty - impose more stringent penalties, restrict the strike - that's the answer. In a world as confusing and uncertain as this, it is good to know that there are people who know the answers.

As for myself, I spent every day of my professional life for the last ten years dealing with public employment negotiations in this State before and after the statute, and

in 20 or 30 other states in this country. And I confess, I don't know the answer. The problem is extremely difficult and we are not sure just how to deal with it.

Those who speak against the strike clothe their position in all kinds of cliches - community concern, public interest and the like. I think they are really advancing their own self-interest. I don't fault them for this. If I represented an employer group, I would do exactly the same thing.

The right to strike is a great equalizer in negotiation and under the present structure we play in a one-sided game. It would be naive of me to expect any employer representative to come in here and voluntarily relinquish his great advantage in negotiation. A more honest statement of position would be refreshing, but maybe I ask too much. I think rheteric, opinion and emotion add very little. I think what we can do is look at the strike problem, look at the facts, and see what, if anything, we have learned. What can we point to as data and say these are the things we have learned in New Jersey over two years of experience and in 49 other states over a period of five to ten years? While they are not a total pattern, there are certain facts that emerge. We think they are these:

We think that penalties and prohibition do not deter public employees' strikes. The point that I made previously about the misconstruction of the purpose of this hearing would seem most graphically illustrated by the proposals

which have become more repressive and more stringent penalties.

What shred of evidence exists in New Jersey, in New York, in Pennsylvania or anywhere else, on an empiric basis, to suggest that penalties will deter strikes? I would suggest any experience we have is exactly to the opposite. If we needed any further proof, we have the postal workers' strike in the face of the most restrictive legislative structure anywhere in this country, but they went out. What does the experience indicate? - that if public employees feel sufficiently aggrieved and don't have an adequate avenue of redress, they will strike, regardless of what the penalties are in the law.

We have also learned that the strikes that do occur are often the fault of the employer. Frequently, they are the fault of the employer and the employee group and I would confess to you that on some occasions it is even the fault of the employee group itself.

We have also learned that in many negotiations, the employers demonstrate a lack of motivation, no real desire to reach agreement or to make concessions, because they know, as we know, that the strike weapon is legally removed and when it is down to the nut, they can go into court and enforce their position.

We have also learned that not all strikes by public employees result in chaos or a crumbling of the foundations of society. We have learned that some are very damaging, others are moderately damaging, and some are not so damaging.

We have learned, finally, that judges are in the best position to assess the impact of any strike upon the parties and upon the public interest, and to examine the situation and to fashion the most appropriate remedy to deal with the various competing interests in that particular situation.

If we put all of these facts together, what do they suggest? They suggest a position to us and the position is this - that a priori ban by a legislature on all public employee strikes, regardless of impact, regardless of circumstance, and regardless of the factors precipitating it, is probably not only unconstitutional but it is empirically unsound. The facts suggest the need for some flexibility, for a system which provides a motive for good faith negotiation, which allows for the assessment of relative fault when a strike does occur, and which permits someone in appropriate position to fashion a remedy that is proper and necessary in the circumstances of that situation.

We believe that a partial legalization of the strike under certain circumstances could produce these results. More specifically, we would propose that injunctive relief be granted in only two situations: First, if the strike presents a clear and present danger to the public health or safety, we believe it should be enjoined. We believe this is the price we pay for working in the public sector. This is what we give up. We believe also that because of the public policy in favor of peaceful resolution of negotiation disputes, a court should be able to enjoin any strike in

which the employee organization has not fully utilized the available statutory impasse.

We believe that the application of these criteria would be up to the court in a particular case. But we feel that there should be certain procedural guidelines: First, no injunction should issue except pursuant to findings of fact made by a court on the basis of evidence elicited at a hearing. Second, we believe that that evidence should establish one of the two criteria we have set forth previously. In either case, we think the injunction should be limited. In the first situation, it would prohibit only those activities that have been demonstrated to pose a danger to the community health or safety. And in the latter case, it would remain operative only until the employee organization complied with the statutory mandate to proceed through the impasse procedure.

We believe this framework should encourage the parties to avoid impasse. The element of doubt as to whether, and, or when an injunction would issue if the employee struck after fact-finding would be a powerful motive force for both parties to reach agreement. Moreover, if they did disagree and if fact-finding did take place, this same force should put severe pressure on both parties to accept the advisory recommendations of the fact-finder.

There has been increasing recognition, we think, that the answer may lie in this direction. In Pennsylvania, a panel appointed by Governor Shafer to study the problems of public employee bargaining did an extensive report in

which they recommended the right of public employees to strike under circumstances much like those I have outlined. A bill of this type is now pending before the Pennsylvania Legislature. Vermont has already passed statutes which would give a limited right to teachers and many other categories of public employees along lines of the type outlined above.

Probably the most graphic illustration is the recent statute enacted in Hawaii which would legalize strikes by all public employees under terms similar to those outlined above with a cooling off period built into the process. I believe this bill has been passed by both Houses of the Legislature and now awaits the Governor's signature in Hawaii.

This is also essentially the result achieved by court decree in Michigan. Under a statute much like New Jersey's, the Supreme Court in the Holland Case has built in the types of factors we have just discussed to the court's injunctive power.

Unlike some of the employer spokesmen that I have heard and some of the papers that I have read, I can't tell you that this is definitely the answer. I don't know. We think it makes logical sense. We think it is consistent with the few facts we have been able to put together. All we can say is, it might work. We think in considering whether to take this route, the Legislature must view it in the context of the alternatives and there are three.

You have before you restrictive proposals with

stringent penalties. We think this would move the State back to a repressive era which has proven unworkable and a failure every time it has been tried. It has only succeeded in compounding an already difficult problem.

Another alternative is to retain the status quo. While we think this has been adequate in most cases, there are demonstrated deficiencies and that is why we are here today.

We think the final alternative is to join with an admittedly limited, but growing,number of jurisdictions and experiment and try to develop new solutions for new problems, to come up with a creative approach to problems which have never before been solved. We think the proposal we advance falls into that category and we would certainly urge you to take the latter of the three approaches. Thank you.

SENATOR KNOWLTON: Mr. Chanin, one of the difficulties that Appellate Courts have with statutes in the field of administrative law-- and I have heard this said and our own Supreme Court said it the other day in connection with an argument before it concerning a case involving the public employment sector arising in Burlington County - they complained that 303 is not definite enough - does not afford sufficient guidelines. Would you care to comment on that?

MR. CHANIN: Yes. I could only comment on it generally because if I had heard the judge say it, I would argue with him. But taking it that it has been said, let me respond to the substantive point.

I am inclined to feel that someone at some point in our governmental structure must make decisions, definite decisions with definite guidelines, whether it be the Legislature, whether it be PERC or whether it be a court. I think in certain respects it may be for the Legislature to do that, to set the precise guidelines and say to the courts, "This is the way to proceed."

As far as the strike is concerned, I think not. I think a court that asks for more definite guidelines is copping out. I think the injunction is an equitable remedy and the function of the courts in our society is to judge a situation and determine when equitable relief is appropriate. I think no agency of government is in a better position to evaluate a total picture when the strike occurs than the court and to make its own guidelines as may be appropriate. I cannot say that the guidelines which would have applied in Newark would apply in Jersey City or Trenton or Paterson. I think that cannot be determined in advance and I think only the courts can make a just and equitable decision based upon facts.

SENATOR KNOWLTON: Now, sir, getting back to this problem of sanctions, you seem to infer, if I understood you correctly, that perhaps the courts should be a place where sanctions are imposed through injunctive procedures and the like. What do you think about Judge A who is kind of an easy-going judge and he says, "All right - I'll dock you so many days' pay because you have struck against my

injunction"; whereas Judge B who is a real hanging judge like old Chief Justice Lord Jeffreys of Merry England fame - he would throw a striking teacher in jail? Don't you think the Legislature should give some guidance, some guidelines, along the lines of - "These are the penalties that we think should be considered" - not mandate them, but to give to the judges, to our courts, an armory of power in the sense of sanctions, not only sanctions to be imposed against the public employee but against the public employer as well?

MR. CHANIN: When you mentioned a hanging chief judge, I thought you were going to refer to a different one.

SENATOR KNOWLTON: No, sir, not our Supreme Court Chief Justice. I happen to be a member of the Bar of this State. [Laughter.] I might say that my senatorial courtesy doesn't run that far either.

MR. CHANIN: I don't disagree with you at all and I would like to end up by agreeing with you, but prefacing it with another comment. I think the problem you pose is a problem intrinsic to the nature of our whole judicial system. As a lawyer, if I go in on a contract case, I get a good jury or a bad jury. And if I go in on a specific legal matter, I get one judge who is better than another judge. I think I must begin with the premise that while there are differences between judges and they may be marked, the Judiciary as a body is equitable, is fair, and will apply reasonable standards.

I will be the first to scream when I get the bad

judge, but I want my opportunity in accordance with our general legal practice to go to a judge and convince him that I am right.

Now we don't differ because I say leave the ultimate discretion in the hands of the judge,and you say perhaps it would be helpful to give him guidelines in applying his discretion. I think that is fine. I have been involved in more strike situations in this country where the judge has said, "I would prefer not to issue an injunction, but I feel legally bound under statute to do so." That is a situation I would rather avoid. Let the judge decide - give him the guidelines. I think the Legislature should. But leave the ultimate power to our Judiciary.

SENATOR KNOWLTON: Recently, there was a certain local teachers' association that tried to get together with a local board of education in the State for the purpose of discussing their grievances and their differences, salary, working conditions and the like. And they sought in vein to find not only the president of the board of education, but all of its members. They sought in vein for days, as a matter of fact,until somebody gave them a tip that the whole board, including the president, was down in some bar and grille. Now don't you think that the Legislature should provide some sanction which would compel the board of education to sit down with the teachers' group to bargain?

MR. CHANIN: What a leading question!

SENATOR KNOWLTON: No. The reason why I asked it

is because you said before that we shouldn't do anything with 303. At what point in time should we do something about a situation like that? That is a deplorable situation.

MR. CHANIN: I realize that I have problems with 303 and the two things you have suggested, I find myself in agreement with, and there are many other things I would like to see changed. I feel, however, within the limited time allotted to us, our purpose at this hearing is to come in and view what has happened. Where have the real problems been? I think the things you suggest - the absent school board and a variety of other horror stories which we could recite - are there. They exist. My point is that they can be dealt with. The one problem that has gotten everyone up in arms, that causes our people to turn to us and say the law does not work, that is causing our local affiliates throughout the State to become disillusioned with the legal mechanism, is the problem of the strike. It is for that reason we have focussed in the limited time allotted to us on the strike. That is not meant to say that we would not welcome the opportunity to give you other provisions, other suggestions of things we would like to see changed.

The point I must make though is if we give you those, we cannot in good conscience come in and say that our people are screaming that these must be changed, that the experience of two years has demonstrated this is a basic flaw in the act. They are good suggestions. We would certainly like

to see them. They might make the road a little smoother. But we think the big deficiency is in regard to the strike and that is why we focused on it.

SENATOR KNOWLTON: Let's get down to another particular, Mr. Chanin. I know of one school district where a great altercation ensued between the board of education and the local teachers' association over what should be included in working conditions. The teachers' association said that classroom size should be included, curriculum should be included. Now to the extent that the opinion or the desires of the local teachers' association might conflict with educational policy as laid down by the Department of Education and promulgated by the State Board of Education of this State, what do you do with a situation like that? What should the school board do there - follow the Department of Education or accede to the requests of the local teachers' group?

MR. CHANIN: I have to give you a personal view on this. My personal view is, stated as broadly as possible, that virtually everything should be negotiable and that is because of my view of what negotiation is. I don't believe that negotiation is a delegation by a school board of its authority. I don't believe that because a school board is forced to sit down and listen to its employees who are unhappy about any subject, they cannot act in the best interest of the public.

The arguments I have heard in this State are based

on the fact that school boards view negotiation as a mandate to give something up. It is not. Negotiation, as we understand it, is dialogue. It is getting something out on the table and having the parties discuss it. The school board under its statute expressly reserves the right to say no. All we ask for is the opportunity on anything of great concern to our people to come in and tell them why they should do it, understanding fully that they have the right to say no after we have presented our case.

The school board has certain definite obligations to act under various parts of the education code in this State. We don't seek to conflict with that. They have great flexibility in how they reach those decisions. We believe that the most feasible way to do that is to sit down with the people who are involved and discuss it. In a sense, this is a straw man that we fight because if PERC or if the courts or if this Legislature narrowly construes the mandatory scope of bargaining, it won't make the problem go away. So long as class size is a vital and sincere concern to teachers, they will seek to express themselves. And if the board says, "We won't talk about it," the problem will not disappear. It will be there and it will fester and there will be frustration.

We say that the Legislature has said that there is a mechanism which is better than this. Let the parties sit down and talk. And if they can't agree, let them go to some impartial to help them out, with the board reserving the

right to make the ultimate decision. I believe that as long as the law makes it clear that the board has the right to make the ultimate decision, I err on the side of more negotiation instead of less.

If I had to take the specific questions you asked about class size and the like and respond on a purely legalistic basis of do they come within the present phrase, terms and conditions of employment, I think the answer is yes. I have just concluded five days of hearing before PERC in a major case on this point. My definition is anything which has a significant impact upon the working life of the employee is a working condition. His employer should have the courtesy, the decency, and, indeed, the obligation to sit down with him and talk about it, reserving the right to say no. And that's all we ask.

SENATOR KNOWLTON: Assemblyman Smith, do you have any questions?

ASSEMBLYMAN SMITH: Well, are you including curriculum in that?

MR. CHANIN: I am, yes.

ASSEMBLYMAN SMITH: Then I just have one observation to make. It is nice of you to throw it into the courts, but I would like to remind you that when there is a strike, the Executive Branch and the Legislative Branch are the ones who take the heat, and all the elected officials, and for that reason, I don't think your solution is a practical one.

MR. CHANIN: Sir, I can't debate with you the heat.

You feel it and not me and I am sure that is correct. I would think if there were a fuel oil drivers' strike in Trenton - private fuel oil drivers - or workers in a private hospital in any city in New Jersey, the same heat would be felt by the Executive and the Legislative Branch. But that would still be resolved in the courts.

ASSEMBLYMAN SMITH: Except for one thing, that we have jurisdiction over the public employees.

MR. CHANIN: The Legislature has the jurisdiction because it chooses to keep it and exercise it. We suggest that the Legislature exercise that jurisdiction by assigning certain appropriate functions to the court. We think the question of whether equitable relief should be issued in a particular situation is a judicial function and should be determined by the court after a full analysis of the facts in evidence.

ASSEMBLYMAN SMITH: I understand your position.

MR. CHANIN: We obviously disagree on it.

SENATOR KNOWLTON: Assemblyman Hirkala?

ASSEMBLYMAN HIRKALA: Mr. Chanin, for the record I would like to know what city and state you reside in.

MR. CHANIN: I reside in Silver Spring, Maryland, and practice in Washington, D. C., and various other states throughout the country.

ASSEMBLYMAN HIRKALA: I asked you that because I wanted to hire you and you are not going to be around when I need you.

Mr. Chanin, you mention the fact that the strike has been the one instrument that has given your organization some sort of feeling against the present law in that there is not a provision in it which would allow you to strike. In the absence of such a provision and ultimately in the wisdom of the Legislature if they determine that they will not enact a law which would permit you to strike, do you think the rest of Chapter 303 is good for the affiliates in your organization?

MR. CHANIN: The general answer to that with my own interpretation of your word "good" has to be yes. But we think that flaw is so basic that it affects many other aspects of the law.

ASSEMBLYMAN HIRKALA: I might say at this point that that provision which disturbs you has led to some flak on the other side where the public is demanding that the Legislature pass a no strike bill. So, of course, we get it from both sides and ultimately we may satisfy no one.

My next question is ---

SENATOR KNOWLTON: That's our job, Joe - satisfy no one.

ASSEMBLYMAN HIRKALA: The next question is: Do you feel that the lack of adequate funding may be an instrument in helping this act not to work for the good of New Jersey?

MR. CHANIN: In regard to that I can speak from personal experience. I have handled most of the major cases before PERC that the NJEA has been involved in. I found the procedures fair in most instances and the people competent.

I have gone absolutely out of my mind with the time delays because they are over-burdened and couldn't get to the problems. We have had negotiations delayed ten, twelve and fourteen months because the backlog before PERC was so great. That has been our major problem with what we think is legislatively sound under this act.

ASSEMBLYMAN HIRKALA: I would like to make a short statement, Senator Knowlton. I want to compliment Mr. Chanin, I want to compliment Mr. Pease, Mr. Parsonnet, and all the witnesses that have appeared before this Committee.

I think, Mr. Chanin, that you and Mr. Pease have hit on the important issue here and, that is, the strike issue, and that if we didn't have the strikes, this might well be a law which is ultimately recognized as a sound, good law. The fact that strikes have come upon the scene have clouded the other aspects of this law and have brought forth certain public condemnations, many of which did not have valid substance.

I want to compliment Senator Knowlton because all of the witnesses here have given us a little better insight into this law and we will be able to deliberate amongst ourselves with a better knowledge of just what is involved. Thank you.

MR. CHANIN: Thank you.

SENATOR KNOWLTON: Thank you, Mr. Chanin.

Ladies and gentlemen, we will take a five-minute break and our next witness will be a very patient mayor,

Mayor Nardi.

[Five-Minute Recess]

SENATOR KNOWLTON: May we reconvene now, please.

Mayor Nardi of the City of Camden is going to speak for the New Jersey League of Municipalities. And, Mayor, I want to thank you very much for being so patient and also for extending the courtesy to Mr. Chanin in permitting him to testify before you. Thank you very much for your cooperation.

MAYOR NARDI: It was my pleasure, Mr. Chairman. It was most enlightening.

SENATOR KNOWLTON: This is Mayor Joseph M. Nardi, Jr., the Mayor of Camden, representing the New Jersey League of Municipalities.

J O S E P H M. N A R D I, J R.: Mr. Chairman and members of the Joint Committee: As indicated, my name is Joseph Nardi. I am the Mayor of Camden and Chairman of the Public Employee Labor Relations Committee of the New Jersey State League of Municipalities. I am appearing before you today on behalf of that Committee and the League.

A detailed statement outlining the League's suggested amendments to the New Jersey Employer-Employee Relations Act has been previously filed with this Joint Committee and another copy is available here for your use. The purpose of my appearance today is to elaborate briefly on the need for these amendments from the standpoint of municipalities as employers, and my references will be to material contained

in our previous statement.

[Detailed statement submitted by New Jersey State League of Municipalities can be found on page 115A of this transcript.]

Gentlemen, there are 567 municipalities in this State, all of which are cast in the role of employers under the terms of Chapter 303. Yet, unlike employers in the private sector, these municipal units are responsible under our governmental structure for providing the broad range of services which our communities demand. And these services must be provided and administered within a complex web of restraints arising from statutory state mandates which restrict the municipalities' options during negotiations with employee groups.

And, again, unlike their private counterparts, municipal employers do not operate within a profit-making framework. Whereas the private employer can either pass on his increased operating costs to the consumer or lower his own profit margin, the municipal employer, faced with increased operating costs, has only one avenue available, and this is to increase the taxes of the citizens. This, of course, is obvious and my purpose is not to belabor it. I mention it only because in the whole dialogue concerning public employee labor relations, there appears to be a tendency on the part of employee interests to portray public labor relations in unilateral terms of "us" and "they". The "they" of course, being public management. This view fails to realize that the "they" is really the taxpaying public at large - the community itself.

Moving on to another general observation: let me urge you not to underestimate the size of the municipal labor force in New Jersey. According to a 1969 report of the U.S. Census Bureau, our state has

over 100,000 full-time municipal employees, exclusive of school districts. The State of New Jersey itself, according to this Report, employs only 60,000 persons on a full-time basis. Municipalities, and our citizens, have a great deal at stake, then, in these amendments to the PERC law.

While the League is on record supporting legislation which provides an orderly and balanced framework for negotiating agreements and reconciling disputes in the public employment sector, we believe that the present provisions of Chapter 303 tip the scales of balance heavily in favor of the employee to the serious detriment of the governmental employer.

The most inequitable provisions deal with the negotiation of "terms and conditions of employment", and we have addressed ourselves to that problem in paragraph 3 of our statement. The law as now written extends to employee groups the right to negotiate terms and conditions of employment, but does not define exactly what constitutes a condition of employment. Nor are there any limitations whatsoever placed on the scope of what may be negotiated. No management rights or prerogatives for decision-making in conjunction with achieving the objectives of the agency are reserved to the public employer. In the absence of any such rights, such matters as the assignment of drivers to public works vehicles or shift rotations in the police and fire departments must be open to negotiation. Yet, there are obviously management decisions dealing with the utilization of personnel in accomplishing the agency's mission. For these reasons, we have recommended an amendment limiting the scope of negotiable items similar to those found in public employee labor laws in other governmental units (New York City, Wisconsin).

Incidentally, the Advisory Commission on Intergovernmental Relations includes such a limitation in its recent model public employee relations law.

An objection for the same reasons has been expressed over the present requirement in the law that all new rules and regulations affecting terms and conditions of employment must be negotiated. This requirement is, in the League's opinion, an unjustifiable restriction on the rights of management and should be modified in the manner suggested in paragraph 8 of our statement.

The League is also concerned about recommendations that public employees be granted the right to strike. We are on record in strong opposition to Assembly 810 and have previously testified to that effect. It is erroneous to equate the public employer with the private employer because the former operates in an entirely different framework than the latter for reasons set forth earlier. There is a profit factor in one instance but not the other; there is largely unrestricted managerial freedom in one instance but not in the other; the public both as taxpayers and as recipients of services are involved in one instance but not the other. Some 25 other states have statutory prohibitions on the right to strike. We urge New Jersey to adopt a similar amendment and we have suggested one in paragraph 11.

Another area wherein the League seeks amendment is that of basic definitions. The present law is either silent or deficient regarding such definitions as "supervisor", "managerial executive" and "confidential employee". There has been considerable confusion as to what positions and titles are, in fact, supervisory and the absence of clear language in the law has required interpretations by the Public Employment Relations

Commission in connection with unit determination and representation cases. Such definitions are contained in other State laws and the ACIR Model. The League's recommendations on this point are set forth in Paragraphs 5 & 6.

There are other aspects of the PERC law, which while not prejudicial to either management or labor, per se, operate to the detriment of both sides. The law does not define unfair labor practices nor does it define what constitutes bargaining in good faith. The League strongly recommends that unfair practices on the part of both management and employee organizations be specifically enumerated along with appropriate punitive action for such actions. At least eight other states have such definitions in their laws and so does the ACIR Model. We cover this point in Paragraph 4 of our statement.

Moving to still another area, we are concerned with the overlapping relationship between the PERC law and certain provisions of Title 11, Civil Service. We comment on this problem in Paragraph 9 of our statement. With the creation of grievance procedures under Chapter 303, public employees may now grieve the same set of circumstances under both PERC and Civil Service. It is our understanding also that other Civil Service provisions defining supervisors and seniority are in conflict. We are recommending, therefore, that both laws - Civil Service and PERC - be cross referenced and integrated to remove these duplications and inconsistencies.

Another weakness in the present structure of the law is the composition of the Public Employment Relations Commission itself. While we imply no reflection whatsoever on the individual members of the Commission, all of whom have dispatched their commissions with integrity and ability, we feel that the Commission cannot function

as a totally impartial body when it is comprised of members with publicly recognized employee or employer affiliations. We are recommending in Paragraph 2 that the Commission be restructured to consist solely of members of the general public. Such a provision is contained in the Model Law recommended by the ACIR.

Finally, we would like to emphasize again a point made in the beginning of our statement. We believe that a comprehensive revision of Chapter 303 is necessary, and that the various piecemeal amendments contained in the bills under discussion here today should not be acted on in favor of such a broad revision which contains the over-all provisions which have been outlined.

Gentlemen, that is the formal aspect of my statement and I would be pleased to answer any questions.

SENATOR KNOWLTON: Assemblyman Smith, do you have any questions?

ASSEMBLYMAN SMITH: No, I haven't.

SENATOR KNOWLTON: Assemblyman Hirkala?

ASSEMBLYMAN HIRKALA: Mayor, I just have one question. I want to read this: "A number of municipal officials have viewed these problems to be of sufficient importance to warrant outright repeal of the legislation. The matter of repeal was seriously considered by the League in its deliberations, but the final conclusion was reached that the interest of specific public employee's labor relations would be far better served by correcting the present inadequate

law than by leaving New Jersey with no guidelines at all through repeal." Could you give us some information as to what percentage favored outright repeal and what percentage favored amending the present law?

MAYOR NARDI: Mr. Assemblyman, I don't have any idea as to the percentages. I would be pleased to try to obtain it for you, although I am confident that no record was actually made of it. This was an expression by certain mayors and members of governing bodies of municipalities that indicated some displeasure with the law and as a result - we ought to do away with it. But after considered discussion and an evaluation of it, it was thought that in philosophy we ought to keep it and we ought to use this as a means to achieve the purposes for which ---

ASSEMBLYMAN HIRKALA: The reason I asked that question, Mayor, is I wanted to know whether the discontent was widespread, whether it was limited to a certain area or whether the displeasure was sort of sporadic.

MAYOR NARDI: My personal observation is that it was not too widespread.

ASSEMBLYMAN HIRKALA: Thank you very much.

SENATOR KNOWLTON: Is that all? Thank you again, Mayor, for your courtesy which you have extended to Mr. Chanin. We really appreciate it.

MAYOR NARDI: Thank you, Mr. Chairman. If you like I have copies of this statement which I will leave.

SENATOR KNOWLTON: We would like to have them.

Mr. Frank A. Forst. Mr. Forst, on my agenda, I have you listed as Frank A. Forst, International Representative, American Federation of Technical Engineers, AFL-CIO. Is that correct?

MR. FORST: Yes.

SENATOR KNOWLTON: And you represent the State Chapter or the State unit?

MR. FORST: I am the International Representative, Senator, which means that I have responsibility of all the locals within the State of New Jersey.

SENATOR KNOWLTON: And what type of employees do you represent?

MR. FORST: At this meeting, we represent 2,000 State Highway workers, 900 Turnpike workers, 500 Parkway workers, 100 Atlantic City Expressway workers. We represent the City of Asbury Park employees, the Cape May County Bridge Commission employees, the Township of North Brunswick. I just can't think of them all offhand.

SENATOR KNOWLTON: Are these employees of various classifications and categories?

MR. FORST: Yes, Senator. Some are State employees - those in the Department of Transportation.

SENATOR KNOWLTON: When you say employees of the Department of Transportation of the State, are these construction people or are they clerical people?

MR. FORST: Yes, Senator, we represent the Highway Engineers, the Aides, the Draftsmen, some clericals. Of the entire construction force, we represent at least 95 per cent of all the field workers, skilled trades, crafts, truck drivers, laborers. On the Parkway, we represent all the toll collectors and maintenance employees. On the Turnpike, we represent all the toll collectors and maintenance employees. In the City of Asbury Park, we represent all but the office employees. In the Cape May Bridge Commission, we represent all but the office employees. In the South Jersey Port Authority in Camden, we represent all but the office employees.

SENATOR KNOWLTON: All but the office employees?

MR. FORST: All but the office employees. For example, in the Birdge Commission, there are only three. In the Cape May Bridge Commission, there are three. In the Camden Marine Terminal, I think there are about six.

SENATOR KNOWLTON: Will you please proceed, sir, and will you keep your voice up so everybody can hear you.

F R A N C I S A. F O R S T: Senator, as you see, I have a statement that I would like to refer to, but first I would like to comment on some of the statements that were made here prior to my appearance. I realize, of course, that I won't be able to comment on all the statements made later or all the statements made tomorrow.

For example, Mayor Nardi said that the League of Municipalities believes in a balanced framework and that

they support an orderly and balanced framework and then comes back and says that they don't believe you should grant the right to strike. It is not possible to be in favor of a balanced orderly framework and not support the right to strike. There is no balance if there is no right to strike because ultimately the employer has the absolute right to turn you down and you have the absolute right to do nothing about it. So there is no balance. It is inconsistent to say you favor balance and then not permit a public employee to strike.

We are also shocked and very saddened by the resignation of Chairman Pease, whom we didn't know when he first came here as Chairman of this Commission and who came with the credentials of being from the Chamber of Commerce of the City of New York and an attorney not involved in labor. We knew nothing about him. We were very concerned about his activities and we have come to see his work and the work of the Commission and he has been absolutely magnificent in his role and his loss is a serious loss. And if his loss is as a result of budgetary cuts, then it is an unfortunate loss for all of us.

I would like to refer to my remarks and state that we appreciate the opportunity to be here and express our views.

We would be remiss if we did not say that in our belief Chapter 303 has been working very well and we can say it with some authority because as an organization, we have engaged in several work stoppages immediately prior to

enactment of the law and since the law, we have had no cause for any work stoppages. We feel that, in many instances, relief through the Public Employment Relations Commission and recourse in the law have avoided other strikes.

For the most part, the law and the Commission have resolved many potential disputes. A notable exception is in the state service where Governor Cahill, as Governor Hughes did before him, has failed to grasp the intent of the law and where state employees have effectively been thwarted in their attempts to exercise their rights under the law.

At this late date, I believe the Legislature or the Commission will not be able to stave off a strike in the Department of Transportation, which probably will come next month. It should be noted that our Local 195 has represented these employees for several years and yet, 21 months after enactment of the law, they have been unable to secure recognition. In this situation, it would appear that a strike is inevitable.

Another potentially explosive situation exists in the New Jersey Turnpike. As in the Transportation matter, the Legislature may be powerless to avoid a possible work stoppage there. Mr. Anthony Librizzi, who is the President of our Local 194, and is sitting beside me now, will testify concerning the Turnpike situation.

However, we urge the Committee to support Assembly

Bill 810 which would provide an incentive for public employers to negotiate in good faith and reach a just agreement. On the other hand, the Chairman's bill, Senate 564, and its companion bill in the Assembly, A 498, however well intentioned, would only provoke disputes by creating an unnecessary imbalance between the employers and the employees. We will emphasize the need for balance in later remarks quoting the Supreme Court in the Lullo decision.

The first consideration of this Committee should be, in our estimation, how Chapter 303 can be improved. Assembly Bill 810 is the first answer. It also answers the question asked by so many, "What happens after Fact-Finding?" No one has yet come up with another answer and certainly A 780, recommending a procedure which has continually failed in the only place it is used - the railroad industry - is not the answer. When two parties to an agreement have come so close - or are so far apart - on an agreement, the waiting of 90 days, as proposed in A 780, would only cause the parties to lose sight of the issues, ignore the need for settlement, and frustrate the employees in seeking their honest objectives.

On the other hand, implementation of A 810, or better still, the prospect of implementation, will cause the parties to focus on the issues, negotiate them in good faith, and seek immediate settlement of outstanding differences.

Secondly, the law should be amended to eliminate any costs to employees or their organizations for the services of

the Commission. The entire concept is inconsistent with the law and employer-employee relations. While Mr. Librizzi will speak on this in detail, I would like to state that, in the private sector, the services of the Federal Government through the National Labor Relations Board or Federal Mediation and Conciliation Service and the State Government through the State Mediation service are without cost.

In these areas, public employers are not involved. The respective government agencies provide service to private employers and employees wherein the government has no direct interest. Certainly under PERC, the government is directly involved and, therefore, there is even more reason why no costs should be assessed.

Picture the XYZ Union reaching an impasse. Which is better, to strike or to go to Fact-Finding? The union says, "Fact-finding - who needs its? It guarantees no settlement and it costs money." Suppose under its power PERC appointed a Fact-Finder and then the union, not even wanting the Fact-Finder, is sent a bill for thousands of dollars. The law says the union has to pay - with its members' money. The employer? He uses public funds. What's the difference?

For the same reason in our estimate, Senate Bill 537 is, as I call it here, a real laugher, Senator, because all the public employer has to do is sit back and wait and, when the employees' representative goes to PERC, witness the biggest holdup since the Great Train Robbery, and we mean it. I am going to digress a minute. Because if the

public employer sits at the table and the public employee group presents its proposals, attempts to negotiate them and the employer just says, "No, no, no," and the employee groups says, "Well, we must be in an impasse - let's get a mediator in here," and PERC says, "What's happened," and, of course, nothing has happened, so they send a mediator in, then under S 537 they send us a bill for it. But the public employer still sits back and does nothing. He doesn't have to agree to anything. He can just sit there and say, no. Then we say, "We must be at an impasse again. Send a fact-finder in." So they send a fact-finder in and the fact-finder renders a decision. The public employer still says, no, and they send us another bill for it, and we are right back where we started from. We have done nothing - nothing has been accomplished. We have been frustrated for months and then what do we do?

I believe better we have laws amended that employers can be fined, payable to the union, if you please, for refusing to negotiate or negotiating in bad faith. Why should the Newark Teachers' dues go to the State? Isn't the State the public employer and a party to the agreement? We think that is incredulous, that these people would pay their dues to be represented in good-faith negotiations and then on the failure of the Board of Education to arrive at a settlement, to force the people on the street, then have the courts come along and assess them their dues and not even let them get their dues. I understand the court has

said that the dues check-off will come directly to the court, which I think is in violation of the law. The check-off law says that the moneys will be payable to the organization to which the moneys are designated to go. The court came in and just took the money away from them. The public employee unions are not in the business of supporting the state. We are not another base for taxation. We are not another area where you can gain more funds. We have to represent public employees.

There should also be included in the law a provision permitting the negotiability of union shop, agency shop, and other forms of union security agreements. We believe that this inclusion into the law would be consistent with the expressed Supreme Court opinion in Lullo vs. IAFF Local 1066, wherein it was said:

> "The labor union movement was born of the realization that a single employee had no substantial economic strength. He had little leverage beyond the sale of his own efforts to aid him in obtaining fair wages, hours of work and working conditions. . . Realization by individual employees that their reasonable expectations were common to their fellow workers turned them toward organization to strengthen and further that community of interest. The concept that in union there is strength and a means of achieving an equitable balance of bargaining power with employers flourished in this country. Ultimately

it found legislative acceptance of monumental proportions in the 1935 National Labor Relations Act and its subsequent revisions. It is undisputed the major purpose of Congress in enacting that legislation was to bring about such a balance in private employment.

"However, the major aim could not be accomplished if numerous individual employees wished to represent themselves or groups of employees chose different unions or organizations for the purpose. Such absence of solidarity and diffusion of collective strength would promote rivalries, would serve disparate rather than uniform over-all objectives, and in many situations would frustrate the employees' community interests.

"Obviously parity of bargaining power between employers and employees could not be reached in such a framework. So the democratic principle of majority control was introduced on the national scene, and the representative freely chosen by a majority of the employees in an appropriate unit to represent their collective interests in bargaining with the employer was given the exclusive right to do so.

"Thus this policy was built on the premise that by pooling their economic strength and acting through a single representative freely chosen by the majority, the employees in such a unit achieve the most effective means of bargaining with an employer respecting conditions

of employment.

"Experience in the private employment sector has established that investment of the bargaining representative of the majority with the exclusive right to represent all the employees in the unit is a sound and salutary prerequisite to effective bargaining."

This was a Supreme Court decision and this was not some union propaganda. In this Supreme Court opinion are the bases for provisions for union or agency shop. The Court said, "the major aim could not be accomplished. . . absence of solidarity and diffusion of collective strength would promote rivalries, would serve disparate rather than uniform over-all objectives. . . frustrate the employees' community of interest. . . parity of bargaining power... could not be reached," and, on the contrary, total employee representation "is a sound and salutary prerequisite to effective bargaining."

While no court has declared that union or agency shop is prohibited, it is our belief that a specific grant in the law would remove the question from the courts and clearly define the intent of the law.

Once again, gentlemen, we wish to thank you for the opportunity to appear and we are prepared to answer any questions that you may have.

SENATOR KNOWLTON: Mr. Forst, the employees whom you represent and who come under the Department of Transportation, do they have civil service status?

MR. FORST: Yes, sir, they have.

SENATOR KNOWLTON: Would you agree with me that in order for a civil service employee to be fired, he just about has got to go up and kick the shins of the Commissioner of Transportation?

MR. FORST: No, sir, I do not. Ninety per cent of the civil service decisions have gone against the employee. In a paper put out by the Civil Service Association last year, we had a case where the Mayor of the City of Vineland laid off a substantial number of his work force because they joined a union. The Civil Service Commission ruled that they were improperly laid off. The civil service decision was taken to the Appellate Division and the Appellate Division ruled against the Civil Service Commission and against the employees and we believe that one of the members of the Appellate Division was a former mayor and one was a former councilman, and we believe their backgrounds made them unable to conceive that mayors couldn't fire employees for joining unions. No, we don't believe there is ample protection in the Civil Service Law. We believe there is little or no protection; only that protection which an employee could provide himself through the courts is available in the Civil Service Law.

SENATOR KNOWLTON: Did that case ever get before our Supreme Court?

MR. FORST: I think Mr. Winard could best advise you on that. I am not aware of its present status.

SENATOR KNOWLTON: You say on page 2 of your statement,

at the top of page 2, after 21 months of enactment of Chapter 303, the employees in the Department of Transportation have been unable to secure recognition. Would you tell us what this dispute is all about?

MR. FORST: I would be very happy to, Senator, as briefly as I can considering your time. Local 195 has since 1958 represented a majority of the engineering staff of the Department of Transportation and since 1965 we have represented a majority of all the employees. In 1965, we had meetings with the Governor and with the then Commissioner, Dwight Palmer. In 1967, we had an unfortunate work stoppage for two days. We negotiated a settlement of that work stoppage with the Department of Transportation and subsequently we felt that we represented a majority of the employees. We have a majority on dues check-off. So when this law passed in September, 1968, we immediately petitioned the Department of Transportation for recognition of our organization on behalf of the employees. The Department of Transportation in September, October, November, December, January, each and every time, told us that they had no information yet as to what would be an appropriate unit and the question of appropriate unit was not available to them - it was going to be handled through the Governor's Office and someone from the Governor's staff. So they could not grant us recognition.

In our estimation this was a thwarting of the law. To be able to take no position and get away with it was very unsound.

Finally, in February of last year, 1969, out of frustration, we filed a petition with the Public Employment Relations Commission. Since February 1969, up until recent months, the Commission has been holding hearings. These hearings have been delayed because of lack of funds. These hearings have been delayed because the State has paraded witness after witness after witness, testifying to substantially irrelevant questions, attempting to put forward a horizontal unit which would effectively destroy our organization. And to give you a brief example, the State took the position that our Highway Engineers could not be an appropriate unit, but in that unit should possible be the attorneys in the Department of Justice or Law and Public Safety, the Agriculturalists in the Department of Agriculture, the Nurses in the public hospitals and the doctors in the public hospitals - all professional people would be in one unit. And it would be incumbent upon our organization to not only organize the Highway Engineers but organize every professional employee throughout the State before we could represent anyone.

In order to be able to represent all the craftsmen in the Department of Transportation, we had to get the craftsmen in the Department of Institutions and Agencies and the Department of Conservation and Economic Development and in all 16 agencies of the State. It was a physical impossibility cast upon the union.

The State has pursued this to what they call horizontal units. They have yet to make a decision on this

question. As I say, they have brought witnesses in from New York and many other places in order to uphold the theory of horizontal units. But our people feel, and we are relatively certain, that this law was not enacted to create some theoretical situation within the State, but to be able to respond to the needs of the employees, for example, the needs of those in the Department of Transportation, in order for them to have their grievances heard and in order for them to present and make known their proposals.

In the last month or so, we have been after Commissioner Kohl to sit down and we have once again renewed our request for recognition. Commissioner Kohl scheduled one meeting with us and cancelled it, another meeting and cancelled it, a meeting this week and cancelled it. He has a meeting scheduled next Monday and I don't dare to think what may happen if he cancels it because it is a bad pattern.

SENATOR KNOWLTON: Then your quarrel is with the practice followed in most states, if not all.

MR. FORST: Senator, that is your conclusion. My quarrel has been with Governor Hughes for some year and a half and with Governor Cahill for the last six months. He can recognize our union. He has full authority to give recognition to our union. We can substantiate that we represent the majority. And the fact that he is not doing it thwarts the law, thwarts the will of the people, and will have its repercussions.

SENATOR KNOWLTON: Let me reframe my question to you, Mr. Forst. I infer from what you have said that you do

not want in this State the type of bargaining units, horizontal or vertical or whatever they are, that obtain in most states, if not all, where they have Public Employee Relations Commissions. Is that right?

MR. FORST: We would support, for example, the arrangement made with President Nixon and the Postal Department.

SENATOR KNOWLTON: But you haven't answered my question. My question has to do with the fact that you do not like the practice followed in most states, if not all, where they have a commission for the public employment sector where they do define bargaining units in a horizontal manner.

MR. FORST: I am not familiar with it enough, Senator, in the other states. I am not familiar with the definitions in the various other states. I believe that this law was created in the interest of harmony and, as it says in the beginning of the law, it is to avoid disputes. The law was created in order to permit public employers to reach agreement and the Public Employment Relations Commission was to get involved only when there is a dispute. We believe that the State of New Jersey has in fact created a false dispute in order to avoid discussions and negotiations with the union.

We believe that two economic situations have passed - the passing of the 1969 budget and the passing of the 1970 budget - where our employees have been sufficiently prevented

from being able to negotiate. We believe that the Governor changed our conditions of employment. He took away a holiday. He took away their reduced work hours in the summer. And we haven't been able to negotiate them. We even have been effectively prevented from even discussing them because he has threatened disciplinary action against anybody who would object.

We believe that this law was created to permit people like the employees of the Department of Transportation to be able to go in and discuss their problems with the Commissioner of Transportation and to be able to go in and discuss their problems with the Personnel Director of the Department of Transportation. We believe that a horizontal unit that would require some kind of a conglomerate to discuss their problems or some other such thing would be not homogeneous. For example, the Civil Service Department has instructed each department of the State to set up its own grievance procedure. This goes back to about 1960, '61, '62. The Civil Service Commission recognized at that time that the departments of the State were homogeneous units. The Commissioner of Transportation is an appointing authority. He decides how many people he needs, what people he needs. He appoints those people. He actually appoints them from civil service lists, exclusive of what goes on in the Department of Law and Public Safety and exclusive of what goes on in the Department of Agriculture. He runs his ship. The concept of horizontal units destroys any single authority

in the Department of Transportation and imposes some overall authority over the question of State employees.

SENATOR KNOWLTON: Do you think that a doctor employed by the State Department of Health should be treated any differently than a doctor employed by the Department of Institutions and Agencies with respect to wages or fringe benefits or working hours, provided all the things are equal, such as the type of job he has, etc, if all of these things are similar, if working conditions are similar?

MR. FORST: You pose, Senator, a hypothetical question which I probably can't directly answer because I don't know of these conditions that exist. The Governor in our last conversation with him posed a similar hypothetical question: Isn't the mechanic in the Department of Transportation the same as the mechanic in the Department of Conservation and Economic Development? These were people that we deal with and these were things that we knew about and these we could answer. If you would give me that as an example, the answer is no.

The answer is that the mechanics in the Department of Transportion work completely different from the mechanics in the Department of Conservation and Economic Development and they are not alike. They are very much unalike. And in 1967, the Civil Service Commission recognized this by setting up various titles and these titles said: Carpenter for the rest of the State service; Carpenter, Department of Transportation - Mechanic for the rest of the State service;

Mechanic, Department of Transportation. Because they are different; they are unique, unto themselves, in the service that they provide in the field.

Not only that, but we believe that the law which talks about prior practice and existing conditions, where we have had previous relationship with the Department of Transportation would be the over-all criteria, that we should be recognized over there.

SENATOR KNOWLTON: Mr. Forst, what is the difference between a Mechanic who works in the Department of Transportation on cars and trucks and a Mechanic in the Department of Institutions and Agencies who works upon cars and trucks? What is so unique about the fellow over here in I and A and the fellow over here in D.O.T.?

MR. FORST: It is a good question, Senator. First of all, the Mechanic in the Department of Conservation and Economic Development works on a type of car, an occasional car and an occasional type of truck, perhaps a single dump truck of maybe two tons, possibly four tons. The Mechanic in the Department of Transportion works on all types of vehicles, all types of automobiles, cranes, bull-dozers, front-end loaders. You name the type of equipment in construction and they have to have the knowledge and ability to repair these. So the scope of their work is vast, in addition to which, in the Department of Transportation, their major effort in the wintertime is to keep the roads clear for the public and they work under the most adverse conditions.

The Mechanic will go out in the field and with salt water dripping in his eyes will repair a truck in the field. And I don't know of any experience such as this in the Department of Conservation or in Institutions and Agencies or any other agency. In the Motor Vehicle Division or the State Police, the Mechanics work in ideal conditions, work only on late-model automobiles, work in nice garages. There's a big difference.

SENATOR KNOWLTON: Getting back to the Mechanics in the Department of Transportation, I imagine that there are many diverse kinds of mechanical equipment which the Department utilizes in its work, is that not so, such as cranes, heavy trucks, light trucks, panel trucks, cars, etc.?

MR. FORST: Yes, sir.

SENATOR KNOWLTON: Does a Mechanic who works on cars also work on cranes and bulldozers and everything else?

MR. FORST: Yes, sir. He gets paid $5.85 for it in private industry.

ASSEMBLYMAN SMITH: That was last week.

MR. FORST: It may go higher, Assemblyman.

The point that I make,and I am pleased to have the opportunity, Senator, to make you aware of it, is that the Legislature should recognize that there is a long-seething frustration on the part of these people because of their inability to be represented under the law which has been in existence for 21 months and that this frustration is badly built up - they have no recourse - and we have been

provided with no avenues to even resolve the questions and we are very much concerned about it. I think that the community of interest of people who work in the Transportation Department, the fact that they work in the same buildings and are inter-related, that the truck driver brings his truck into the shop where the mechanic repairs it, where they have common supervision, where the supervisor in charge of the shop is on the same level as the supervisor in charge of the man in the field and their boss, for example, Mr. Stelljes, is in charge of all of them, is a much stronger community of interest than any common wage that may exist among employees in other departments. It is a very sad situation.

SENATOR KNOWLTON: Do you have any questions?

ASSEMBLYMAN SMITH: Yes, a few. Frank, since I have been down here - this is my opinion and you may disagree - I think you have been able to get more out of the Legislature than any other labor man, and you say it is a good law, yet in your statement you suggest by innuendo there might be two strikes forthcoming. Are you exhausting your remedies before this Commission or are you jumping the gun?

MR. FORST: Assemblyman Smith, the fact of the matter is that the remedies before the Commission on the State situation, the 21 months of waiting - there comes a time, as with the postal workers, when there is just no more time to wait. The Governor has taken away their summer hours, he has taken away their holiday, he is going to put in effect

the substance of the Hay Report, and if this happens there will be a strike. There is no question in my mind about it because he has usurped to himself the bilateral authority of negotiations and made unilateral decisions and effected them without the opportunity to negotiate them.

Secondly, on the Turnpike there is a very difficult situation where we are utilizing the facilities of the Commission and we are very anxious to utilize them. The fact is, we are very anxious to prove they can work. Nobody would deplore more than myself any strike on the Turnpike. I would be very upset over it, Assemblyman Smith, because we went to mediation and the Turnpike took a firm position. As Mr. Parsonnet pointed out earlier - you may not get the correlation until I give it to you now - he said that in compulsory arbitration both sides will hold their positions and will not negotiate because they know eventually it will go to a third party. People who will not make decisions for themselves will leave it to a third party to make the decisions for them. People in government who are afraid to say, "Yes, you are worth $5 an hour," would like to go to a fact-finder and ask, "Well, are they? You tell us because we don't know."

We have a situation in the Turnpike where they have made one offer back in April. That offer has not changed. We are now going to fact-finding. And we don't know what is going to happen and I think that is what Tony is going to talk about. We don't know what is going to happen. If the fact-finder is an independent third party and if the fact-finder

has all the facts laid before him, certainly both sides will have opportunity to fully explore their facts. And if at the end of that time the Turnpike says, "We will not pay it," or, "We will not do it," then where are we? If the Turnpike will agree to a fact-finder's decision, then the union will agree to a fact-finder's decision. We want a peaceful resolution of the problem. But if this independent third party who is representing the public, in effect, who has no axe to grind, comes out and says, "This is fair," and the Turnpike says, "We won't pay it," then I don't know what is going to happen.

ASSEMBLYMAN SMITH: Are you at that point yet?

MR. FORST: We are at that point and we are concerned that it may be delayed. It just may be delayed too long. We have a situation where we were three weeks in mediation. We have been negotiating since March. We petitioned for a fact-finder on Monday of last week and he hasn't been appointed as yet. We don't know what is going to happen. We wanted the fact-finder appointed yesterday. We wanted to meet before him today. I spent five days preparing a lengthy presentation to present to him, but he is not there yet. We find the fault in the law. You heard the testimony and we didn't discuss it because we knew it would be said, that the processes evolve so slowly, that PERC can't get involved until they are told there is a dispute. We know in the State Mediation service and the Federal Mediation service and you know in negotiation in private industry that

if there is a contract deadline the 30th of the month, they are calling on the 15th of the month and they are asking, "How are things going? Will you need our services or won't you?" They want to get into a situation before it deteriorates. PERC doesn't have that opportunity. PERC has to wait until somebody rings the bell and calls them and by that time, positions get polarized and it is difficult then to bring the positions together.

SENATOR KNOWLTON: That is unusual, Mr. Forst, because we heard today criticism of PERC because it stepped into the picture to mediate when it wasn't asked to.

MR. FORST: Well, I heard that myself, Senator, but there are special interest groups who are pursuing a particular positions for position's sake. I find that public employers having negotiated now some ten or eleven contracts of various types, municipal, authority, county - I find that the public employer just is not prepared to negotiate. I sit with the Turnpike Authority and I say, "I wish somebody on the other side knew how to negotiate because I know how to settle this damn thing, if you would just relax a little bit and let's talk about the problem." But there is nobody on the other side who knows how to relax and talk about the problem. They take positions. Then, as was pointed out, they sit and they take a position - as Chairman Pease pointed out in Newark - and there is no give at all. They just sat and waited and waited and waited until the strike came.

PERC should get in there. PERC is qualified. PERC

has very competent people. They should get in there and do something about it. Because PERC acts not in the employer's interest, not in the employee's interest, but in the public interest, and that is what should be served. An employer or an employee organization might say, "You came too quickly," but it is still in the public interest that they come and they try through mediation - because the mediator makes no decision - he acts as a catalyst to get the parties together. He can't really come too soon, not really too soon.

SENATOR KNOWLTON: Well, have you asked PERC to come in with mediation and fact-finding?

MR. FORST: Yes, we have. We are very satisfied with the work of the mediator. But unfortunately we have run into a very stubborn position on the part of the Turnpike which we expect to develop in fact-finding.

PERC is involved in the highway situation, the Department of Transportation, but I am afraid that understaffed and under-financed, they are in way over their heads. They just don't have the resources to resolve the question. They are in way over their heads. You see, you get 2,000 angry people. Just for example, it was very close. Senator, maybe I shouldn't say this. It was very close. But when the Governor took away the Memorial Day holiday, those people in the Transportation Department had thought to themselves, "We will get in our trucks and we will get in our pickups and we will get in our tractors and we will drive them eight o'clock in the morning when we go to work up to Trenton, stop on

State Street, take the keys out and walk away. Who is the Governor to take away a holiday which we have enjoyed for years and years and for what reason?" I don't mean this disparingly, Senator. I recognize you are a Republican Senator and Walt Smith --

SENATOR KNOWLTON: Politics has nothing to do with it.

MR. FORST: That's the point. The point is changing the working conditions of the employee, an instanteous decision without any consultation, without any recognition that we represent 2,000 of those people. And those people come to us and say, "What happened? Why weren't you consulted? Why didn't we get our nose in the door and get a chance to say anything about this?" These are the problems. We face the people. And when it comes to a choice as to whether we are for the government as a structure, to defend decisions such as that, or whether we are with the people, we are with the people. We have to represent those people. That is why if these people vote to go on strike and they go out on strike, I will be out there. And if I get arrested and put in jail, at least the people know where I am. I'm on their side.

SENATOR KNOWLTON: Let me remove one concern from your mind, Mr. Forst. This Committee is composed, secondly, of Republicans and Democrats. First and foremost, we are legislators of this State, representing the best interests of the people of the State. After that, we are Catholic,

Protestant, Jew, Gentile, whatever.

MR. FORST: Maybe, Senator Knowlton, in my emotion discussing the question --- I have the greatest respect for your body and I didn't want you to think otherwise. Walt Smith has known me for years and knows that. And I have a great admiration for this Legislature that sits here now. I have a great admiration for the courage of the Legislature, which in 1968 passed this Chapter 303, and over the Governor's veto passed Chapter 303. I have nothing but the greatest respect for this Legislature. I only wish really that the State would act with the same good concern at this time.

You know when we struck, Senator, in 1967, we spent six months talking about our problems to the State, talking about them, talking about them, telling them of the impossibilities of our situation and their answer was, Senator, "They won't strike. Don't worry about it. They won't walk off the job. Don't be concerned. The union will fall apart the minute they try to go out on a strike." Well, they were wrong, Senator; they went out and out very effectively, I might add. In 1966 we had a highway holiday where we wanted to come down and present to the Legislature some of our problems and they said, "The people won't go. The public employee won't do it and the union will fall apart." Yet we had 1200 outside here and the legislators responded. Walt and many of the others want to know what their problems are.

People get frustrated not having somebody to talk

to, not having somebody to direct their problems to. And we are again in the same situation with Commissioner Kohl who since he has been Commissioner has not even met with us. It is a very serious problem, Senator.

SENATOR KNOWLTON: Mr. Forst, let me make an observation. In 1968, the Legislature answered the demands of public employees by passing Chapter 303. Now we have been deluged on all sides to do something or not to do something about 303 and we have also been asked to act with the greatest of restraint. And I would ask that you and your constituency act with some restraint, the same restraint that you wish us to use, until we can get to the bottom of all of this.

MR. FORST: Senator, I would like to just add - I heard you mention the Taylor Report in New York - I attended a seminar that Dr. Taylor addressed in New York and at that time he was very strongly in favor of the Taylor Law and punitive action for public employees and four months ago Dr. Taylor renounced that position. If you want, I will be glad to send you the statement that he made. Dr. Taylor, after years of study of the question, does not believe that punitive action will resolve the question. I think our own Newark situation proved that. You can take 200 teachers and put them in jail. It doesn't resolve anything. The question is resolved when the people sit down in good faith and discuss their problems. And you will find employee organizations willing to back up and willing to take secondary

positions and tertiary position. But when the employer confronts you head on and either holds his cards close to his vest or will not engage in meaningful dialogue, from these are born frustrations.

We have to report to our people almost every day. If I am not out on the road, they want to know what is happening. And if I don't see them for a week, they want to know what is happening. If I tell them the same old thing, "Have patience," which I have and I do, it certainly wears thin after a while. It wears thin.

SENATOR KNOWLTON: Do you have any further questions?

ASSEMBLYMAN SMITH: No.

SENATOR KNOWLTON: Assemblyman Hirkala?

ASSEMBLYMAN HIRKALA: Mr. Forst, how many State employees are members of Local 195?

MR. FORST: Two thousand in the Department of Transportation. We have in Local 196 a handful in the Department of Conservation and Economic Development.

ASSEMBLYMAN HIRKALA: No. I asked you 195?

MR. FORST: Two thousand.

ASSEMBLYMAN HIRKALA: -- unless this is a misprint. I am worried now only about Local 195, whom you say have not received any recognition under the PERC law.

MR. FORST: Two thousand, Assemblyman Hirkala.

ASSEMBLYMAN HIRKALA: Two thousand are State employees and are members of Local 195?

MR. FORST: Yes, sir.

ASSEMBLYMAN HIRKALA: How many of these employees are not receiving any recognition under the PERC law?

MR. FORST: All of them. They are all in the Department of Transportation.

ASSEMBLYMAN HIRKALA: Not one of these employees is being recognized?

MR. FORST: That's right.

ASSEMBLYMAN HIRKALA: Getting back to the reason they are not getting recognized, what is the position of the State government in not recognizing them?

MR. FORST: Assemblyman Hirkala, the position of the State government is that the unit which Local 195 has petitioned for, requested recognition, which embodies groups within the Department of Transportation, itself, is an inappropriate unit - inappropriate. As you know, the law states recognition of appropriate units. So they say that the unit is not proper. And they say that other units other than the one that we propose is proper and that these units are horizontal units which would transcend all State agencies and not be limited to the Department of Transportation.

ASSEMBLYMAN HIRKALA: Do you mean to tell me that you represent 2,000 employees and none of them can be recognized? I understand there are certain areas of the State where four employees are recognized.

MR. FORST: That's right, Assemblyman.

ASSEMBLYMAN HIRKALA: I think there is something wrong there. Thank you.

SENATOR KNOWLTON: Thank you very much, Mr. Forst.

MR. FORST: I realize it is late but I would appreciate your giving Mr. Librizzi, who has a short statement, a chance to present it so we can finish up today.

SENATOR KNOWLTON: Will you move over to the microphone, Mr. Librizzi, please.

I have on my schedule here, you are Anthony Librizzi of the New Jersey Turnpike Union. Is that correct?

MR. LIBRIZZI: That's right.

SENATOR KNOWLTON: What is your official position, sir?

MR. LIBRIZZI: I am President of Local 194.

SENATOR KNOWLTON: And what is that local affiliated with?

MR. LIBRIZZI: With the American Federation of Technical Engineers.

SENATOR KNOWLTON: Proceed, please.

A N T H O N Y L I B R I Z Z I: I am President of Local 194 which represents in excess of 900 employees of the New Jersey Turnpike Authority. Our organization has been certified as the exclusive representative of these employees following a Secret-Ballot election conducted by PERC.

I first want to state that our experience with PERC, its Executive Director, and its staff has been that they have been efficient, competent, and appear to be well versed in their respective roles under the Act. For this reason, we would consider it a mistake to change the number, size, or

make-up of the Commission as it is presently constituted. Further, we have read or heard no reasonable argument that would justify changing the Commission and we do not believe in change for change's sake.

While it does not come within this Committee's purview, we believe that PERC should be given additional funds - a sufficient budget to do the tremendous job for which it was created, especially in these, its early years of existence.

Changes in the law are necessary, however, and they are within the scope of this Committee. And one change which we propose has to do with the budget and an inequity in the law. Under Chapter 34:13A-6, the cost of fact-finding "shall be borne by the parties equally." Senate Bill S-537 would increase shared-cost services of PERC. This is patently unfair and inequitable.

The Act which created the Commission and the creation of the Commission was and is, as ennuciated in Chapter 34:13A-2, based on this policy declaration:

> "It is hereby declared as the public policy of this State that the best interests of the people of the State are served by the prevention or prompt settlement of labor disputes* * *and that the voluntary mediation of such public and private employer-employee disputes under the guidance 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."

For this reason, alone, the parties to a dispute who voluntarily submit to the jurisdiction of the governmental agency should not be required to pay for its services as such submission is paramountly in the public interest.

Secondly, the parties to the dispute are unequal. On one hand, we have one branch of government paying another branch - or, as would be the case of disputes involving State employees, paying itself - while, on the other hand and in all

instances, the employees must pay the State what, in effect, is a tax or service fee unlike that charged any other like group for services deemed to be in the interest of the public's "health, welfare, comfort, and safety."

The State is, in effect, supplying a service to itself, its citizenry, and its various agencies, bodies, and sub-divisions. Employees should not have to pay the costs out of their own pockets.

There is needed another change in the law. Local 194 supports the Amendment proposed under Assembly Bill A-810, spelling out clearly the right of employees in the Public sector to strike. We say, "spelling out clearly," because we do not believe the State has the right or authority to deny Public Employees to strike and any preventive law, such as Senate Bill S-564 or Assembly Bill A-498, would not only be detrimental to the public interest but would also be violative of our inherent rights as well as the Thirteenth Amendment to the Federal Constitution.

We do not believe this legislature has the courage to adopt - or this Governor the courage to sign into law, A-810. For this reason, we propose that the Act be amended to provide employees the explicit right to strike in the event the Public Employer refuses to agree to the decision of a Fact-Finder. This would, at least, impress the Public Employer with the fact that the Fact-Finder, in effect, represents the public interest in what is deemed to be a fair settlement, based on the facts submitted by both parties.

To what advantage is a Fact-Finder if the Public Employer can arbitrarily and callously ignore his findings? Local 194 is, at present, in Fact-Finding with the New Jersey Turnpike Authority. What would you have us do - what would the public have us do - if an impartial Fact-Finder's report is ignored by the Authority? How are employees to get justice in their employment conditions if not to strike under these conditions?

Lastly, we believe in the Union Shop and Agency Shop provisions in negotiated Agreements. The law is insufficient in this area. Chapter 34:13-5.3 should be amended to provide specifically for the negotiation of Union or Agency Shop. Paragraph 4, at the end, could have added: "Such negotiations may include provision for any form of Union Security agreement, including Union or Agency Shop." Thank you

SENATOR KNOWLTON: Thank you, sir.

Assemblyman Smith, do you have any questions to ask Mr. Librizzi?

ASSEMBLYMAN SMITH: No.

SENATOR KNOWLTON: Assemblyman Hirkala?

ASSEMBLYMAN HIRKALA: Just one question, Mr. Librizzi: Do you feel when your union has appeared before PERC that your relationship has been good and that PERC has done a good job in these labor negotiations?

MR. LIBRIZZI: Yes.

ASSEMBLYMAN HIRKALA: Thank you.

SENATOR KNOWLTON: Thank you very much, Mr. Librizzi.

Mr. Forst, you said you have some information concerning a statement made by Dr. Taylor recently. I would appreciate it very much if you would send that to the Committee.

MR. FORST: Thank you, Senator. I would be happy to.

SENATOR KNOWLTON: Is Dr. Nelson here? [Dr. Nelson comes to the microphone.]

My agenda here lists you as Professor Jack Nelson,

Joint University Committee on Public Law 303. Is that correct?

PROFESSOR NELSON: That is correct.

SENATOR KNOWLTON: And you are Professor of what faculty?

PROFESSOR NELSON: The faculty of Education - faculty of the School of Education at Rutgers.

SENATOR KNOWLTON: Rutgers School of Education. Thank you, sir. Would you, please, proceed. By the way, do you have a statement for us?

PROFESSOR NELSON: I don't have one in typed form. I'm sorry. I can provide you with one if you desire afterward. The notes are adequate.

SENATOR KNOWLTON: Thank you.

J A C K N E L S O N: I will apologize in advance for any redundancy, but invoke the professorial privilege, I suppose, of being redundant about everything.

What I would like to do is to spend just a few moments, I hope not very long, having gone through 303, on some of the possible revisions that I have read and indicate simply some comments about them.

The most important single defect, and one which I think has been already stated in my listening to other persons here today, is the lack of adequate impasse resolution and that presumably this would be the one to which your Committee would most importantly address itself.

It occurs to me, having read some materials, more specifically and very currently by Theodore Kheel, a recognized

labor mediator, that no-strike laws in the public sector are both ineffectual and unenforceable. The argument goes something like this: The strike prohibition means penalty systems that have not, in fact, prevented strikes and rather have made martyrs of strikers. The prohibition of strikes makes negotiations one-sided. The employer has the ultimate weapon. There is no recourse to the employee, with the exception of an illegal act. The kind of example I can give you currently with regard to schools is: In Bristol, New York, during this past year - still under the Taylor Law, as you know - the teachers in Bristol, New York, were found guilty of having engaged in illegal strike, despite the findings from a hearing body that the school board had engaged in extreme provocation. Despite the fact that the Taylor Law presumably has that provision, at the same time these teachers were in fact found guilty of having illegally engaged in a strike, despite example after example of extreme provocation, unwillingness to negotiate, etc.

Making strikes illegal puts the public employees to the test of civil disobedience then and in one sense affronts the fabric of the rationale under which many people engage in public employment, that is, a notion of social service and social good.

The idea of credible deterrents of a strike threat is not under the present law open to public employees. Yet public employers have such a weapon in the sense of being able to engage in injunctions and being able to have final

determination in matters in regard to negotiation.

The Taylor Law, with its no-strike provision and with rather stringent additions to it, having to do with penalty provisions, has not been effective for teachers in the State of New York, transit workers nor sanitation men. One could argue from these and varieties of other examples - the data I have indicates something like 320 teacher strikes during the 1960's, three-quarters of these, however, coming during the last two years - an indication that despite the fact state after state is beginning now to enact laws like 303, and most of them do not include provisions for strikes by public employees, that in fact there have been increasing numbers of strikes rather than decreasing numbers.

The Pennsylvania law - it is not a law yet. Pardon me. There is legislation which presumably is being enacted right now, which was mentioned by my predecessor from the NJEA here, that attempts to remedy this with regard to the state; that is, they are going to abolish the no strike provisions and permit strikes which are subject still to injunction proceedings against specific strikes only if the health, safety and welfare of the community is in danger and only after notice is served and a hearing is held. This, I think, is rather consistent with notions of due process which have consistently been upheld in this country. This permits them then to be testable in the courts, which I think is an appropriate way to look at these. It also permits the health, safety and welfare communities to be determined.

Under the present law, as I understand it, upon recommendations from PERC, if the union objects, it really cannot strike, that is, legally. On the other hand if an employer objects, it does so with impugnity and with the continuing provision of status quo, which is, in fact, to the employee's disadvantage. Any time that the employer does not decide to go along with those provisions, the employee is the one who suffers under status quo arrangements, unless he is permitted some kind of latitude.

The second area - the first being no strike - the second area that I would like to speak to is related to it in the sense of trying to relieve the problem with regard to impasse resolution, that is, the notion of binding arbitration. It seems to me that even with strike opportunities, there ought to be some provision in the law for some kinds of binding arbitration, that this may be needed and has been specified in other states as being a valuable thing in order to guarantee the enforcement of provisions of the contracts on both employee and employer parts. In the field of education, there have been some examples of employers not fulfilling some contractual arrangements.

As you may know, Newark has, as a result of a strike recently, written binding arbitration into its own local contract in a kind of interesting way of attempting to resolve it, itself.

Other states - Minnesota, Rhode Island and Pennsylvania - have differing forms of binding arbitration as there are

different kinds of public employees, etc.

The third area is that of unit determination. It seems to me that there is a need to clarify to some extent the means by which unit determination is decided. For schools, in particular, this is a problem in the sense that 303 only exempts the Superintendent of Schools and does not consider then those people who are in administrative jobs in schools to be classified under executive management, as I recall it, under the supervisory connotation, and has led, I think, to some problems with regard to determining units.

My suspicion is that the law being new and the laws being new across the country, there has been in this State and in others a kind of vulcanization effect in which a great deal of fragmentation with regard to units has occurred, that has been resolved in some states by relying upon a kind of standard of community of interest. I also presume over a period of time there will become increasingly larger units rather than smaller as the realization comes that the pie can only be sliced a given number of ways and that the economy can only expand at a certain rate and so on, and that larger units may in fact develop a commonality of interest greater than the smaller units, as I understand it, some cases in New Jersey have gone as small as one or two persons being classified as a unit.

What I am saying is I don't know a way for legislation to correct this. But it appears to me that there may be a need to clarify the means by which unit determination is

decided and that one might consider again the kinds of standards used in other states which have to do with basically community of interest and which may be testable in courts, rather than through appointive boards.

The next to last comment then is on membership on PERC. I happen to agree with Professor Marcson, although we do not have a committee stance, and Mr. Marcson's earlier comments here, that there is a need to simply protect PERC from being subjected to charges of conflict of interest. The way around that, I should think, would be to appoint a board purely out of the public rather than to insist upon in statutory requirements certain criteria for selection based upon the person's organization or his particular kind of employment. Rather hopefully, you can get the same quality of person I have heard referred to at this table a number of times today by simply asking that they be from the public rather than by insisting that they be drawn from certain representative bodies.

There also apparently is some need for adequate staffing and financing. That has been dealt with at some length so I won't spend more time on it, except to indicate my understanding - and it was corroborated by the NJEA's comments today - in that rather excessive times have occurred between attempts to get something done and actual adjudication of one kind or another. Hopefully, this will be corrected by better financing and staffing.

The last comment - and this is one that I would like to suggest to you perhaps should not be included in legis-

lation, with the exception of perhaps a reconstitution of PERC and I would argue that it might be smaller - this is where I differ from Professor Marcson - smaller rather than larger in number. The comment is this: There appear to me to be disparities between public schools and higher education and these disparities have been remarked on earlier. But I would argue that they are not only disparities simply in structure and in population, one being selective and the other being compulsory, but rather they may also be having to do with concepts of what kinds of things are negotiable. It seems to me that the university concept in which the faculty, administrators and students, now, tend to share much of the kind of concern for courses, for class operation, for activities and so on, is different from the traditional public school concept in which the administration and the board, mainly through state constitutions and state statutes, are the determinants of such things as courses and programs, promotions of faculty, etc.

My assumption then is that these disparities between these two concepts, what I will call university concept and public school concept, may lead to different kinds of relations under PERC. My own personal preference was for the American Association of University Professors' concept and, that is, that professors should not have been included in the laws. However, since they are in most of the law that I know about in various states included as public employees, and since I have since found that many colleges do not share

what I will refer to as good university relationships in which there is a shared responsibility in decision-making, many colleges, therefore, need the protections which 303 and other such laws provide for collective negotiations and I now tend to support these laws and 303 to that extent. The adversary relationship which is inherent in most of these negotiation laws provides for these colleges opportunities that they would not have otherwise had.

Now in terms of legislation, I would recommend then a reconstitution of PERC, as I indicated earlier, perhaps a smaller number - I would argue five might be preferrable to seven or nine or eleven or so on - but drawn from the public, with the provision for advisory commissions which will be drawn from varieties of the constituencies which exist, whether they be drawn from universities,as an example, from public school employees, from transportation people whom we heard last from, fire and police. The various kinds of constitutencies of public employees which exist argue to me to have PERC provide for these as advisory commissions to bring to them hopefully the best interests and the public good, if you will, with regard to each of these specifics. But let PERC not be, itself, involved in these only to the extent that they will receive this advice and then tend to act upon it.

It seems to me as an example and in support of this that the public employees represent such varied interests, backgrounds, functions, structures, etc., that it would be

virtually impossible to assume that any one body is going to be able to accommodate them, either in unit determination or in other kinds of matters, what I referred to earlier as a university versus public school concept. It seems to me rather that there should be provision with financing, hopefully, for these commissions to be able to provide advisory services to a PERC board who would represent the public good in a sense.

Thank you for your time.

SENATOR KNOWLTON: Dr. Nelson, in your work on the faculty of Education at Rutgers, are you involved with primary and secondary school education?

PROFESSOR NELSON: Yes, I am, in the sense that I work with teachers in preparation programs, teacher certification programs. I also teach graduate courses in which the vast majority of students are teachers in the public schools.

SENATOR KNOWLTON: Has your work given you the opportunity of observing how a public school administration works?

PROFESSOR NELSON: Yes, and I taught in public schools a while. So I see it from both sides. I have not been a public school administrator.

SENATOR KNOWLTON: You said something before to the effect that you thought that Chapter 303 was deficient in that it excluded Superintendents from the bargaining unit, Superintendents being the only management class of personnel

not represented by a bargaining unit. Do you think that a principal of a primary school or a secondary school is in the management category?

PROFESSOR NELSON: Yes, I do.

SENATOR KNOWLTON: Do you think that people engaged in special services in education in a school district, such as remedial reading or curriculum work, things of that sort - do you think they come under management more than other types of categories?

PROFESSOR NELSON: I think you run into a problem there. You have linked together affiliated services like a school psychologist, as an example, or a remedial reading person who may, in fact, be a teacher 90 per cent of his day and work with several schools, and the curriculum coordinator in a school district. The curriculum coordinator I could rather easily label as an administrator, depending upon how it is spelled out in the district. But most typically he, in fact, does have administrative powers and authorities; whereas the remedial reading teacher does not typically have, or a specialist, if you will, does not typically have those kinds of authorities, rather acts purely in an advisory capacity to teachers and to administrators in schools. I think that you could in fact delineate a spectrum of people within schools. But I would clearly put principals, vice principals and central staff people, that is, people like associate and assistant superintendent for given tasks, as administrative. I think classroom teachers would obviously

be in a non-administrative category. There exists then a kind of staff category that I don't have a label for, but it is kind of in between the two and then I think it has to do with their function rather than where they sit in the structure.

SENATOR KNOWLTON: One further question, Doctor: There have been and are in certain school districts local teachers' association which want to read into the definition of working conditions or conditions of employment such factors as curriculum content and size of class. Do you think that these are logical or rational factors to be considered in collective bargaining between teachers' associations and local boards of education?

PROFESSOR NELSON: Yes, because I think they are basic working conditions of the field and I don't know how you avoid them if you agree that the negotiations should include working conditions - and it happens, by the way, that many of the strikes and I don't know exact numbers, but I would argue that nearly, if not entirely, a majority of strikes in current times involving school teachers have involved those issues as much, if not more than, the salary and economic benefits. It seems to me that these are really at the heart of much of the educational problem in our society today, and, that is, the feeling of many teachers that they really don't have much voice in this. It seems to me these, therefore, are basic working conditions and ought to be open to negotiation.

SENATOR KNOWLTON: Under our statutes, the Department of Education has the power to set educational policy with respect to curriculum content and size of class and, indeed, the type of structure a school building should take. Of course, this is approved by the State Board of Education. Let us assume in town X there is a teachers' association that doesn't agree with one or more of these policies. What is the answer to that confrontation?

PROFESSOR NELSON: I could give you, I suppose -- I am not a lawyer, but I might be able to give you a legal answer.

SENATOR KNOWLTON: No, I don't want that. I happen to be a lawyer.

PROFESSOR NELSON: I prefer not to give you a legal answer.

SENATOR KNOWLTON: You know, the law can be an ass, as a wise old judge one time observed. I am much more interested in practical aspects here. We can work out the law. First we have to get the facts.

PROFESSOR NELSON: I happen to be a believer in the United States Constitution because of its brevity and its flexibility. It seems to me, therefore, the statutory provisions notwithstanding, that we would be better off in the State to not specify at the State level curriculum content and working day and number of students per class, and so on, even though those powers may be delegated as is typical in most state constitutions to the Legislature and,

therfore, to the State Board of Education and, therefore, to the State Superintendent and so on. And because districts differ, communities differ, regions differ, these kinds of things may rather better be negotiated at the local level for the impact of them is really much more important to the local community than it would be to a State Board of Education, etc.

My argument then is that if that is the way the statutory commitments are, those ought to be changed, even though I know you're not involved in that process in this Committee.

SENATOR KNOWLTON: You are not asking us to do very much.

Let me ask you this: Suppose we go along with your theory. Wouldn't this lead to a variety of different systems of educational methodology, curriculum content, size of class? We have over 500 school districts in this State. We could presumably have over 500 differences in approach to education. And who is to say which one would be the best? Don't you think there has to be some central authority that has recourse to experts in the field of teaching methodology and curriculum and educational psychology and things of this sort? Don't you think there should be some coordination somewhere along the line? Isn't that the purpose of the Department of Education?

PROFESSOR NELSON: In terms of coordination, I don't happen to think - and I would say this not in reference

to New Jersey - I have only been here two years and it would be remiss if I were to argue that I know anything about the State Department of Education here. I have on the other hand been involved in education in four or five other states and here now for those two years. It seems to me that that kind of coordination doesn't exist in any state; that is, the assumption that the people in the State Education Department or their advisors know the best way to teach or the best way to go about education. I can present to you, I think, a considerable amount of data that would indicate that, including a considerable quantity of literature in the field, which argues that what we have been doing in education has not been entirely good.

It, therefore, seems to me that we ought to try and provide more and more for the plurality, if you will, of ideas in order to permit them to be tested, and that the more centralized the system, the less likely it is - and I would argue France as an example of that - that you can in fact provide for these kinds of varieties.

It happens, by the way, in New Jersey in the area that I know most about, that is, in social studies education, that there is considerable latitude right now. And districts don't have any standard curriculum. There is interest I find among some of my colleagues in public school teaching - they have some interest in trying to have some kind of standard curriculum, as is true in the State of New York. I happened to be in New York as a professor for five years

and involved in many school districts, and I think it is a poor system because it is overly centralized, it is overly restrictive. The teachers feel they have very little decision power at the local level, the kind of example being that all of them have to teach a particular unit, presumably at a particular time. The Regent's Exam is a kind of over-riding device here. I don't find that kind of thing in New Jersey.

My argument is I see nothing wrong with having the State Department of Education do the coordination. But I don't think the coordination ought to be based upon the presumption that they have in fact the answers or the best answers to how education ought to take place. I have studied the field for some time and I don't think we really have those answers yet. And I would hate to presume and, therefore, write into legislation that presumption that they do have the best answers as to how education ought to take place and what it ought to be.

SENATOR KNOWLTON: Well, do you think in order to provide more money for PERC we could achieve some savings and pass it on to them, if we abolished the Department of Education?

PROFESSOR NELSON: Is it permissible to take the Fifth on that? No, I think I see what you are painting up. I wish I really knew more about the State Education Department here. I know that most of them are terribly underfinanced. That is one of the reasons that the national government, the U.S. Office of Education, had special programs and special

moneys available to build up state education departments because not only were they having a heck of a time even coordinating what was happening in local districts, but they were able to provide no leadership. I don't want to define leadership as central authority to tell what to do, but rather offering the opportunities for school districts to experiment and see what kind of things are possible - to make available to them information. I find New Jersey, as a matter of fact, in social studies - and I know it to be true in two other subject areas - has only one person in the whole State Education Department who has that responsibility. I find in the State of New York, despite the centralized problems, something in the range of seven full-time people involved in social studies instruction for the secondary level alone. This means to me that New Jersey is not really in a financial position yet to be able to say in the State Education Department that they can in fact provide the kind of leadership that might be available in other states.

I would have to answer your question with a no. Hopefully, the State Education Department with adequate funding also can provide the kind of leadership I would like to see and I suppose what you would like to see too.

SENATOR KNOWLTON: Would you agree that it would be logical or rational for the Department of Education to promulgate broad guidelines with respect to curriculum content, classroom capacity, teaching methodology, and then let these

matters be worked out in detail in the school district between the board of education and the faculty and the administration?

PROFESSOR NELSON: Yes. That is my basic argument when I say the U. S. Constitution makes a nice model in the sense that its brevity and its flexibility have made it last for so long. It seems to me that a similar kind of an idea can be utilized at the State level where you have wide varieties of districts within that state, so that the state can in fact promulgate wide and broad kinds of guidelines, and within those guidelines offer the options to school districts to be able to present their own positions with regard to some of the guidelines, that is, in terms of whether or not they would like to take exception to them and offer arguments as to whether they should or should not be permitted to. But that to me is not a bad coordinating kind of function. That is the kind of leadership function that I could support.

SENATOR KNOWLTON: Suppose that you had a board of education and a teachers' association that agreed as to classroom size and things of that sort, but this necessitated the building of a new primary school, say, and the electorate just thought that the taxes were too high and they didn't think they could afford to foot the cost of that school. Do you think that the teachers' association would be justified in going out on strike?

PROFESSOR NELSON: Well, you have given the hypothetical

question and I haven't got enough of the variables yet to be able to give you any kind of an answer.

SENATOR KNOWLTON: There are some school districts where this situation is coming up to the finish line.

PROFESSOR NELSON: In fact, the schools are apparently the number one agencies now in public employment that are susceptible to strikes and have had them. In that situation I really can't respond in the sense that there are too many variables involved. If the board presumably was acting in good faith - and that's the presumption in the law - and if this was as much as they could do and they are still responsible to the electorate, then it seems to me that there is not a justification for the teachers to go on strike because there has not been the kind of provocation from the employers in this sense, the board representing employers, to deny them this. If the board did all it could to attempt to get a bond passed or to develop the financing to build this school, then it seems to me it is probably not a justified kind of act on the teachers' part, rather that the teachers and the board together ought to do a better job of educating, if you will, the electorate.

On the other hand, if the board has really not attempted to adequately provide for these kinds of services and has, in fact, been against the teachers and against whatever the negotiations were in the way of acting in a provocative way to not support an election which included the new school in it, then one could argue that it was not the school that was

the provocation or the lack of the school, but rather the lack of good faith and lack of support of the school board. On those grounds, I would argue that if you were to change the law to permit a legal strike, there may be some justification in that kind of strike.

SENATOR KNOWLTON: These past few questions and answers are to point up the difficulty inherent in the field of labor relations in the public sector. It differs quite substantially from the private sector, in that in the private sector you have just two parties, management and labor. In the public sector, you have managment, labor, but breathing down the shoulders of management is the electorate, and that is what we are confronted with here as legislators.

PROFESSOR NELSON: Right.

SENATOR KNOWLTON: It makes it rather difficult.

PROFESSOR NELSON: It certainly is and it has been one of the problems and, as you are well aware, the laws throughout the states have attempted to resolve that, and I think have not done it, and the rash of public employee strikes are simply exhibits in that sense. And it is because the laws as written have not attempted to resolve these impasse problems, except to indicate that where they exist, the employer ends up on the good side. This is, I think, the thing that needs to be redressed here.

SENATOR KNOWLTON: You see, the same member who belongs to Mr. Forst's union probably is a taxpayer back home and goes down to the Town Hall and complains like mad about his taxes going up.

PROFESSOR NELSON: Of course, that is an interesting factor. Presumably that would act on the public's behalf if one could institutionalize that and the realization that the public employee is at the same time his own employer. That might argue for more reasonableness in these actions.

SENATOR KNOWLTON: I don't want to keep you here any longer.

Assemblyman Smith, do you have any questions?

ASSEMBLYMAN SMITH: Dr. Nelson, let me make sure I understand your position. You would give all the public employees the right to strike the same as the NJEA and then vest any limitation with the court on public, health, safety and general welfare?

PROFESSOR NELSON: Yes. I think the Pennsylvania statute, which I understand has been passed now by one and may, in fact, have been passed by both Houses, is a reasonable attempt to accommodate what I see as a very difficult problem.

ASSEMBLYMAN SMITH: Let me ask you this hypothetical: In your opinion, if the children of one school district were deprived of their education for, say, several weeks, would you consider that an act which affected the public health, welfare and safety, etc.?

PROFESSOR NELSON: Really, to me, this is the heart of the problem in education, that the strikes of teachers tend to be against the ones the teachers should be supporting most. The New York strike, I think, is an example of that. I am using this as a prelude to indicate that the strikes tend to be against the working mothers and fathers and

families of low income who really need to work and who, therefore, can't provide things at home easily for the children if the children are not in school. That is really a terribly unfortunate thing. At the same time, I am banking too upon the reasonableness of teachers, that such a strike is taken only where there is some kind of provocation.

ASSEMBLYMAN SMITH: Regardless of the cause of the strike, let's look at the children. Would you say that would be sufficient to get a restraining order?

PROFESSOR NELSON: In terms of education, I am going to have to say no. The data that I have seen, including the results from the New York City strike ---

ASSEMBLYMAN SMITH: All right. How about three months? Would three months change your mind?

PROFESSOR NELSON: Three months - possibly.

ASSEMBLYMAN SMITH: But somewhere in point of time, you would change your mind.

PROFESSOR NELSON: Probably, yes.

ASSEMBLYMAN SMITH: Then you would have six or seven judges with all different standards.

PROFESSOR NELSON: But at least it would be resolved with due process as a condition.

ASSEMBLYMAN SMITH: That is not always a good solution.

PROFESSOR NELSON: No, but at least it would be equitable. As it stands now, the employers have all the armaments on their side. The board knows that they can simply sit and not respond.

ASSEMBLYMAN SMITH: And, of course, with police and fireman, one minute might be too much.

PROFESSOR NELSON: That may be true. By the way, the same is true in private employment too, as I am sure you are aware. There are some distinctions between privately-employed sanitation men and publicly-employed sanitation men and the distinctions are not very clear because presumably they both have the same kind of functions and jobs with the same impact on the public, etc. The railroad strike, it is very clear, had something to do with the public good. So I am not as clear in saying there is a very stark dichotomy between public and private, although I understand the predicament there, that there are some differences. But at the same time there are many private employees and employments which strike right at the heart of public health and safety.

ASSEMBLYMAN SMITH: But that doesn't make this other right.

PROFESSOR NELSON: No, but it provides - and this is why I happen to think the Pennsylvania thing is rather well stated - because it provides for recourse to public employers as a result of a determination of problems in public health, safety and welfare. It seems to me, as an example, that a strike of state printers would not have as direct an effect upon the public good as would a strike of firemen in the City of Trenton. I think that is clear and it would seem to me that that is a reasonable kind of way to begin to look at these and, that is, you begin to separate by the functions

they perform rather than by the simple notation that they are either public or private.

ASSEMBLYMAN SMITH: If you do that, you are going to have the park guards or the people picking up the paper in the parks getting more money than the police and firemen.

PROFESSOR NELSON: Well, in many areas, as you may know, electricians and plumbers earn more than classroom teachers now.

ASSEMBLYMAN SMITH: It still doesn't necessarily make it right.

PROFESSOR NELSON: It doesn't make it right. But the interesting thing is that teachers are now responding to that by saying ---

ASSEMBLYMAN SMITH: You mean they are becoming electricians and plumbers?

PROFESSOR NELSON: No. What they are doing is striking and getting higher wages.

SENATOR KNOWLTON: Thank you very much, Dr. Nelson.

This hearing will recess until tomorrow morning at ten o'clock.

[Hearing Recessed]

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FOLLOWING SUBMITTED BY MAYOR JOSEPH M. NARDI, JR.

PROPOSED AMENDMENTS TO CHAPTER 303, NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT OF 1968 RECOMMENDED BY THE NEW JERSEY STATE LEAGUE OF MUNICIPALITIES

The New Jersey State League of Municipalities has been on record in support of public employee labor relations legislation which would provide an orderly framework for processing employee demands in the public sector. Chapter 303 of the Laws of 1968 was originally viewed, as a step in the right direction. Imperfect though it was, it provided an administrative foundation and brought order where there previously had been chaos.

However, a year and a half of experience under Chapter 303 has revealed a number of major inadequacies and inequities in the act.

A number of municipal officials have viewed these problems to be of sufficient importance to warrant outright repeal of the legislation. The matter of repeal was seriously considered by the League in its deliberations, but the final conclusion was reached that the interests of pacific public employee labor relations would be far better served by correcting the present inadequate law than by leaving New Jersey with no guidelines at all through repeal. With proper amendment, the PERC law can become an effective, equitable implement bringing labor peace and fairness to the public sector.

The League, through its Committee to study the New Jersey Employer-Employee Relations Act, has made an intensive review of municipal experience under Chapter 303. The Committee is composed of mayors, municipal managers, municipal attorneys and other officials, all of whom, in their official capacities, have had extensive first-hand experience in the public employee-employer relations sector. They are: Joseph M. Nardi, Jr., Chairman, Mayor, Camden; James Alexander, Assistant Business Administrator, Trenton; Christian Bollermann, Attorney, Board of Adjustment, Cresskill; Walter J. Davis, Mayor, Bloomfield; Francis X. Hayes, 1st Assistant Corporation Counsel, Jersey City; Henry N. Luther,III, Mayor, Parsippany-Troy Hills Township; John T. McHugh, Township Manager, Willingboro, President, New Jersey Municipal Management Association; Albert Pannullo, Administrative Analyst, Department of Administration, Newark and James D. Westman, Township Manager, Franklin (Somerset).

Earlier this year the Committee requested the legislature to delay any action on amendments to the PERC law until municipalities, through this League Committee, had the opportunity to formulate a comprehensive position on the broad application of Chapter 303. The Committee has completed its deliberations and now makes the following recommendations:

1. Comprehensive Amendment of Chapter 303. Several bills, namely S-537, S-564, A-498, A-777, A-780, A-810, A-862 and A-897 are now pending before the Legislature which make piecemeal amendments to Chapter 303. It is recommended at the outset that amendatory legislation be prepared which contains a comprehensive revision of the present law, and that the respective piecemeal amendments not be moved further.

2. Composition of the Public Employee Relations Commission. Chapter 303 (N.J.S.A. 34:13A-5.2) presently provides for membership on PERC of persons representing identified management and employee interests. The Committee believes that such composite membership has rendered PERC an inappropriate agency to sit as a quasi-judicial body hearing allegations of unfair labor practices. The Committee recommends that Chapter 303 be amended to provide that PERC be comprised of members representing the public generally and that no membership by persons with either employee or employer bias be authorized. (A-862 would accomplish this purpose).

However, if the present philosophy is to prevail wherein PERC will continue to be comprised of individuals with such employee or employer affiliations, the Committee recommends that the Commission be enlarged to include a representative of municipal employers. Only State and board of education employers are now represented.

3. Management Rights and Areas of Grievance Concerning Conditions of Employment. Chapter 303 is seriously deficient with regard to the definition of negotiable terms and conditions of employment in that it does not reserve to public employers the management prerogatives not open to negotiation or grievance which are essential to such public employers in meeting their policy making obligations under the law. The Committee recommends that a reserved rights of management clause be amended to the law, both as a new definition of "management rights" under N.J.S.A. 34:13A-3 and under N.J.S.A. 34:13A-5.3 as a qualification to the negotiation and grievance of terms and conditions of employment. The following language drawn from the State Employment Labor Relations Act of Wisconsin is suggested:

> "Management Rights" Nothing in this chapter shall interfere with the right of the employer in accordance with applicable law, rules and regulations to:
>
> 1. Carry out the statutory mandate and goals assigned to the agency utilizing personnel, methods and means in the most appropriate and efficient manner possible.
>
> 2. Manage the employees of the agency, to hire, promote, transfer, assign or retain employees in positions within the agency and in that regard to establish reasonable work rules.
>
> 3. Suspend, demote, discharge or take other appropriate disciplinary action against the employee for just cause; or to lay off employees in the event of lack of work or funds or under conditions where continuation of such work would be inefficient and nonproductive.

4. Unfair Labor Practices. The present law is inadequate in three basic respects in its provisions covering violations or unfair labor practices.

(1) Chapter 303 (N.J.S.A. 34:13A-6) does not specifically empower the Public Employment Relations Commission to rule on alleged violations (unfair practices). The procedures set forth in the Commission's Rules and Regulations dealing with such violations are without specific statutory authorization. Chapter 303 should be amended to grant such powers and authority to the Commission.

(2) "Unfair Labor Practices," including but not limited to "bargaining in good faith" are not defined in the present Act. The Committee recommends that N.J.S.A. 34:13A-3 be amended to include the following definitions drawn from the language of the Connecticut legislation on the subject.

> "Unfair Practices" - (a) Employers or their representatives or agents are prohibited from: (1) Interfering, restraining or coercing employees in the exercise of the rights guaranteed in section 2 of this act; (2) dominating or interfering with the formation, existence or administration of any employee organization; (3) discharging or otherwise discriminating against an employee because he has signed or filed any affidavit, petition or complaint or given any information or testimony under this act; (4) refusing to bargain collectively in good faith with an employee organization which has been designated in accordance with the provisions of this act as the exclusive representative of employees in an appropriate unit; (5) refusing to discuss grievances with the representatives of an employee organization designated as the exclusive representative in an appropriate unit in accordance with the provisions of this act. (b) Employee organizations or their agents are prohibited from: (1) Restraining or coercing (A) employees in the exercise of the rights guaranteed in subsection (a) of section 2 of this act, and (B) a municipal employer in the selection of his representative for purposes of collective bargaining or the adjustment of grievances; (2) refusing to bargain collectively in good faith with a municipal employer, if it has been designated in accordance with the provisions of this act as the exclusive representative of employees in an appropriate unit.
>
> "Bargaining in Good Faith" For the purposes of this act, to bargain collectively is the performance of the mutual obligation of the municipal employer or his designated representatives and the representative of the employees to meet at reasonable times, including meetings appropriately related to the budget-making process, and confer in good faith with respect to wages, hours and other conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation shall not compel either party to agree to a proposal or require the making of a concession.

(3) The third deficiency regarding the area of unfair labor practices and other violations of the Act is that no enforcement provisions or legal remedies are set forth. It is recommended, therefore, N.J.S.A. 34:13A-6 be amended to empower the Commission to initiate enforcement procedures when violations have been determined. The following provision from the State of Connecticut is suggested:

> "If, upon all the testimony, the board determines that a prohibited practice has been or is being committed, it shall state its findings of fact and shall issue and cause to be served on the party committing the prohibited practice an order requiring it or him to cease and desist from such prohibited practice, and shall take such further affirmative action as will effectuate the policies of this act".

5. Definitions. Chapter 303 is deficient (in N.J.S.A. 34:13A-3) with regard to other definitions. The terms "supervisor" and "professional employee" should be amplified. The Committee suggests the following language drawn from the National Labor Relations Act (and also appearing in Assembly Bill 498):

> "The term "supervisor" means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment".
>
> The term "professional employee" means:
> (1) Any employee engaged in work (A) predominately intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; (B) involving the consistent exercise of discretion and judgment in its performance; (C) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; (D) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual or physical processes; or
>
> (2) Any employee, who (A) has completed the courses of specialized intellectual instruction and study described in clause (D) of paragraph (1) and (B) is performing

> related work under the supervision of a professional person to qualify himself to become a professional employee as defined in paragraph (1).

The term "managerial executive" appearing in connection with exclusions from participation in employee representative units as set forth in N.J.S.A. 34:13A-5.3 is not defined in the Act. It is recommended, therefore, that the following definition of "Managerial Executive" be added to N.J.S.A. 34:13A-3:

> "A managerial executive is an employee who participates in the formulation, determination, or effectuation, of management policy, and exercises significant independent judgment in his work."

6. Confidential Employee. It is recommended that the "confidential employee" be added to those persons ineligible for inclusion in an employee representative unit under the provisions of N.J.S.A. 34:13A-5.3. "Confidential Employee" should be included in the definitions in N.J.S.A. 34:13A-3, and the following language is suggested:

> "A confidential employee is one who has access to, or possesses, information relating to employment labor relations or who assists and acts in a confidential capacity to persons who exercise managerial functions in employee labor relations."

7. Established Practice Provision. The Committee believes that Chapter 303's exception by virtue of "established practice", to eligibility for inclusion in an appropriate representative unit runs counter to the basic concept of the appropriate unit principle. The Act should be amended to delete that mandate, making the matter of established practice a subject for negotiation by the involved parties.

8. Negotiation of Rules and Regulations. Chapter 303 (N.J.S.A. 34:13A-5.3) provides that new rules or modifications of existing rules must be negotiated by the employer with the employee representative. The Committee views this mandate as an unreasonable restraint on the employer, which should be replaced with a provision that such rules must be, whenever practicable, announced in advance and discussed. The Committee recommends the following language which appears in Assembly Bill 498:

> "Proposed new rules or modifications of existing rules governing working conditions shall, whenever practicable, be announced in advance and discussed with the majority representative before they are established."

9. Conflict with Civil Service. Chapter 303 creates a body of employee grievance procedures which overlap parallel provisions in Title 11, Civil Service, with the result that an employee may process grievances under both bodies of law on the same set of circumstances. It is recommended that Chapter 303 be amended in this regard to include a clause that an employee must make a choice of remedies, and having processed his grievances through one channel would be precluded from the other. It is also suggested that Title 11, Civil Service, be amended to provide a similar provision in reference to grievance procedures available under the Public Employer-Employee Relations Act and stipulating a similar election of choice of remedies.

10. Individual Bargaining Rights. To conform with the New Jersey Constitution and Federal practices under NLRB, it is suggested that the act be amended to provide the following provision:

> "An individual shall have the right to process his own grievance provided the majority representative is present and provided that any agreement reached with the individual employee is not violative of the contract."

11. Strike Provisions. The Committee is unalterably opposed to any extension to public employees of the right to strike. A statement outlining such opposition was presented on April 7 before the Assembly Labor Relations Committee at a public hearing on Assembly 810.

The statement, presented by Mayor Henry N. Luther, III, of Parsippany Troy Hills, pointed to the long-standing community view that the public interest is jeopardized by work stoppages by public employees. Legalizing strikes would result in an epidemic of paralyzing stoppages. Most of which would endanger the public safety. The statement added that a provision permitting strikes would be in conflict with the philosophy of Chapter 303 which was enacted to provide employees with avenues for negotiating their objectives, thereby eliminating the need for the strike as a weapon in dealing with employing units of government.

The Committee urges that Chapter 303 be amended to include the following provision drawn from the Municipal Employee Relations Act of Massachusetts:

> "It shall be unlawful for any employee to engage in, induce, or encourage any strike, work stoppage, slowdown or withholding of services by such employees."

In conclusion, the League wishes to reiterate its general support of public employee labor relations legislation as well as the belief that with the amendments recommended above, the present law can become a workable and fair mechanism for employer-employee negotiations in the public sector.

STATE OF NEW JERSEY

N. J. PUBLIC EMPLOYMENT RELATIONS COMMISSION

BEFORE THE

JOINT SENATE & ASSEMBLY STATE GOVERNMENT COMMITTEE

JUNE 17, 1970

This committee has been charged with the responsibility for inquiring into the effectiveness of Chapter 303. Somehow information seems to have gotten abroad that all labor disputes and strikes can be prevented by waving a magic wand over the heads of parties. This is a misconception. P.E.R.C has certain powers but it does not have the power to force people to reach an agreement. A basic mistake is made by those who claim that any strike in the public sector of New Jersey means that Chapter 303 is a failure. Chapter 303 is not an anti-strike law. We wish to note that this failure to specifically prohibit strikes is not in our opinion objectionable. It is a public employment relations act and its success must be measured by its positives as well as its failures. The public does not hear of its successes but its few failures are blazened forth as headlines in the press. Many persons expect this statute to solve all problems instantly. It cannot be done. We are aware of the statistics which reveal that public employees will strike, whether specifically prohibited by statute or not. We have appended data to this statement in support of that proposition. (App. I) In fact, the recent postal employee strike exhibits this in the clearest fashion; Federal employees are not only prohibited from striking, but they agree as a condition of employment, not to engage in strikes. The Commission, therefore, believes that the effectiveness of a statute cannot be measured by the existence or non-existence of strikes.

If, however, the effectiveness of Chapter 303 and of the Commission which administers Chapter 303 are to be measured by the extent to which the purposes of the Act have been implemented, we believe this Act has been effective. As a result of the passage of this Act public employees have been given the

right to engage in collective negotiations through a duly designated majority representative and public employees have been protected in the exercise of that right as well as the right to refrain from such activity. In that respect this Commission has been busily engaged in making unit determinations and conducting secret ballot elections where the parties have failed to voluntarily resolve unit and representation questions. The Act has channelized disputes regarding representation issues through a legal procedure rather than through a test of strength by strikes or other job action. Since the appointment of the Commission iin December 1968 the Commission has conducted 95 hearings, 86 representation elections and issued 71 Certification of Representatives. These representation questions were resolved through the parties' consenting to an election in 50 cases. In consent cases the parties established the unit and agreed upon who shall be eligible to vote as well as when and where the election was to be held. The use of these procedures to resolve representation questions is truly democracy in action wherein employees make their choice known through the ballot box. This opportunity has been afforded approximately 30,000 employees as of May 30, 1970.

If the effectiveness of the Commission and of Chapter 303 is to be measured by the number of contracts that have been consummated without work stoppages, then certainly 303 has worked well. We estimate that in 1969 there were approximately 300 agreements executed in the public sector. During 1970, to date, the best information available reveals in excess of 500 agreements covering terms and conditions of employment of public employees in the State of New Jersey. These contracts in 1969 were achieved with 16 strikes and in 1970 there were 12 strikes through May 30. Fifteen of these 28 strikes during 1969 and 1970 lasted 1 day or less than a full day. It should be noted that New York which prohibits strikes and has stringent penalties has also had 12 strikes during 1970, as of May 30th.

It is the Commission's position that effectiveness of its functions must be measure by the number of cible strikes that could have occurred but for impasse resoluti achinery available to the parties through medi n and fact-findir If one considers that each impasse could hav esulted in a strike, e Commission has prevented over 400 strikes because this reflects the number of mediation cases processed since December 1968. In addition, strikes have occurred in many states because of a lack of machinery to resolve representation questions. We have resolved at least 86 cases that could have resulted in disruptions of public service. Furthermore peaceful procedures have been developed whereby voluntary recognition may be utilized to resolve such questions outside the Commission. Although we know that a substantial number of representation issues have been resolved by the parties without Commission intervention we are unable to state the number of instances where this occurred.

These activities which we consider to be evidence of our effectiveness and the effectiveness of Chapter 303 have been carried-out in a framework whereby the statute was retroactive to July 1, 1968; the Commission was not appointed until December 1968; and did not have space nor staff until March 1969. As of May 30 the Commission and its staff has handled over 930 cases. At this very moment the Commission remains horribly understaffed and has faced the dilemma of insufficient funds for approximately the last three months. In addition to a very substantial backlog of cases which are yet to be processed, the parties have frequently had to wait more than six months after the close of a hearing for a decision. During the last two months budgetary considerations required the postponement or delay of some 25 hearings. The future is no rosier when one considers that our

budget requests for 18 staff positions have been cut to 12 positions for 1971 and that at present our staff consists of six professionals. The picture has been further complicated by a salary structure too low to attract the kind of people needed who are knowledgable in public sector labor relations.

It is not our desire to cry on this committee's shoulder. It is rather our professed intent to assist this committee in making Chapter 303 work. We would only note that an ample budget must be provided if the statutory purpose is to succeed. We shall now detail our proposals and our comments with reference to improvements in Chapter 303.

We are fully cognizant that Chapter 303 is not a perfect law and as we indicated to this body in March 1969, when experience revealed areas requiring change we would utilize that experience to propose such changes in Chapter 303. Such proposals are fully detailed in our appendix to this statement (App. II).

One area which this Commission finds sorely in need of improvement involves the further education of public employers, employee organizations and employees as to the concepts of collective negotiations and how to live within the framework of Chapter 303. Our experience in our day-to-day contacts with all parties, as well as our experience from conducting mediation activities reveals a need to educate all of the participants in public employee labor relations. We have found time and again that the first mediation session, and frequently the second mediation session, is an exercise in the education of the parties as to the process of collective negotiations. It is for this reason that we propose that Chapter 303 be amended to provide Rutgers with the role of educating not alone the public employer, but employee organizations and employees as well, in the field of public employee labor relations. We therefore support the proposed amendment in A-498 and our own proposals which carry out that

purpose. In line with this proposal and to satisfy this need we requested $50,000 in our 1971 budget to be paid to Rutgers for conducting such training. We regret that this amount was cut out of our budget for 1970-1971. We also are concerned about the need for research and education through PERC itself and therefore included a staff position in our budget for a research and education officer which unfortunately has also been eliminated from our budget request.

Our experience in conducting mediation activities has further shown us that the Act's provision whereby the Commission may intervene only upon the request of either party in an impasse situation does not constitute an adequate procedure. We are aware of several instances in which the Commission had knowledge that the parties' negotiating process had bogged down. In those cases it is our judgment that it would have been preferable to institute mediation without awaiting a request from either party. The Newark teacher's strike is typical of such cases. The Commission should have the authority to intervene on its own motion in the case of an impasse and offer its services before positions are polarized and mediation is made more difficult, if not impossible. We believe that frequently the parties hesitate to request mediation for fear that this is a sign of weakness. For these reasons the Commission proposes that the Act be amended to provide that the Commission may, on its own motion, initiate mediation. We accordingly urge adoption of that provision in A-498 and in our own proposals.

In this connection the Commission opposes the provision contained in S-537 which would assess the cost of mediation against the parties. We believe that this device would impede negotiations rather than improve it. We further believe that the failure to utilize mediation because of the cost factor may result in more dissension, more strikes and greater

disruptions in the public service. A majority of the states which provide impasse resolution service in the public sector presently provide such mediation services at the state's expense. The impasse resolution procedure must be viewed as a substitute for strikes and job action. To achieve this purpose it must be readily available. More detailed comments on this are contained in our attachment to this statement (App. III).

In the area of impasse resolution we find that frequently the parties are unable to resolve disputes regarding the scope of negotiations - whether or not certain items are negotiable. The Commission proposes that Chapter 303 be amended so that any disagreement concerning what constitutes terms and conditions of employment within the meaning of Chapter 303 be referred promptly to the Commission for its determination. By this procedure the parties will be given a speedy determination of what is negotiable and those issues will not constitute a part of their impasse. We do not agree with the provisions in A-498 which would require the Commission to establish by rule what is negotiable. To do so by rule rather than on a case-by-case basis would, in our judgment, be impossible. We have given careful and deliberate thought to the question of whether a list can be tailored to cover all areas that are negotiable and not negotiable. No such list could be complete. Furthermore, to do so by rule would require notices of hearings and comments upon proposed rules. On the other hand utilizing a case-by-case approach may establish guidelines to assist the parties and will not require the long process involved in repeated hearings for rule-making.

We have been concerned with the need to define the process of collective negotiations. We believe this definition will clarify to the parties their respective roles and their mutual obligations. This definition we propose should read: "To negotiate collectively is the good faith performance of the mutual obligation of the employer and representative of the employees to meet at reasonable times and negotiate regarding terms

and conditions of employment and to participate in the impasse resolution procedures with the intent of arriving at an acceptable common ground; however, the obligation does not compel either party to agree to a proposal or to make a concession so long as such refusal to agree or concede is made in good faith and based upon reasonable grounds."

In the area of unit determinations the Commission is aware of the concern with excessive fragmentation of units in the public sector. We are also mindful that the employees' desire for representation must be given recognition. We have, therefore, proposed that Chapter 303 be amended to provide for two criteria in addition to "community of interest". The additional criteria which we propose are "the authority of the public employer to negotiate terms and conditions of employment" and "the joint responsibilities of the public employer and public employees to serve the public". We believe that these 3 criteria will result in unit determinations which do not result in excessive fragmentation and which give the employees an opportunity to select an employee representative. A detailed study of the criteria utilized in other jurisdictions is submitted with this statement (App. IV).

Our experience in unit determinations indicates a deficiency with reference to the inclusion of supervisory and nonsupervisory employees in the same unit. Chapter 303 provides for the combining of supervisors and nonsupervisors where "established practice, prior agreement or special circumstances" exist. In the typical situation the number of supervisors is substantially smaller than the nonsupervisors with whom they might be combined. To insure that the supervisory group is not overwhelmed by mere numbers, they should have the opportunity to express their preference. The Commission proposes to meet this problem by the insertion of the following language in Section 34:13A-6(d). "If the Commission finds that established practice, prior agreement or special circumstances dictates

a unit of both supervisors and nonsupervisors a majority of such supervisory employees must vote for inclusion in such unit". This provision will permit a combined unit of supervisors and nonsupervisors only where the supervisors are given an opportunity to first vote for such inclusion. A similar provision exists in Section 34:13A-5.3 in our proposal which we have appended to this statement.

The unit definition contained in A-498 which provides that the appropriate unit shall be defined with due regard for the community of interest among the employees concerned "and for consistency with the legal jurisdiction of the public employer involved" is not favored by the Commission. We do not believe that any question exists with reference to a unit being found appropriate which is not consistent with the legal jurisdiction of the public employer and we consider this addition superfluous and not meaningful.

Assembly Bill A-498 proposes that "proposed new rules or modifications of existing rules governing working conditions shall whenever practicable be announced in advance and discussed with the majority representative before they are established". The Commission prefers that no change be made in Chapter 303 which provides that the public employer is required to negotiate with the majority representative regarding proposed new rules and modifications of existing rules.

We believe this provision would be difficult to administer and would permit changes in working conditions without negotiations with the majority representative. Unilateral action by the employer would be contrary to the intent and principles of collective negotiations which constitute the basic policy of Chapter 303.

We would propose either no change or, in the alternative, the following language: "Proposed new rules or modifications of existing rules governing working conditions may be instituted by a public employer

and shall thereafter be negotiated with the majority representatives provided that if the parties are unable to agree upon such new rules or modifications of existing rules within 30 days after they are announced the original rules shall be reinstated."

This approach would permit implementation of changes dictated by emergencies or other needs with negotiations occurring after their implementation.

The Commission has proposed that the Act be amended to provide a definition of craft employees and a definition of professional employees which coincides with that utilized in most jurisdictions. The absence of these definitions constitutes a deficiency requiring correction in the present law. We support the definition of professional employee contained in A-498 which coincides with the one we propose.

With reference to the definition of supervisor as contained in A-498 the Commission is of the opinion that this definition, which is that utilized in the National Labor Relations Act, is far too extensive and complicated and will result in administrative difficulties for this Commission. Specifically the definition contains 26 criteria which exist in the disjunctive so that any one criterion can make an individual a supervisor. Additionally, problems as to what constitutes a routine exercise of authority or routine assignment of employees will pose substantial administrative problems in the public sector. The Commission, after due consideration, has concluded that the term "supervisor" should be defined as meaning anyone having the authority to "hire, discharge, discipline or evaluate employees or to effectively recommend regarding any of the foregoing". We believe the 8 criteria which we have specified will be subject to empiric evidence and therefor easier to administer and will create greater

certainty as to which individuals are to be considered supervisors. Furthermore, we believe the definition which we have proposed will serve to identify those individuals charged with the responsibility of supervision in its truest sense.

We agree with the recommendations in A-498 which substitute the word "Commission" for the word "division" thereby clarifying the decision making body under Chapter 303.

We wish specifically to note our objection to the amendment proposed in A-498 which provides "Nothing in this Act shall be construed to abrogate or modify in any way the provision of Title 11, Civil Service, of the Revised Statutes, or any rules or regulations promulgated thereunder." This provision could give the Civil Service Department or Civil Service Commission the authority to effectively nullify and void the provisions of Chapter 303 by rules or regulations hereafter promulgated. We would find this provision acceptable by the insertion of"...heretofore promulgated thereunder". We have submitted a more detailed statement of our comments on A-498 as an appendix to this statement (App. V).

The Commission is not proposing the inclusion of any strike prohibition in Chapter 303. The evidence to date in New Jersey and other jurisdictions does not convince us that a statutory strike prohibition and statutory penalties are any more effective in preventing strikes than the absence of such a provision. We further believe that the Commission should not be assigned the task of enforcing the strike prohibition which the Courts have found to exist in common law. We would, however, recommend that the Legislature consider the passage of appropriate legislation or resolution requesting or requiring that the courts consider: (1) the equities of the situation, (2) any mitigating circumstances, (3) whether the public employer by its conduct has provoked a work stoppage; (4) the employee

organizations efforts to prevent or terminate a work stoppage and (5) the respective positions of the parties in meeting their obligations under Chapter 303. These factors should be considered both before granting an injunction or temporary restraining order and subsequently in making judgments as to contempt or determining penalties under any such orders or injunctions.

We would further urge the establishment of a qualified study group to consider the entire question of strikes and alternatives to the strike in public employment.

Although we are satisfied that Chapter 303 permits this Commission to find violations of the Act and to remedy such violations we believe any question as to such authority should be resolved. We therefore would recommend specific language incorporating an unfair practice section and giving the Commission specific authority to remedy such violations. In this regard we would propose that Section 19:13-2, Section 19:14-18 and Section 19:18-1 and 2 of our Rules and Regulations, which we have appended; be utilized as a basis for appropriate legislations to amend this Act. We would propose in the alternative that Assembly Bill A-897 would be an appropriate vehicle to specifically provide unfair or improper practices in Chapter 303, (App. VI), with the addition of the following: "The Commission shall have the authority to hear and decide charges alleging violations of this Act, and to order appropriate remedies for such violations of the Act. The Commission shall have the authority to establish rules, regulations and procedures to process charges alleging violations of the Act, make findings of fact, issue orders, fashion remedies necessary to effectuate the policies of the Act and to seek enforcement of such orders issued in any court of competent jurisdiction.

The Commission has found that the tripartite composition of this Commission has worked satisfactorily. As an alternative proposal to a

Commission consisting only of public members or a commission with two additional public members we would suggest the following for consideration: A tripartite commission as presently constituted shall deal with impasse matters, however, only the public members of the commission shall make decisions in representation cases or cases involving alleged violations of the statute. We believe that this approach will provide the assistance of the partisan members in resolving impasses and simultaneously eliminate allegations of conflict of interest in representation and unfair practice proceedings.

The Assistant to the Director of the Federal Mediation and Conciliation Service recently noted that there are three periods under a new law in labor relations. He characterized the first as the "chaotic period" which occurs during the early unsettled days. The second he stated is the "hiatus period" when relative calm exists and the parties begin to learn to live together and to accept precedent setting decisions. The third is the "period of the unknown."

We request patience and understanding by all during the present "chaotic period". We believe that as all parties accept the concept of collective negotiations, engage in good faith dealings and as we too profit from our experience we shall all enter this more desirable second phase of public employee labor relations. An adherence to the philosophy as well as the letter of the law will result in minimum disruptions and in maximum service to the public. Our crystal balls are far too clouded at this time to look ahead to a third period. We are sure that our joint dedication to serve all of the people of the State will permit this Act to function effectively thru each of these periods.

WORK STOPPAGES IN GOVERNMENT, BY SELECTED STATES

Appendix - I

1966 - 1969

State	1966		1967		1968		1969	
	Number of Strikes	Employees Involved	Number of Strikes	Employees Involved	Number of Strikes	Employees Involved	Number of Strikes	Employees Involved
States with comprehensive Public Employment Relations Acts								
New Jersey	5	2,280	8	2,930	10	3,310	16	6,000
New York*	15	41,000	15	64,700	23	68,100	15	2,400
Michigan*	27	8,110	34	28,900	42	9,570	69	19,000
Wisconsin*	3	1,430	5	600	2	430	15	3,200
States without comprehensive Public Employment Relations Acts								
Pennsylvania**	4	1,110	10	8,190	13	21,700	38	11,500
Illinois***	11	4,170	18	4,810	22	10,400	38	25,000
Ohio	15	5,420	28	5,940	24	6,080	65	16,300
Texas****	3	660	2	320	1	480	5	500
Total work stoppages for all states	142	105,400	181	131,700	254	201,790	414	161,000

* Statutory prohibition on strikes and provision for penalties for striking.
** Statutes cover police and firemen only.
*** Statutes cover firemen only.
**** Prohibition against employees joining employee organizations.

CHAPTER 303, LAWS OF 1968
AS AMENDED

An Act to amend the title of "An act to promote the mediation, conciliation and arbitration of labor disputes and the creation of a board of mediation for the promotion thereof," approved April 30, 1941 (P. L. 1941, c. 100), so that the same shall read "An act concerning employer-employee relations in public and private employment, creating a bpard of mediation, a public employment relations commission and prescribing their functions, powers and duties," and to amend and supplement the body of said act and making an appropriation.

Be It Enacted by the Senate and General Assembly of the State of New Jersey:

Title amended.

1. The title of chapter 100 of the laws of 1941 is amended to read as follows: An act concerning employer-employee relations in public and private employment, creating a board of mediation, a public employment relations commission and prescribing their functions, powers and duties.

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

C. 34:13A-1 Short title.

1. This act shall be known and may be cited as "New Jersey Employer-Employee Relations Act."

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

C. 34:13A-2 Policy declaration.

2. It is hereby declared as the public policy of this State that the best interests of the people of the State are served by the prevention or prompt settlement of labor disputes, both in the private and public sectors; that strikes, lockouts, work stoppages and other forms of employer and employee strife, regardless where the merits of the controversy lie, are forces productive ultimately of

economic and public waste; that the interests and rights of the consumers and the people of the State, while not direct parties thereto, should always be considered, respected and protected; and that the voluntary mediation of such public and private employer-employee disputes under the guidance and supervision of a governmental agency will tend to promote permanent, public and private employer-employee peace and the health, welfare, comfort and safety of the people of the State. To carry out such policy, the necessity for the enactment of the provisions of this act is hereby declared as a matter of legislative determination.

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

C. 34:13A-3 Definitions.

3. When used in this act:

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

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

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

(d) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer unless this act explicitly states other-

wise, and shall include any individual whose work has ceased as a consequence of or in connection with any current labor dispute or because of any unfair labor practice and who has not obtained any other regular and substantially equivalent employment. This term, however, shall not include any individual taking the place of any employee whose work has ceased as aforesaid, nor shall it include any individual employed by his parent or spouse, or in the domestic service of any person in the home of the employer, or employed by any company owning or operating a railroad or railway express subject to the provisions of the Railway Labor Act. This term shall include public employee, i.e. any person holding a position, by appointment /or contract,/ or employment in the service of a public employer, except elected officials, heads and deputy heads of departments and agencies, and members of boards and commissions, provided that in any school district this shall exclude only the superintendent of schools or other chief administrator of the district.

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

(f) The term craft employee means one engaged in a manual pursuit, usually not routine, for the pursuance of which a long period of training or an apprenticeship is usually necessary, and which in its pursuance calls for a high degree of judgment and of manual dexterity, one or both, and for ability to exercise such skill with a minimum of supervision and to exercise responsibility for valuable product and equipment.

(g) The term professional employee means - (a) any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; (ii) involving the consistent exercise of discretion and judgment in its performance; (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual or physical processes; or (b) any employee, who (i) has completed the courses of specialized intellectual instruction and study described in clause (iv) of paragraph (a), and (ii) is performing related work under the supervision of a professional person to qualify himself to become a professional employee as defined in paragraph (a).

(h) The term supervisor means anyone having the authority to hire, discharge, discipline or evaluate employees or to effectively recommend regarding any of the foregoing.

C. 34:13A-5.1 /Division of/ Public Employment Relations Commission and Division of Private Employment Dispute Settlement; establishment, functions State Board of Mediation.

5. There is hereby established a /Division of Public Employment Relations/ Commission to be known as the New Jersey Public Employment Relations Commission and a Division of Private Employment Dispute Settlement.

(a) The /Division of Public Employment Relations/ commission shall be concerned exclusively with matters of public employment related to determining negotiating units, elections, certifications and settlement of public employee representative and public employer disputes and grievance procedures. For the purpose of complying

with the provisions of Article V, Section IV, paragraph 1 of the New Jersey Constitution, the /Division of Public Employment Relations/ commission is hereby allocated within the Department of Labor and Industry, and located in the city of Trenton, but notwithstanding said allocation, the office shall be independent of any supervision or control by the department or by any board or officer thereof.

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

C. 34:13A-5.2 Public Employment Relations Commission; /establishment,/ powers and duties, membership, appointment, qualifications, chairman, terms, vacancies, compensation and reimbursement.

6. (a) /There is hereby established in the Division of Public Employment Relations a commission to be known as the New Jersey Public Employment Relations Commission./ This commission, in addition to the powers and duties granted by this act, shall have in the public employment area the same powers and duties granted to the labor mediation board in sections 7 and 10 of chapter 100, P. L. 1941 and in sections 2 and 3 of chapter 32, P. L. 1945. There shall be a chief executive officer and administrator who shall devote his full time to the performance of his duties exclusively /in the Division of Public Employment Relations./ for the commission. (b) This commission shall make policy and establish rules and regulations concerning employer-employee relations in public employment relating to dispute settlement, grievance procedures and administration including enforcement of statutory provisions concerning representative elections and related matters. The commission shall consist of 7 members to be appointed by the

Governor, by and with the advice and consent of the Senate. Of such members, 2 shall be representative of public employers, 2 shall be representative of public employee organizations and 3 shall be representative of the public including the appointee who is designated as chairman. Of the first appointees, 2 shall be appointed for 2 years, 2 for a term of 3 years and 3, including the chairman, for a term of 4 years. Their successors shall be appointed for terms of 3 years each, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the member whose office has become vacant.

The members of the commission shall be compensated at the rate of $50.00 for each day, or part thereof, spent in attendance at meetings and consultations and shall be reimbursed for necessary expenses in connection with the discharge of their duties.

C. 34:13A-5.3 Public employees' organizations; authorization, membership, representation, written agreements, grievance procedures.

7. Except as hereinafter provided, public employees shall have, and shall be protected in the exercise of, the right, freely and without fear of penalty or reprisal, to form, join and assist any employee organization or to refrain from any such activity; provided, however, that this right shall not extend to any managerial executive except in a school district the term managerial executive shall mean the superintendent of schools or his equivalent, nor except where established practice, prior agreement or special circumstances dictate the contrary, and a majority of the supervisors vote for such employee representative, shall any supervisor /having the power to hire, discharge, discipline or to effectively recommend the same/ have the right to be represented in collective negotiations by an employee organization that admits nonsupervisory personnel to membership, and the fact that any organization has such supervisory employees as members shall not deny the right of that organization to represent the appro-

priate unit in collective negotiations; and provided further, that, except where established practice, prior agreement, or special circumstances dictate the contrary, no policeman shall have the right to join an employee organization that admits employees other than policemen to membership. The negotiating unit shall be defined with due regard for the community of interest among the employees concerned, the authority of the public employer to negotiate terms and conditions of employment for the employees concerned and the joint responsibilities of the public employer and public employees to serve the public, but the commission shall not intervene in matters of recognition and unit definition except in the event of a dispute.

Representatives designated or selected by public employees for the purposes of collective negotiation by the majority of the employees in a unit appropriate for such purposes or by the majority of the employees voting in an elec ducted by the commission as authorized by this act shall be the esclusive representatives for collective negotiation concerning the terms and conditions of employment of the employees in such unit. Nothing herein shall be construed to prevent any official from meeting with an employee organization for the purpose of hearing the views and requests of its members in such unit so long as (a) the majority representative is informed of the meeting; (b) any changes or modifications in terms and conditions of employment are made only through negotiation with the majority representative; and (c) a minority organization shall not present or process grievances. Nothing herein shall be construed to deny to any individual employee his rights under Civil Service laws or regulations. When no majority representative has been selected as the bargaining agent for the unit of which an individual employee is a part, he may present his own grievance either personally or through an appropriate representative or an organization of which he is a member and have such grievance adjusted.

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

When an agreement is reached on the terms and conditions of employment, it shall be embodied in writing and signed by the authorized representatives of the public employer and the majority representative.

Public employers shall negotiate written policies setting forth grievance procedures by means of which their employees or representatives of employees may appeal the interpretation, application or violation of policies, agreements, and administrative decisions affecting them, provided that such grievance procedures shall be included in any agreement entered into between the public employer and the representative organization. Such grievance procedures may provide for binding arbitration as a means for resolving disputes.

To negotiate collectively is the good faith performance of the mutual obligation of the employer and representative of the employees to meet at reasonable times and negotiate regarding terms and conditions of employment and to participate in the impasse resolution procedures with the intent of arriving at an agreeable common ground; however, the obligation does not compel either party to agree to a proposal or to make a concession so long as such refusal to agree or a proposal is made in good faith and based upon reasonable grounds.

8. Section 6 of P.L.1941, chapter 100 (C. 34:13A-6) is amended to read

as follows:

3. 34:13A-6 Powers and duties.

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

(b) Whenever negotiations between a public employer and an exclusive representative concerning the terms and conditions of employment shall reach an impasse, the commission [, through the Division of Public Employment Relations] shall, upon the request of either party, or may on its own motion, take such steps as it may deem expedient to effect a voluntary resolution of the impasse. In the event of a failure to resolve the impasse by mediation the [Division of Public Employment Relations] commission is empowered to recommend or invoke fact-finding with recommendation for settlement, the cost of which shall be borne by the parties equally. Any disagreement concerning what constitutes "terms and conditions of employment" within the meaning of this Act shall be referred promptly to the commission for its determination.

(c) The board in private employment, through the Division of Private Employment Dispute Settlement, and the commission in public employment [, through the Division of Public Employment Relations,] shall take the following steps to avoid or terminate labor disputes: (1) to arrange for, hold, adjourn or reconvene a conference or conferences between the disputants or one or more of their representatives or any of them; (2) to invite the disputants or their representatives or any of them to attend such conference and submit, either orally or in writing,

the grievances of and differences between the disputants; (3) to discuss such grievances and differences with the disputants and their representatives; and (4) to assist in negotiating and drafting agreements for the adjustment in settlement of such grievances and differences and for the termination or avoidance, as the case may be, of the existing or threatened labor dispute.

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

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

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

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

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

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

C. 34:13A-8. Right to engage in lawful activities.

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

C. 34:13A-8.1 Existing agreements and statutes not affected.

10. Nothing in this act shall be construed to annul or modify, or to preclude the renewal or continuation of any agreement heretofore entered into between any public employer and any employee organization, nor shall any provision hereof annul or modify any statute or statutes of this State.

C. 34:13A-8.2 Filing of contracts.

11. The commission shall collect and maintain a current file of filed contracts in public employment. Public employers shall file with the commission /a copy/ and with the Institute of Management and Labor of Rutgers-The State University, copies of any contracts it has negotiated with public employee representatives following the consumation of negotiations.

C. 34:13A-8.3 Employee-management relations program.

12. The commission in conjunction with the Institute of Management and Labor of Rutgers, the State University, shall develop and maintain a research and training program for the guidance of public employers, public employees and their representatives in employee-management relations, to provide technical advice /to public employers/ on employee-management programs, to assist in the development of programs for training /management personnel/ in the principles and procedures of consultation, negotiation and settlement of disputes in the public service, and for the training of /management/ officials in the discharge

of their employee-management relations responsibilities in the public interest.

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

C. 34:13A-11 Adoption or amendment of rules.

11. The board shall have power to adopt, alter, amend or repeal such rules in connection with the voluntary mediation of labor disputes in private employment and the commission shall have the same powers in public employment, as may be necessary for the proper administration and enforcement of the provisions of this act.

ANALYSIS OF SENATE BILL NO. 537

This bill would amend the Act to provide for the cost of mediation to be shared by the parties.

An analysis of the provisions in other State public employee statutes reveals that mediation costs are shared by the parties in California, Nebraska, Nevada and North Dakota. The State pays the cost of mediation in Connecticut, Rhode Island, Massachusetts, Maine (if state mediators are used), Michigan, New York, Oregon, Vermont and Wisconsin. The Colorado report, Pennsylvania report, Illinois report and Maryland report all recommended state payment for mediation.

In addition, the federal program provides for free mediation and all private sector agencies provide such free services.

It is the Commission's recommendation that New Jersey should retain the present system based upon the following: (1) the fact that a majority of the states provide such machinery at State expenses; (2) the mediation services which are designed to reduce or eliminate disputes will not be successful if a party must be concerned about the expense of such services; (3) efforts will be made in fiscal 1971 to reduce the use of ad hoc mediators by greater reliance on staff which we hope will be increased in fiscal 1971; (4) additionally, we hope that an improvement in the parties' familiarity with collective negotiations will reduce the need for mediation.

APPROPRIATE NEGOTIATING UNITS:
CRITERIA LISTED IN STATE STATUTES
GOVERNING PUBLIC SECTOR LABOR RELATIONS

NLRB

Major considerations

(1) Similarity of skills, wages, hours and other working conditions among the employees involved.

(2) History of collective bargaining

(3) Desires of employees

Extent of organization may be considered but it cannot be a controlling factor.

(Pages 79-81; 1969 Guidebook to Labor Relations, CCH)

N. Y. S. - PERB

3 standards

(1) The definition of the unit shall correspond to a community of interest among the employees to be included in the unit. As implemented, PERB has considered "whether the employees sought to be grouped together are subject to common working rules, personnel practices, environment or salary and benefit structure."

(2) The public employer at the level of the unit shall have the authority to agree to or to make effective recommendations with respect to the terms and conditions to be negotiated.

(3) The unit shall be compatible with the joint responsibilities of the public employer and public employees to serve the public, i.e., degree of administrative inconvenience to be experienced by unwarranted fragmentation in the uniting of public employees.

PERB has construed these criteria to require the designation of as few units as possible, consistent with the overriding requirement that the employees be permitted to form or join employee organizations of their own choosing to represent them in a meaningful and effective manner.

The policy is that fragmentation of a public employer's employees into small units is to be avoided unless there is present such a conflict of interest as to preclude effective and meaningful collective negotiations. Thus, they have adopted the "most appropriate unit" policy.

(The Resolution of Representation Status Disputes Under the Taylor Law, Joseph R. Crowley, Fordham Law Review, Pages 519-521)

Report of Task Force on State and Local Government Labor Relations, 1967

Points out the need to balance two basic principles: (a) right of employees

to self-determination and (b) right to organize and bargain collectively.

An important factor to be considered is community of interest: similarity of job duties, wages, common supervision, and common skills, educational requirements, job location, and common bargaining history.

Other considerations: (1) separate units for (a) craft (b) professional (c) occupational groups; (2) departmental or division-wide units; (3) desires of employees and employers.

(Page 12)

[illegible] Commission report suggested three criteria be included in the law to guide the regulatory agency.

(1) Employees with the same conditions of employment which apply uniquely to them

(2) Employees with a history of workable and acceptable negotiating pattern

(3) Employees in the same historic craft or profession

A clear and identifiable community of interest must be found. Fragmentation of units should be avoided.

(1968 Supplement to Report of Task Force, p. 19)

[illegible] of President's Review Committee on Employee-Management Relations in the Federal Service, January, 1969

Recommended that in addition to "community of interest" criterion, an appropriate unit should be one that promotes effective dealings and efficiency of agency operations.

(1969 Supplement to Report of Task Force, p. 21)

"It is axiomatic that a negotiator can truly negotiate only those matters over which he has the authority to act or the power to recommend action... Bargaining units must, therefore, be so constructed that they will represent the employees of one negotiator (or of his principal, if the negotiating task has been delegated).

(Pages 22-24, 1969 Supplement)

Delaware

Department of Labor and Industrial Relations shall consider:

(a) (1) Duties

(2) Skills

(3) Working conditions

(b) History of collective bargaining by public employees and their representatives

(c) Extent of organization among the employees

(d) Desire of the public employees

(SLL 17:127, 7/29/68)

Maine

The Commission should decide in each case whether, in order to insure to employees the fullest freedom in exercising the rights guaranteed by this chapter, and in order to insure a clear and identifiable community of interest among employees concerned, the unit appropriate for purposes of collective bargaining shall be the public employer unit or any subdivision thereof....

(SLL 29:220 8-4-69)

Massachusetts

Employee organizations and the appropriate department or agency heads may, by mutual agreement, subject to the approval of the director of personnel and standardization, establish appropriate collective bargaining units based upon community of interest, which may include similar working conditions, common supervision, and physical location. Employees may, in appropriate cases, be given the opportunity to determine for themselves whether they desire to establish themselves as an appropriate collective bargaining unit.
(State employees)

(SLL 31:246 1-29-68)

The Commission shall decide in each case whether the appropriate unit for purposes of collective bargaining shall be the municipal employer or any other unit thereof; provided, uniformed employees of the fire department shall be in a separate unit; and provided, further, that no unit shall include both professional and non-professional employees unless a majority of such professional employees vote for inclusion in such unit.
(Local government employees)

(SLL 31:248a 8-4-69)

Michigan

The Board shall determine in each case the appropriate unit "in order to insure public employees the full benefit of their right to self-organization, to collective bargaining and otherwise to effectuate the policies of this act". (SLL 32-265 9-4-67)

Same criteria used in public as in private sector. "The unit shall be either the employees of 1 employee employed in 1 plant or business enterprise within this state, not holding executive or supervisory positions, or a craft unit, or a plant unit, or a subdivision of any of the foregoing units: Provided, however, that if the group of employees involved in the dispute has been recognized by the employer or identified by certification, contract or past practice as a unit for collective bargaining, the board may adopt such unit."

(SLL 32-249 3-24-69)

Nevada

The primary criterion for such determination shall be the community of interest among the employees concerned. (Excludes local government department heads)

(SLL 38:288 6-23-69)

New Hampshire

"Unit" shall mean all employees, or, in the alternative, groups of employees classified according to department, groups of departments, institution, or groups of institutions, as the commission shall determine, upon petition, to be appropriate in order to assure to employees the fullest freedom in exercising their rights hereunder and also to provide for efficient and harmonious administration of management-employee relations.
(Covers state and university employees only)

(SLL 39:202f 9-8-69)

Oregon

In the exercise of the right to form and participate in an organization for collective negotiation, all classified employees who are under the same appointing authority shall be deemed a single employee group for the purpose of forming and participating in a negotiating unit, except that an appointing authority initially may consider requests for and, if justified by professional, geographical, organizational unit or other considerations affecting employment relations, authorize negotiating units on other

than a total agency basis.

(SLL 47-234d 10-2769)

South Dakota

In defining the unit, the labor commissioner shall take into consideration, along with other relevant factors, the principles of efficient administration of government, the principles of uniform comprehensive position classification and compensation plans in the governmental agency, the history and extent of organization, occupational classification, administrative and supervisory

levels of authority, geographical location, and the recommendations of the parties.

(GERR No. 291 E-2 4-7-69)

Vermont

Extent of organization is not controlling. The board shall take into consideration but not be limited to:

(1) The authority of government officials at the unit level to take positive action on matters subject to negotiation.

(2) The appropriateness of the proposed unit to represent all employees within the unit having regard for the similarity or divergence of their interests, needs, and general conditions of employment. (Self-determination for special classes of employees)

(3) Whether over-fragmentation of units among state employees will result from certification to a degree which is likely to produce an adverse effect either on effective representation of state employees generally, or upon the effective operation of state government. (State employees only)

(GERR NO. 295)

Washington

In determining, modifying, or combining the bargaining unit, the department shall consider the duties, skills, and working conditions of the public employees; the history of collective bargaining by the public employees and their bargaining representatives; the extent of organization among the public employees; and the desire of the public employees.

(SLL 58:241 6-26-67)

Wisconsin

The Commission determines the appropriate unit and whether the employees engaged in a single or several departments, divisions, institutions, crafts, professions, or occupational groupings constitute an appropriate collective bargaining unit. (State employees)

(SLL 69:242a 8-8-66)

Rhode Island

State labor relations board determines appropriate bargaining unit.

(SLL 50:239 5-8-67)

Connecticut

Board decides appropriate negotiating unit "in order to insure to employees the fullest freedom in exercising the rights guaranteed by the act and in order to insure a clear and identifiable community of interest among the employees concerned."

(SLL 16:255 7-17-67)

Principles and Criteria Considered in Canada

(1) Purposes, intent and provisions of the legislation

(2) Community or mutuality of interest with respect to wages, hours, working conditions, and other collective bargaining objects of employees

(3) Prior history and pattern of collective bargaining

(4) The history, and the extent and type of labor organization connected with the determination of the unit and with other employees of the same employer

(5) Desires of the employees

(6) Eligibility of employees for membership

(7) Employer's administrative set-up, the organization and method of operation, the way the unit fits into the organization

(8) Prior decisions regarding appropriateness of units

(9) Collective bargaining record of an existing bargaining agent

(10) Agreement of the parties
(Determination of the Appropriate Bargaining Unit
Edward Herman, pp 12-13)

Fed. EO 11491

(1) Community of interest

(2) Effective dealings and efficiency of agency operations

JURISDICTION

CRITERIA	NLRB	PERB-NYS	1967 Task Force	Ill. Comm.	EO 11491	Delaware	Maine	Mass.-State	Mass.-Local	Michigan	Nevada	New Hamp.-State	Oregon	S. Dakota	Vt.- State	Washington	Wis.-State	Wis.-Local	Rh. Island	Conn.
1. Determined by board, etc. but no specific guidelines provided							X		X	X		X	X				X	X	X	
2. Community of interest	X	X	X	X	X	X	X	X			X					X				X
3. History of bargaining	X		X	X		X				X				X		X				
4. Extent of organization						X								X	X	X				
5. Desires of employees	X		X			X		X								X				
6. Authority of employer to negotiate		X													X					
7. Efficiency of operations		X	X		X							X	X	X	X					
8. Insure rights of employees			X				X			X		X								X

ANALYSIS OF ASSEMBLY BILL NO. 498

This bill contains comprehensive proposed amendments to Chapter 303 which are analyzed herein.

1. Eliminates "Division"

The bill substitutes the "Commission" for the "Division" contained in Chapter 303. This amendment comports with that recommended by the Commission itself.

This proposal is therefore supported.

2. Policy statement

It alters the policy statement from that contained in Chapter 303. In this regard see p. 1 line 20-24 and p. 2 top lines 25-27. The major questionable lines are found on p. 1 lines 22-23 "...joint resolution of certain terms and conditions of employment be prescribed . . ." The term "prescribed" would limit the right to negotiate on terms and conditions of employment. This matter is discussed in item 5 below.

3. Definition of Supervisor

P. 3 lines 48 to 55 defines "supervisor" by using the terminology used by the Taft-Hartley Act and used by the NLRB. The definition contains 13 criteria, plus the proviso that the authority to effectively recommend the foregoing 13 criteria constitute one a supervisor. Additionally, there is a provision that such authority is not merely routine or clerical. These 26 criteria exist in the disjunctive so that any one can make an individual a supervisor. This definition has caused a plethera of decisions by the NLRB. The major administrative problem under the NLRB has been the issue of "routine" exercise of authority, "routine" assignment and direction of employees and "clerical" exercise of any of the listed authority.

A major area of dispute has involved questions of assignment of work and direction of employees as a "conduit in the chain of command" which doesn't require judgment but is routine or clerical.

A measure of supervisory authority which is simpler to administer and which may reach the group whose exclusion is intended can be accomplished by the definition "hire, fire, discipline, evaluate or effectively recommend such action." Evaluation affects promotion, reward, demotion, lay-off and recall rights. This is more susceptible to empiric tests and requires less Commission evaluation of hundreds of pages of testimony.

4. Professional Definition

P. 3 lines 56-75. This is the same definition used by the NLRB, many states and proposed by the Commission in its amendments.

This definition is supported.

5. Definition of "negotiable terms and conditions of employment"

Page 3 lines 76 to 81 contains this definition.

The definition is broad. It, however, becomes unclear by the insertion of the term p. 3 line 79 "within the legal jurisdiction...of the appointing authority". We cannot determine the intent of that statement.

The provision that terms and conditions shall be "within the. . .power of the appointing authority" is desirable. Obviously, the appointing authority can bind only itself and can therefore negotiate only those matters within its power and not those beyond its own power.

Line 80-81 provides that what is negotiable shall be that "which the Commission shall determine by rule to be negotiable". This would require the Commission to hold hearings on rule changes each time it desired to find anything to be negotiable. This would be most time consuming. It also involves the issue which this Commission has considered internally periodically, i.e., will it issue a list of what is negotiable or shall this be on a case-by-case determination.

The idea that the Commission resolve questions of what is negotiable if the parties cannot agree has certain merits. The concept that the Commission establish by rule what is negotiable may effectively interfere with the parties' ability to engage in negotiations.

An approach restricting the area of negotiations may be available through a provision that the mission of the agency and the policies of the agency are

not negotiable but the implementation as they affect employees is negotiable. This approach has been used by New York City.

The federal labor relations program excludes matters covered by law. This is embraced by the provision in A-498 referring to "power of the appointing authority".

In the opinion of the Commission a list of what is negotiable is not desirable. On balance the preferable device would be a case-by-case approach which is the New York practice and that of most states. This approach can require that such issues be subject to Commission determination and not be the subject of an impasse. The New York O.C.B. law provides: "(2) on the request of an employer or certified public employee organization engaged in negotiations, to make a final determination as to whether a matter is within the scope of collective bargaining in such negotiations under the terms of the applicable executive order, and on the request of a public employer or a certified employee organization which is party to a grievance, to make a final determination to whether a dispute is a proper subject for grievance and arbitration procedure established pursuant to section 1173-8.0 of this chapter;"

The Commission has adopted this approach in its proposed amendments to Chapter 303 by adding to 34:13A-6(b) the following: "Any disagreement concerning what constitutes 'terms and conditions of employment' within the meaning of this Act shall be referred promptly to the commission for its determination provided, however, that with respect to any matter not previously decided by the commission, the commission's determination shall be made only after giving due regard to record testimony and evidence and the positions of the parties or a stipulation of facts in lieu of record testimony and evidence."

6. Executive Director

P. 4 line 13-14 bottom of page provides, regarding the executive director, "and who, subject to available appropriation, shall receive such compensation as is fixed by the commission." We do not believe this alters the commission's right to set the salary of the director and therefore do not object to this change.

7. Unit definition

Page 5 lines 24-25 bottom of page adds to community of interest "and for consistency with the legal jurisdiction of the public employer involved."

We are unable to understand the intent of the draftsmen. A unit must be coextensive with the public employer's jurisdiction. We do not believe the amendment is designed to deal with a possible finding regarding a multi-county unit. The term is therefore confusing.

The Commission proposal as contained in the proposed amendments 34:13A-5.3 is as follows: (underscoring denotes additions)

"The negotiating unit shall be defined with due regard for the community of interest among the employees concerned, the authority of the public employer to negotiate terms and conditions of employment for the employees concerned

and the joint responsibilities of the public employer and public employees to serve the public, but the commission shall not intervene in matters of recognition and unit definition except in the event of a dispute.

8. Composition of Commission

The bill in Section 6, p. 5 line 20, lines 27-29 adds two more public members. The Commission has no objection to this provision.

9. Rights of minority representative

Page 6, lines 43-47 amends Chapter 303 to clarify the rights conferred by the Constitution. Employees may process grievances through a minority group. Minority representatives may not negotiate for employees.

Such a provision was included in the Commission's preliminary rules and regulations but was later deleted. The Commission proposes that no change be made in the law at present regarding the rights of minority employee representatives. It proposes instead that this issue be left silent for clarification by court decision. The Supreme Court in the Lullo decision indicated it would rule upon the issue when posed.

10. Modification of rules

P. 6 lines 59-60 provides that proposed new rules or modifications shall "whenever practicable, be announced in advance and discussed".

The Commission is of the opinion that this provision would be difficult to administer and would permit changes in working conditions without negotiations with the majority representative. Unilateral action by the employer would be contrary to the intent and principles of collective negotiations which constitute the basic policy of Chapter 303.

We would propose either no change or, in the alternative, the following language: "Proposed new rules or modifications of existing rules governing working conditions may be instituted by a public employer and shall thereafter be negotiated with the majority representatives provided that if the parties are unable to agree upon such new rules or modifications of existing rules within 30 days after they are announced the original rules shall be reinstated."

This approach would permit implementation of changes dictated by emergencies or other needs with negotiations occuring after their implementation.

11. Mediation

P. 7, lines 15-16 adds the right of the Commission to intervene in an impasse on its own motion.

This proposal is in accord with the Commission's own proposals and is supported. Additionally, p. 7, lines 28-29 gives the Commission the right to hold conferences, etc., regarding not only labor disputes but also impasses.

This agrees with the Commission's own proposals and is supported.

12. Personnel

P. 9, lines 89-93 eliminates the provision that the Commission's determination that personnel are qualified is not reviewable.

This provision restricts the right to hire competent personnel at a time when finding personnel is already very difficult. No reason exists to warrant a change in light of the satisfactory present arrangements.

13. Rules as to what is negotiable

Section 7, p. 9, lines 1-12 middle of page provides for public hearings on rules as to what is negotiable. It provides for rules by June 30, 1970.

As previously noted in item 5 the Commission is opposed to establishing terms and conditions of employment by rule believing such can best be performed on a case-by-case basis.

The requirement that rules be established by June 30, 1970 poses an additional problem because if the amendment is passed in May, insufficient time is allowed for notice of hearings, hearings, and full consideration of most difficult and complex issues. If this provision passes, as a minimum, September 30 should be the earliest for such rules or at least 90 days from the effective date of any amendment to the Act.

14. Right to strike

The Commission finds this matter to be highly controversial and because of the tripartite make-up of the Commission has decided not to make any recommendation on the question of strikes. Individual Commissioners are willing to offer separate comments should such be desired.

15. Rules and Regulations of Civil Service

P. 10, lines 7-11 top of page, adds a provision that not only are statutes not annulled or modified by this Act, but additionally it doesn't abrogate or modify rules or regulations under Title 11.

Because the provision as now formed would permit future rules and regulations to affect Chapter 303 we would find this provision acceptable only if the word "heretofore" were inserted at the end of line 10 so that the sentence would read: "Nothing in this Act shall be construed to abrogate or modify in any way the provisions of Title 11, Civil Service, of the Revised Statutes or any rules or regulations heretofore promulgated thereunder". (Underscoring is word added by Commission.)

16. Rutgers

P. 10, lines 3-13 bottom of page. Provides that Rutgers train public employees and public employers. This provision comports with the Commission's own proposal. Accordingly, the Commission supports this amendment. It should be noted that the term "public employees" is assumed to include their representatives as well, if there is any question that group should be specifically included.

ASSEMBLY, No. 897

STATE OF NEW JERSEY

INTRODUCED APRIL 9, 1970

By Assemblymen FLORIO, HORN, JACKMAN and HEILMANN

Referred to Committee on State Government

A SUPPLEMENT to 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, chapter 303.

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

1. Improper employer practices. It shall be an improper practice for a public employer or its agents deliberately (a) to interfere with, restrain or coerce public employees in the exercise of their rights guaranteed in section 8 of P. L. 1941, chapter 100 (C. 34:13A-8) for the purpose of depriving them of such rights; (b) to dominate or interfere with the formation or administration of any employee organization for the purpose of depriving them of such rights; (c) to discriminate against any employee for the purpose of encouraging or discouraging membership in, or participation in the activities of, any employee organization; or (d) to refuse to negotiate in good faith with the duly recognized or certified representatives of its public employees.

2. Improper employee organization practices. It shall be an improper practice for an employee organization or its agents deliberately (a) to interfere with, restrain or coerce public employees in the exercise of the rights granted in section 8 of P. L. 1941, chapter 100 (C. 34:13A-8), or to cause, or attempt to cause, a public employer to do so; or (b) to refuse to negotiate collectively in good faith with a public employer, provided it is the duly recognized or certified representative of the employees of such employer.

3. Application. In applying the provisions of this act and the act to which it is a supplement, fundamental distinctions between private and public employment shall be recognized, and no body of Federal or State law applicable wholly or in part to private employment, shall be regarded as binding or controlling precedent.

4. This act shall take effect immediately.

STATEMENT OF JOHN L. BROWN, SECRETARY-TREASURER OF NEW JERSEY STATE AFL-CIO BEFORE SENATE-ASSEMBLY JOINT COMMITTEE

June 17, 1970

Since this is my first opportunity to appear before a Legislative Committee as a representative of the New Jersey State AFL-CIO, may I express my appreciation at being heard for the Labor Movement of the State and my intention to give the fullest kind of cooperation possible to the members of the Legislature in an effort to arrive at a clear understanding of the interests of the workers of the State.

At the outset, may I respectfully suggest that the one bill before the Legislature which should truly be discussed from the standpoint of approaching equity with respect to public employees is not included in the list of bills to be considered today. This is Assembly Bill No. 1049 which has as its purpose the inclusion of public employee disputes under the provisions of the Anti-Injunction Law.

In our last appearance on the question of public employment disputes, we pointed out the undeniable fact that every case in the last two years of a stoppage of work by a group of public employees has resulted from the refusal of the public employer to comply with the requirement of law to negotiate collectively in good faith.

The Courts have disregarded this obligation of the employers but have landed like a ton of bricks upon employees who are forced to protest

a violation of their rights. Our Anti-Injunction Law provides among other things, that no injunction shall issue unless the employer has complied with its obligation to negotiate in good faith and to use all available governmental services for mediation, fact finding and the like.

The New Jersey State AFL-CIO wishes to submit to you in the most certain terms that not until employers have been forced to recognize and comply with their obligations under the law can we expect a reasonable and effective result from the Public Employment Relations Act. We urge you to pass Assembly Bill 1049 as the basic means of securing the kind of equity which will produce lasting results in the settlement of public employee disputes.

We have in past years believed that public employers are likely to recognize their obligations under law without compulsion. We regret that experience has proved to the contrary and that public employers today must be considered as basically opposed to the concept of fair and equitable treatment of their employees through collective negotiation. If the Courts are required to compel them to negotiate in good faith, we will, we believe, reach the objectives set forth in Chapter 303 of the Laws of 1968 -- the promotion of "peace and the health, welfare, comfort and safety of the people."

Coming now to a consideration of the various bills which have been presented for consideration, may we consider them seperately as follows:

SENATE NO. 537

The sole purpose of this bill is to impose upon the disputing parties the cost not only of fact finding which is now equally divided between them, but also the cost of mediation and any other steps taken to resolve a dispute.

We cannot understand why public employees or public employers should be required to undertake an expense which private employees and private employers are not required to do.

The State Mediation Board provides free mediation services to all private employers and their unions to help in resolving their disputes. To require the public employee unions or their employers to pay the costs of mediation is to destroy the public employee unions at the outset, since they start small and without funds and are unable to bear this expense.

This bill is designed, curiously enough, to destroy small unions in public employment before they can get started. We are sure that the sponsors of this bill have no such intent but it certainly seems unreasonable to discriminate against the small incipient public employee unions by requiring them to pay for mediation which the giant unions in private employment receive free of charge and have received free since 1941.

SENATE BILL NO. 564

This bill has certain technically corrective measures which are unobjectionable. There are, however, several substantive provisions which would be disastrous if adopted. They are, in order, the following:

(1) The definition of "negotiable terms and conditions of employment". This definition is highly restrictive in nature and does not allow PERC any leeway in determining the nature of the disputes which are subject to negotiation in individual cases.

This definitely is wrong and would result in a hamstringing of the entire purpose of the legislation. The Legislature cannot contemplate in advance all of the varied subjects which could be matters for negotiation. To limit negotiable matters is to destroy the effect of the collective negotiation.

The recent case decided by our State Supreme Court in an Opinion by Justice Francis has about the best statement on this subject that can be made. Justice Francis in a unanimous Opinion by the Supreme Court, said as follows:

> "Obviously, the Legislature envisioned a gradualistic approach with decisions both by PERC and the courts awaiting presentation of individual problems. We agree that in this untilled area expertise is distilled only from experience." (Emphasis ours)

In other words, the Court has said that the question of what should or should not be negotiated is a matter that should come from experience and not something that should be laid down in hard and fast terms at the outset. We urge against this proposal of Senate 564.

(2) The number of members of the Commission would be increased from 7 to 9.

We strongly oppose this increase. The experience of our representative on the Commission has indicated that the smaller Commission is well-knit, has very well learned its duties and obligations, and has carried them out with an excellent understanding of the problems involved.

The National Labor Relations Board with so many millions of workers who are subject to that Act consists of only five members. It has worked efficiently and well. So has our PERC. While labor has criticisms to make of our Commission, these criticisms are directed at the slowness with which it works and at not other complaint. The slowness is primarily due to a lack of adequate appropriations and we intend to press hard for adequate appropriations to do a proper job. We have only one other criticism. This relates to the law itself and not to the Commission. The Law should make it clear that mediation should not have to wait until an impasse occurs. The State Board of Mediation is not so limited. It may step into a case when it thinks mediation will help. PERC should be given the same opportunity so that it can avoid the creation of an impasse rather than wait for an impasse to occur before taking steps.

However, to increase the number of the members of the Commission to nine is simply to create not deny more expense and to add further unfamiliarity with the purposes of the Act.

(3) We most strongly oppose the proposed modified definition of "negotiating unit". The words "consistency with the legal jurisdiction of the public employer involved" are, in the first place, vague and ambiguous and in the second place, ignore completely the basic reasons for the establishment of appropriate units. Examine, if you will, some of the appropriate units in private industry and you will see that the "legal jurisdiction" of the management representative at the head of the unit is meaningless.

For example, a group of four engineers in a factory of 10,000 people is an appropriate unit. They have a community of interest. They have comparable skills and they are subject to the supervision of a separate supervisor. That supervisor has no power whatever to fix wages or other basic conditions of employment but yet they are in a separate unit.

As another example, machinists in the machine shop of a large industrial plant may constitute a separate unit. Here again their supervisor cannot fix their wages, their vacations, their holidays or their overtime rates or any other basic provision. Yet, they constitute a separate appropriate unit because they have a community of interest and separate hiring.

Those that seek to regulate the unit because of "legal jurisdiction" of the public employer involved are totally unfamiliar with the fundamental basis of establishing an appropriate unit.

(4) On Page 6, Section 7, Line 45, there is an attempt to break down the principle of exclusive representation by allowing minority individuals to be represented by minority unions.

This was the very basis of the case of Lullo vs. International Fire Fighters decided by the State Supreme Court on March 9 in which in 38 pages of very well-reasoned Opinion the Court held that it would be totally wrong and against all principle to provide for minority representation by minority groups. To do so would be to break down completely the concept of union representation. We urge the members of this Committee to read carefully the decision of the Supreme Court in the Lullo case. It is probably the best

exposition which can be found of the necessity of exclusive representation and the dangers of breaking down an exclusive union through the handling of grievances by minority groups.

It must always be borne in mind that under the Lullo decision, the union owes an obligation of fair representation to all persons in the unit whether or not they belong to the union. To destroy the effectiveness of the union by eliminating its right to exclusive representation will be to destroy the entire value of the P.E.R.A.

(5) On Page 6, Section 7, Line 59, there is again an attempt to destroy collective negotiation in the public field by permitting the establishment of rules without negotiation. There is also aneffort to eliminate negotiation in good faith as to grievances.

The draftsman of this proposed legislation has devised ways and means of destroying the effectiveness of unions. If employers are permitted to change rules and regulations without negotiations, then the unions might just as well not exist. The "meet and discuss" concept of employment relations flew out the window 40 years ago. Yet, the draftsman of this legislation would bring it back in full force and effect so as to deprive employees of the right to negotiate their disputes.

(6) The proposal on Page 9, Section 8, to re-affirm the decisions of the Courts as to the right to strike is not only a waste but is an irritant which is entirely unnecessary. Neither the Constitution nor Chapter 303 refer to the right to strike in any way. This was very deliberately done for the

purpose of enabling PERC to act without any pressure in this respect. It would be a grave mistake to include the language referred to.

(7) On Page 10, Lines 7-11, there is again language which should not be included in the Act.

The PERA was deliberately written without relation to the Civil Service Act and merely provided for a continuance of the rights thereunder. Section 7 already provides, "nothing herein shall be construed to deny to any individual employee his rights under Civil Service Laws or Regulations." There is no reason whatever to repeat this language again in Section 10.

On the whole, the provisions of Senate Bill 564 are very dangerous to the effective operation of the Act. This bill should not be adopted.

ASSEMBLY BILL NO. 498

This bill is identical with Senate Bill 564. It is equally dangerous and definitely anti-labor and anti-public, since no legislation will ultimately prevent public employees from insisting upon fair and reasonable collective negotiation with their employers. Under the circumstances, as we have said with respect to Senate Bill 564, we urge that Assembly Bill 498 should not be passed, since it would only create rather than eliminate public employee disputes.

ASSEMBLY BILL NO. 810

Assembly 810 is a bill which gives the right of collective bargaining to public employee unions and the right to joint or concerted

economic action in support thereof. In other words, it is a bill to permit strikes in public employment.

For many years organized labor in this State refrained from taking a position as to the right of public employees to strike. Recent developments, however, have indicated that public employers are at present as determined to prevent and interfere with collective bargaining on behalf of public employee unions as were private employers before the Wagner Act. We did not expect thatpublic employers would take this type of position. We did not expect them to refuse to bargain in good faith and we expected that public employers would make every effort to comply with mediation and fact finding. We found that we were in grave error. Every strike which has taken place has been because of a deliberate violation of the obligation to bargain collectively on the part of the employer or to comply with contracts already made. Under these circumstances, to deny to employees the right to refuse to work unless his rights are protected is to deny equity and fairness. We most strongly urge thata method be found to compel collective bargaining and to compel compliance with collective contracts. One way of doing this is to permit employees whose rights are denied to engage in a strike. For this reason, we support Assembly Bill 810.

ASSEMBLY BILL NO. 862

This bill would eliminate representation of employers and employees on the State PERC. It would require that all members be representatives of the public.

The only result of this bill would be to provide that representatives of management would be on the Commission as "public" representatives but no union representative would be on the Commission because he would be said to be a representative of public employees.

(It is interesting to note that among the so-called "public members" was included Mr. Charles Serraino who was both a union representative up to about 20 years ago and who has been a management representative in private employment since that time. In these circumstances, while technically he was a "public representative" yet, it cannot be denied that at the time of his appointment, he was a management representative in private employment. It is also to be noted that one of the "public representatives" is Mr. William Kirchner who is on the legal staff of the New Jersey Bell Telephone Co. Yet, when Thomas L. Parsonnet was appointed as a labor representative, although at the time of his appointment he represented no public employee unions but represented the State AFL-CIO, his position was rather close to that of Mr. Kirchner who, however, was considered a representative of the public. No criticism is made of either Mr. Serraino or Mr. Kirchner. We merely indicate that it is a different attitude with respect to "public representative" and "public employee representative", so that any labor man will be considered a labor representative whereas a management representative will be considered a representative of the public.)

We request that inquiry be made of the members of PERC. We believe they will state that the attitudes and knowledge of the public employer representatives and of the employee representatives have been invaluable in

the development of PERC and its regulations.

ASSEMBLY BILL NO. 1058

The purpose of this bill is to engage in the laying down of certain definitions as to the term "public employer" and the terms, "craft employee", "professional employee", "supervisor", and "managerial executive". It also would attempt to define the negotiating unit and would limit the negotiating unit to one specific unit rather than to "a" unit appropriate for collective negotiation.

The bill is based upon misunderstood concepts and should not be adopted for the following reasons:

(1) The definition of public employer would limit public employers so as to exclude representation for example, from the Bi-State Authorities, where the Court has already directed the recognition of a union.

Public employees have the right to collective representation regardless of who their employer is. This should not be denied.

(2) The attempt to define "craft employee" , "professional employee", "supervisor" or "managerial executive" is again an attempt to deprive the State of the value of the developing expertise of PERC and the Courts. These questions should be left to agencies who can, as a result of experience, define and redefine these words or phrases so as to constantly remain up to date. To do so by legislation would be to hamstring PERC.

(3) The bill attempts in Section 2, Page 3, Lines 24-27, to limit the power of PERC to determine what is an appropriate unit. We have referred to this question in connection with Senate Bill No. 564 and attempted to point out that PERC is in far better position to reach ultimate conclusions than is the Legislature which must lay down definitions in advance of cases, the type of which it cannot contemplate. We have previously pointed out, however, its desire to recognize limited units even though the particular head of the unit is unable to determine wages or conditions of employment. While the unit consists of a unit of employees, the mistake made by this bill and others introduced in the Legislature, relates to the fact that the definition of the unit of employees does not describe the identity of the person who must bargain for the employer. The policy making board or body of the employer decides who shall bargain with each particular unit and what shall be the terms and conditions to be offered. The size of the unit or the limitation of the unit of employees does not affect the right of the employer to bargain through whomever it wishes.

This is the mistake which so many people seem to be making -- the unit of employees does not in any manner affect the right of the employer to bargain through whomever it wishes.

(4) In Section 2, Page 4, Line 32 and again on Line 51, there is an attempt to declare that there is only one appropriate unit in any group of employees. This is an absolute absurdity dictated by a total lack of understanding of labor relations. There may be dozens of different types of appropriate units of employees. If the employees of a particular group who

are appropriate, seek recognition they should not be denied on the ground that there may be other units which also are appropriate,

The experience of 35 years with the National Labor Relations Board has indicated that you cannot say that only one unit is appropriate in any group of employees. To do so would be to put either the Labor Relations Board on a National basis or PERC on a State basis, in a complete straightjacket which would make it almost impossible for employees to become organized or to bargain collectively.

Finally, may we respectfully call the Committee's attention to two issues of the New Jersey Law Journal. In the May 28 issue of the Law Journal is an editorial relating to alternatives of strike by public employees. It suggests that reasonable alternatives to the strike weapon must be developed. It discusses the possibility of limiting the injunctive power, the possibility of unfair labor practice proceeding (which now exist before PERC but which are impractical because it will take years to determine such proceedings) or compulsory arbitration. The difficulty with compulsory arbitration is that , not as the Law Journal suggests, but the mere fact that it forces strikes because it polarizes the negotiations. This is evident from the history of our Public Utility Anti-Strike Law.

We believe that the most likely approach would be the empowering of the Courts to require bargaining in good faith and compliance with contracts before issuing injunctions against strikes. At least, this approach should be

tried as a means of requiring equity to be done.

A letter to the Editor on Page 5 of the New Jersey Law Journal's issue of June 11 should be considered. There is much of interest in this letter although we do not fully agree with it.

Among other things, this letter complains about the failure to publicize findings and recommendations of fact finders. This was tried in 1969 in the Newark Board of Education case but was not successful in forcing the Board of Education to comply with its agreement.

The letter suggests compulsory arbitration as a possible means but again we believe that compulsory arbitration will create rather than eliminate labor disputes.

The only acceptable proposal that we have been able to contemplate is a proposal to require the public employer to comply with its obligation to bargain collectively or to comply with any contract which it has made as a condition to the enjoining of a strike of its employees. We strongly suggest this approach as a possibility which will accomplish the purposes of peace and harmony in public employment and suggest for this reason that the one bill which should be adopted is a bill which this Joint Committee has ignored, namely, Assembly Bill 1049.

Respectfully submitted,

NEW JERSEY STATE AFL-CIO

By: _____
JOHN J. BROWN
Secretary-Treasurer