Volume II

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

before

PUBLIC EMPLOYER-EMPLOYEE RELATIONS STUDY COMMISSION

(Constituted under P. L. 1974, c. 124)

Held:
April 30, 1975
Assembly Chamber
State House
Trenton, New Jersey

MEMBERS OF COMMISSION PRESENT:

Dr. Richard A. Lester (Chairman)
Senator Wayne Dumont
Senator Peter J. McDonough
Senator Carmen Orechio
Assemblyman Christopher J. Jackman
Assemblyman Robert E. Littell
Vincent J. Apruzzese
Joel H. Sterns
Roger McGlynn

ALSO:

Dr. William M. Weinberg, Executive Director
Peter P. Guzzo, Secretary

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(1 - 12: I)
(13 - 35: III)
(36 - 69: I)
(PM: IV)

I N D E X

I N D E X (Continued)

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DR. RICHARD A. LESTER (Chairman): The Chamber will please come to order.

This is a public hearing of the Public Employer-Employee Relations Study Commission, constituted under Chapter 124 of the Laws of 1974, as approved October 21, 1974.

I am Dr. Richard A. Lester, Chairman of the Public Employer-Employee Relations Study Commission. Seated with me are other members of the Commission: Senator Dumont and Roger McGlynn. At my right is William Weinberg, who is Executive Director. Others will be coming as the hearing progresses.

Today's hearing is the second of two public hearings held here in Trenton. The first public hearing was held on March 5th in the Senate Chamber. We are bi-partisan in that sense; we are meeting in the Assembly Chamber today. The purpose of these hearings is to assist the Commission to fulfill its mandate under Chapter 124 of the Laws of 1974, which empowered the Commission to analyze and report its findings and recommendations to the Governor and to the Legislature on such questions as were set forth in the notice of the hearing.

I have a list of those persons who have already indicated a desire to testify today. If there are any other persons in the Chamber who wish to testify, please register with Peter Guzzo, who is in the back of the room. He is serving as the Secretary to the Study Commission.

As each participant is called to speak, we ask that you sit at the desk in the front row and speak into the microphone. We also ask that you first identify yourself by stating your name, your address and the organization, if any, that you represent. If you have prepared statements, we request that you make copies available to Mr. Guzzo, for distribution to the Commission members, the Hearing Reporter and the press.

Any prepared statements that you have need not be read in full. You may request that your statements be made a part of the record and they will be considered by the Commission and by the Legislature as part of that record. Additional statements or documents may also be provided to the Commission and they too will be considered, even if they are not made a part of the official record.

After each participant has made his or her statement, the Commission may ask some questions and we trust that those who make statements will be prepared to respond to such questions. No questions should, of course, be directed to members of the Commission at this time. All questioning will be conducted by members of the Commission. However, if anyone in the audience wishes, you may submit questions to me through Mr. Guzzo for consideration by the Commission.

The purpose of the hearing is to provide for the convenient and open expression of views by each participant for the benefit of the Commission.

On behalf of the Commission, I want to welcome all those here this morning. We are here for that purpose. The Commission wants to make a thorough, well-informed, objective study of Chapter 13A of Title 34, that is, the New Jersey Employer-Employee Relations Act, of the problems that have been encountered in enforcing the statute, and of the administration of the statute in practice.

The Commission hopes to use New Jersey's past experience, analyses of the experience in other states, and the wisdom of the practitioners in the field, to improve our statute and to make its administration as intelligent and practical in promoting good work relations and satisfactory operations as possible here in the State of New Jersey.

We have a large number of persons who have requested an opportunity to be heard. I hope that we can keep to the schedule so we will have sufficient opportunity for people who present statements to give their main points and respond to questions that may be asked by the Commission members.

Mayor Holland of the City of Trenton is scheduled to present the first statement. Mayor, we are pleased to have you here and you can start in right now.

A R T H U R J. H O L L A N D: Thank you.

My name is Arthur J. Holland. I am the Mayor of the City of Trenton. I appreciate the opportunity to appear before you today.

In addressing the issue of impasse procedures, the burden of proof of the need for changes in the existing system lies with those who advocate change. I am not aware of evidence that the present system is sufficiently deficient to require enactment of major new methods of impasse resolution at this time.

Various remedies for the resolution of public sector impasse are now available in New Jersey. According to estimates made by Jeffery B. Tener, Deputy Executive Director of PERC, over 80% of all public contracts in New Jersey were settled in fiscal year 1974 without any action by PERC. Approximately 75% of the impasses for which PERC received a request for intervention that year were resolved through mediation. Fact-finding remained as an additional source of resolution in the remaining 25% of the cases. A handful of strikes resulted. While the process of negotiation was often long and arduous, these statistics can hardly be claimed to depict a system which is in danger of collapse. On the contrary, they seem to show a system which is working relatively well.

S-1087, grants PERC unfair labor practice jurisdiction, a new means of avoiding impasses resulting from the failure of either party to negotiate in good

faith. By making the "failure to negotiate in good faith" an unfair labor practice, S-1087 should improve the process of negotiation. The establishment of unfair labor practice precedents could well result in the reduction in the incidence of impasse. While the full impact of this new authority is unclear, I believe that this new statute should be given time to operate before declaring the need for additional impasse procedures.

The prescriptions for the alleged ills of public sector labor relations offered by various groups or individuals---the right to strike and/or some form of binding arbitration---pose a serious threat to the citizens of New Jersey.

Concerning the right to strike for public employees, I would like to read an excerpt from a letter written to L. L. Steward, former president of the National Federation of PublicEmployees:

> ...militant tactics have no place in the functions of any organization of government employees...A strike of public employees manifests nothing less than an intent on their part to obstruct the operation of government until their demands are satisfied. Such action, looking toward the paralysis of government by those who have sworn to support it, is unthinkable and intolerable.

The author of that passage was President Franklin D. Roosevelt. I subscribe fully to the sentiments expressed. We need only look to the public employee strikes in Baltimore, San Francisco, Montreal, Albuquerque and New York City to see their hazardous impact.

While the potential danger is greatest in incidents of strikes by public safety employees, all strikes by public employee organizations disrupt the

provision of services deemed to be necessary by the people's elected representative. I cannot in good faith, therefore, support the granting of the right to strike to public employees. I might add I am not very effective without a secretary.

The second prescription being offered is some system of binding arbitration, an alternative I have long held to be an alternative to a strike. There are, however, serious problems with it as well, especially in view of our present lack of financial capacity. The foremost source of objection is the potential loss of fiscal and management control to an arbitrator which could, in the final instance, effectively strip the electorate of their role in contractual matters.

This loss of control is inherent in the standards used by the neutral arbitrator in making a decision. The governing body or executive involved in negotiations has been selected by the citizenry to represent them. They must weigh the overall impact of contract terms on the citizens of the governmental unit whom they represent and the public employees. They must weigh the impact on the tax rate and their ability to manage the governmental unit.

The present State budget crisis provides a good illustration. The Governor has been elected by the people to administer the affairs of this State. Were a system of binding arbitration to exist and an impasse develop over the Governor's proposal for no salary increases, the Governor and Legislature would be at the mercy of an arbitrator. What is now a $450 to $500 million budget gap could be transformed into a $750 million gap. I do not think this is what you want for New Jersey. I know it is not what I want for the City of Trenton, where a similar offer of no salary increases is still on the bargaining table with two of our employee groups because of a similar budget crisis.

Let me insert that about 10 or 12 years ago, I was one of the leading lobbyists for a State law which would make it impossible for a governing body to upset a salary schedule established by a school board. I want that law repealed today. At the time we advocated it, we felt that teachers were underpaid - they were disadvantaged. The pendulum has swung almost completely the other way. We are in a situation today in which school boards say to governing bodies, "We want so much money for salaries." Governing bodies say, "We can't raise it." They say, "Give it to us anyhow." It is an unrealistic situation.

The importance of salary and wage settlements in the public sector should not be underestimated. Government is an extremely labor intensive endeavor. In many instances salaries and wages represent over 75% of the total expenditures.

While I realize that the wages of the public employees probably usually represent 100% of their income, the loss of control over their determination in the negotiation process by the public's elected representatives is a drastic, and I believe, inadvisable step.

The recent action of voters throughout New Jersey in rejecting over 60% of the school budgets provides insight into the will of the people regarding the size of public expenditures. The public's expression of opposition can be translated quite readily into a position of opposition to the loss of control over expenditures which is inherent in a system of binding arbitration. Amid what I perceive to be a nationwide taxpayers' revolt, I see little public support for the granting of budget making or breaking powers to a third party over whom the voters have no control. I urge this committee to take these sentiments into account.

A recent incident in Oakland, California illustrates another of the dangers inherent in a system of binding arbitration. There, an arbitrator rendered a decision which broke salary parity between police officers and fire fighters in favor of fire fighters. A 3% salary differential now exists. While the role

of parity in contract negotiations is now somewhat in question, this case illustrates the potential dislocation within the wage structure which can be created by an arbitrator. Similar anomalies could occur outside of the bargaining process regarding both salaries and wages and the rights of the various public employee groups vis a vis the public employer.

Another potential factor which the Commission should consider is the dynamic away from settlement which would be incorporated should a system of binding arbitration be available at the end of the negotiating process. Bilateral negotiation could become a "pro forma" exercise in which one or both of the parties decides that it will fare better before an arbitrator. I am a firm believer in maintaining the role of head-to-head negotiations as the best means of protecting the interests of both parties.

Experience in other States has also shown that strikes will not necessarily be prevented though enactment of binding arbitration statutes and that impasses and even strikes could be encouraged thereby. Wisconsin, which has a binding arbitration law for police and fire disputes, recently experienced at least four work stoppages by police. Thus control over the major element of public budgets could easily be sacrificed for a means of impasse resolution which would fail to prevent strikes.

Finally, it would seem that binding arbitration is an equitable system because of its use of a neutral third party. The risk to both parties is, however, that the arbitrator will render an extreme and perhaps arbitrary decision, which will severely damage one of the parties. This possibility translates, in the case of a governing body or executive, into the usurpation of their statutory responsibility to approve budgets and determine tax levies. While seemingly equitable, this system usurps the power of the citizenry as exercised through their elected representatives.

Other issues related to PERC upon which I shall comment include the composition of PERC. I believe that the present partisan structure is unworkable, particularly given PERC's new powers. The ability of partisan members to participate and vote in an objective way is remote. I wish to go on record, therefore, as supporting the modification of the composition of PERC to one which would include paid, full-time, voting public members and, if necessary, unpaid non-voting partisan members to provide expertise. The precise numerical composition would be left to this Commission and the Legislature to determine.

Another matter which I believe should be addressed by this committee relates to the role of contract settlements in public budgets. As the major element of most public budgets, salaries, wages and other employee benefits should be determined within the context of overall budget development. Therefore, the timing of budget negotiations, now under the jurisdiction of PERC, should be linked to municipal budget development dates in a way which will permit concurrent consideration. Any effort to force contract negotiations and settlements prior to budget development will effectively place the remaining budget items in the role of neglected step-children. As elected public officials we must be true to our statutory duty conferred by the electorate to develop a budget. It would be virtually impossible, in my estimation, to guarantee the development of a reasonable budget under circumstances where employee contracts would have precedence over all other elements of the budget by virtue of the sequence of negotiations.

Finally, I do not believe that a distinction should be made between public safety employees and other public employees based on the critical nature of the services. Critical services are provided by numerous other employees, such as sanitation workers, water works employees, sewage department employees and the services of all public employees are necessary to orderly and effective government.

No such clear distinction is available and none should be written into law.

DR. LESTER: Thank you, Mayor.

Do any members of the Commission have questions?

SENATOR DUMONT: Mayor, what statute were you referring to that you said you had supported in the beginning, but you now want to see repealed?

MAYOR HOLLAND: I don't know the number of the Title, but I am sure that you might well have been one of the advocates of it. It goes back about ten or twelve years. It is a law which made it impossible for a governing body to interfere with a salary schedule adopted by a school board. The governing body could cut the budget, subject to review by the Commissioner, but the school board was free within that total amount of money to maintain its adopted salary schedule. It still exists.

SENATOR DUMONT: You said it was about ten or twelve years ago?

MAYOR HOLLAND: Yes. I was very much in sympathy with it at the time. I didn't want elected officials for political purposes not to vote for school board budgets. I served for seven years as Chairman of the Board of School Estimate. I appointed the school board. Then, of course, along with two members of the governing board and two members of the school board, I served on the Board of School Estimate. In all of those years, I voted to cut only two school board budgets by, I think, a couple of hundred thousand, and that was with the agreement of the school board members.

As time went on, teacher demands and acquiesence, I think to a great extent because of the existence of that law, I believe have contributed toward inflation and put teachers' salaries way ahead of gains in other sectors. Some of my best friends, of course, are teachers.

DR. LESTER: I want to say for the record that Assemblyman Jackman is here and also Senator Orechio.

Mayor, you say here that at one time you were in favor of a system of binding arbitration for disputes of interest as an alternative to strikes.

MAYOR HOLLAND: I still favor that.

DR. LESTER: On a voluntary basis?

MAYOR HOLLAND: No, I would, if necessary, as an alternate to the right to strike advocate compulsory binding arbitration. But what we are finding, as I mentioned in the case of the disruption of parity and in other cases, is that the decision is simply impractical in that the body responsible for raising the money simply doesn't have the capacity in this State, for example, where we rely so heavily on the real estate tax.

DR. LESTER: Let me just ask you this: Are there conditions under which some of the objections you make here could be at least partially met? Suppose, for example, the statute indicated that the tax ability to pay or various other criteria must be met. Secondly, suppose you had an opportunity to have either a part in the selection of the arbitrator or had more than one arbitrator, or had restrictions on the arbitrator, as some of these laws provide, where the arbitrator, if you only have one arbitrator, or a panel can only choose between the employer's last offer, so to speak, and the union's last demand or a fact-finder's recommendation, which puts on some restriction. I recognize still that isn't complete restriction.

MAYOR HOLLAND: I am assuming, of course, that each of the parties would have the right to veto the third party; in other words, the third party would be a mutual choice.

The problem with any party determining capacity to pay is that you get into a subjective area. In our city, for example, one out of every five people is in a

fatherless-family situation and another 12 percent are over 65; that is a third of the population. The capacity is not there. But someone selected to make a determination of the capacity might say, "How can you possibly put a price tag on education? No matter what it costs, we simply have to raise the money."

I was about to say earlier that what is being looked to is a kind of compromise - there is no ideal recommendation obviously - where the binding arbitration would have to be based on the final proposal and the final demand. Of course, the danger there is, knowing that, they could each move up toward the ---

DR. LESTER: Experience seems to be, if anything, the opposite in states like Michigan and Wisconsin on the grounds that either the employer or the union may want to make a final request or offer that seems fairly reasonable so that the neutral arbitrator or arbitrators would pick that one over against the one that is more extreme.

MAYOR HOLLAND: You are indicating that that seems to be the least undesirable of the proposals?

DR. LESTER: Yes, in a sense.

MAYOR HOLLAND: That is about where I am in terms of the closest thing to a sensible solution. As I said, under no conditions would I support the right to strike in the public sector.

DR. LESTER: Assemblyman Littell is here.

Are there questions that other members of the Commission wish to ask? (No response.)

Thank you very much for coming here this morning, Mayor, and giving us the benefit of your experience and views.

MAYOR HOLLAND: Thank you, gentlemen.

DR. LESTER: Our next speaker will be a person who will substitute for William Druz. He has Mr. Druz' statement and wants to make a remark with respect to it.

J O S E P H L A V E R Y: Mr. Chairman and members of the Commission, my name is Joseph Lavery. I am from the Department of Civil Service. I am appearing on behalf of William Druz, who is the Chief Examiner and Secretary of Civil Service and a member of the Public Employment Relations Commission. He asked me to submit on his behalf, since he could not appear here today, 25 copies of his prepared statement. He also wished me to convey to the Commission that both he personally and the Department of Civil Service are available to help the Commission in any way that would be helpful to it.

(Statement of William Druz can be found beginning on page 1 X.)

DR. LESTER: Thank you for bringing his statement here and we will read it with interest.

Is Frank Mason here? We are running a little ahead of schedule because two people who were on the list have not appeared and will not appear.

F R A N K M A S O N: Mr. Chairman and members of the Commission, first let me say that my name is Frank Mason. I am the director of the Governor's Office of Employee Relations. As such, I represent the State in all employee relations matters.

Because of the peculiar nature and the particular juxtaposition of the Governor with reference to the Legislature and any of the processes of study on this issue, or of the review of the Commission Report, or of eventual action or reaction to proposed legislation, or eventual further action with regard to legislation that may be actually passed, I don't feel it is appropriate for me to take a position, acting as his agent, which would be such as to predispose the Governor with reference to those possible courses of action.

For that reason I was inclined to decline appearing here at all. However, the Office of Employee Relations does have a peculiar level of responsibility and the experiences that have come about since the first bill was passed in 1968 have centered, in large measure, in that office.

I have been appointed as its Director by three successive Governors. I, therfore, have, probably, a kind of experience which most individuals have not been able to achieve in this public sector negotiations arena in the State of New Jersey. For that reason I feel that I should at least make myself available for questions that the Commission may wish to pose.

I do have, however, some observations which I would like to suggest as worthy of your consideration and they happen to bear on many of the kinds of things which you have already seen presented to you by various parties who have already testified and, probably, who will testify yet.

Let me re-emphasize then that I do not intend to speak for the Governor in terms of the position that he would take with reference to the eventual disposition of the key issues which you may make recommendations on, or which the Legislature might feel worthy of passage.

With all of that in mind, let me first turn my attention to the, apparently, two or three issues that have arisen. One is the question of the right to strike. The testimony before you so far shows this to be a recourse which is not popular with either side. I don't recall hearing any employee organization suggesting that they enjoy the prospects of strike. I certainly don't recall any management group,or representative, indicating that it is something that they see with great favor.

The public management representatives variously describe it as a license to throttle the taxpayer and to place public services, frequently vital services, in great jeopardy. Employer representatives have said it is bad and some, as in the case of the firefighters, haven't even sought it because they view it as a weapon to be resorted to only when all else fails and it is a weapon which has dubious value in the final analysis.

Presumably when those people speak of all else having failed, they speak of their persuasivenss at the table, perhaps in combination with their spirited public relations programs and other elements of their approach to solving their problems. Even in those cases, they don't advocate what they call a full right to strike; they speak of a limited right to strike. The limits that are spoken of, however, frequently are limits which would defy a clear and unequivocal definition and, in some respects, are the kinds of limitations which apply to

somebody else.

When they are spoken of as being health and welfare jeopardy to the public, there are a lot of situations which you probably can conclude would hardly meet that test. So, even a limited right to strike may, in fact, be equivalent to the comperable right to strike - if you want to call it that - in the private sector.

In any event, they all seem to construe the strike as a last effort kind of proposition. It is hard for people who are accustomed to having an income to find a strike to be anything that is very appealing. It certainly is disruptive of important services, and for some of those disruptions the public can be quite vitriolic, with long-lasting concerns or apathies, as the case may be.

In addition to that, strikes do pose a problem between the parties, in terms of their relationship to one another. Obviously, strikes can be won or lost. Only in a case where a labor organization strikes and wins are they likely to realize any satisfaction and any offset to the losses of wages, etc., that they have already experienced - perhaps even their public image.

There are a variety of measures which the employer may take to offset the cost of a loss strike, some of them may be quite good; some of them produce efficiency; some of them produce greater effort; and some are really not so good. Some produce a challenge to the quality of the public service, which is forced to deteriorate through lessened numbers of jobs, lessened numbers of people that can be employed, holdbacks on purchase of equipment and capital improvements, etc.

The test, then, of the usefulness of the strike is not in the sense that it exists and is final and is therefore good onto its own, but rather what it produces - at least that's the test that the public would essentially

use in terms of its review of it.

If granted the right to strike, the imbalance of power between the parties will ordinarily prevail. It is described by some people as the means of creating a balance of power. I would submit that you don't win a strike if the power is balanced.

Therefore, when you view the right to strike, I think you should consider that the question that really will be determined by the action of strike is: What was the imbalance of power? The likelihood is that a confident employer who does not view the strike as a major threat will win that strike. Conversely, an employer who cannot withstand it may lose it. I am not sure that the imbalance isn't even a major test and temptation which is placed before the parties at the bargaining table. Certainly where the balance rests with the employer, there would be a tendency to be a little less concerned and perhaps a little more cavalier about the offer you have on the table. After all, if the union doesn't like it, they always can demonstrate their dislike by striking. A union without great strength and without great conviction and without great organization will fail in that strike.

Conversely, if an employer is weak, he is going to be fearsome of placing even his best effort on the table, the reason being that he recognizes the imbalance in favor of the union and he is concerned that if there is a strike, he has to have something more than was on the table to resolve that issue and, in that circumstance, is loathe to take his best position.

Both of those circumstances, as I see it, raise serious questions as to the validity of the right to strike in the public sector. Even in cases where a strike is won, there is some real question as to

how therapeutic that strike will have been. I think all of us can look at examples in the private sector, circumstances where strikes are won but industries fade away; jobs are lost; situations occur where large numbers of people are displaced. You don't have to look very far. You can look to an industry such as the newspaper industry in New York City, or, years ago, the coal industry in Pennsylvania, to see some of the kinds of results that can take place when the imbalance is such that strikes can readily be won but the result is unpredictable - or at least seemingly unpredictable at the time.

The loss of strike to a public employer would undoubtedly result in a reshuffling of priorities and a reallocation of resources to accommodate the actual results, perhaps with the result that you have a new tax structure which, perhaps, makes your community more or less attractive - to industry, to residents, etc., etc.

The question of being placed in a position of making a commitment that you can't afford is of dubious value. In this era, where our major responsible segments of government and public citizens have turned their attention to peaceful pursuits - and I think this is evident even in the labor relations area in the private sector - the advocation of strike seems to be one kind of flag which waves alone and, I think, probably ought to be examined very carefully before one decides to subscribe to it as the way of opening a kind of warfare in order to provide a finality to labor relations disputes. Unless there would be a clear mandate that this would be the appropriate course of action, it would seem to me to be one that might well be avoided.

A second key area that I think has been addressed by most people - again, with the concept, essentially, focusing on a finality to the negotiation process - is some form of arbitration. Arbitration's chief virtue, as I see it, is finality. The least arbitrary model is the final offer model and the least onerous of those is a final offer on an item by item basis. It is of still doubtful acceptability, both in terms of the testimony that you have already received and in terms of the actual effect; there are certainly huge distinctions between the attitudes of the employee organizations and management representatives that you have heard already on this issue. There is a seemingly preconceived notion that finality is, of its own right, a virtue to be sought after to the exclusion of the consideration of the means of achieving it. I don't necessarily feel that that's appropriate.

Right now, I would point as an example to some circumstances that have become apparent, again, nearby. In the State of Pennsylvania, where there is a binding arbitration provision, the recent impasse with the State Police resulted in an arbitration award which amounted to approximately 12 1/2%. In this vein, I think, you might recognize, at least as far as the State of New Jersey is concerned, a 1% cost of settlement is approximately $7 million in terms of value in each year. And to the extent that it is a base that you improve upon, it is a $7 million item in this year and in succeeding years.

The problem then is that you are dealing with big bucks and if you start talking in terms of decisions of that size, you are talking about decisions which are not to be taken lightly.

In the case of the State of Pennsylvania - in that situation - the State did not have a major deficit

problem, as do we, but they were, nevertheless, on a very tightrope situation in terms of balance of the budget. The point that I think you should be aware of is, not that it was 12 1/2%, necessarily, but the means by which that figure was arrived at.

Essentially, although the dynamics of the State's economic circumstances had been changing from a situation in which they were able to make their State Police organization one of the best paid in the country to where, in this particular year, their resources were somewhat limited, they now found themselves looking at an arbitration situation where the arbitrator, quite frankly, said that it was, in fact, evidenced by past experience that the State had intended to treat this group of employees in this manner and that in his estimation, or the estimation of the arbitration panel, the maintenance of that position was not inconsistent with the State's own goals and, considering the economic circumstances of the day, this award seemed highly appropriate.

They went on further to explain that although it only dealt with a small portion of the State's employees and the kinds of results and impacts it might have on other negotiations in the State were not given absolute consideration, the arbitration panel did not feel that this was part its responsibility, to dedicate itself to the question of what the imposition of that award might mean in terms of 100,000 other employees; they were addressing themselves to the equities of the circumstances at hand.

That kind of consideration and that kind of attitude, in the State's circumstances here in New Jersey, would have an interesting kind of price tag - something in the neighborhood of $85 to $90 million. That, to me, represents big dice that you roll when you talk about

arbitration.

I don't necessarily feel that we should say arbitration is bad. All I am saying is, I think it ought to be a very clear understanding of the size and complexity of the problem.

Let me give you a bit of a model that I would see as having operated were we to have imposed some of these kinds of remedies in the circumstances that the State happens to be facing in this particular year. In the first place, the negotiations which have been continuing since last fall - and which continue to this day, awaiting, essentially, the finality of legislative action with regard to the resources that the State will have to deal with and other issues - would, if the current system of time limits, etc., were followed, have gone to impass, to fact-finding, and either to arbitration or to an open-end with reference to strike by last December.

If they had gone to arbitration, I don't think there is any question but an arbitrator - or a variety of arbitrators, because we deal with many units - would have made significant awards, based on the economic circumstances that our employees are facing. I think if the Governor had his "druthers", he would, likewise, have authorized me to proceed to make a reasonable settlement in view of the needs of our employees.

However, the Governor doesn't see that we have the wherewithal to make that kind of overture. Where would we be had we gone into arbitration and allowed such an award to come about, in terms of the ability to pay for that kind of award? And assuming that we had, instead, a right to strike, is there any question in anybody's mind that by this time the exacerbation of our position at the table - that is, a no-increase position - would have been regarded either as a temptation or an

aggravation with reference to the question of strike and that it could have, by now, produced a very chaotic public service circumstance.

In the final analysis, then, I see these two possible choices as fraught with some very real and difficult consequences. Without trying to beat them to death, or take too much of your time, I really think we should focus our attention on any questions that you may have. But I would want to say just one other thing. As I see it, at least, in the final analysis the development of an employee relations program and the relationship between employee representatives and the representatives of the employer - the government - rest very substantially on the good faith and respect of the two parties. To the extent that there is no acceptance of the concept of negotiations and the concept of proposal and counter-proposal, you have a situation which I don't think the Legislature can effectively remove.

I don't know that you can legislate good faith. I think we have made the attempt, in the modifications to Chapter 303, to build into the system a means of better control. We have provided for the test of good faith. We have provided for other challenges, such as unfair practices. We have provided for a means of determining negotiability of specific issues and we have opened the door to the resolution of internal problems through the processes within the agreement, some of which had not been available because of conflicting laws in the past.

I think it is worthwhile to consider allowing the new Public Employee Relations Act a time to exist and to study it, without the feeling that we are compelled to make additional changes immediately. I think that is a theme that has gone through much of the testimony that you received from both sides of the table.

It appears to me that the deficiencies of Chapter 303 were so obvious as to require our attention almost immediately after its passage, yet we were able to wait for five years and look at it and let it take its course and let the circumstances develop. And I think a review of that five years of history does not suggest, in the State of New Jersey, that the character of our employee relations suffers by contrast to other states. As a matter of fact, the movement and improvements in the public sector probably can be compared very favorably to what goes on in the private sector in the State of New Jersey.

Whether or not, within a matter of months after the passage of the 1087 amendments - which, in large measure, have reduced the problem areas that existed in Chapter 303 - we should further attempt to make major changes is, I think, the key issue before you. My own feeling would be that we ought, really, to have a look at what can the Commission, if it is given the necessary resources to deal with the issues before it, do in helping to resolve the issues, and what kind of history begins to evolve within the framework of the tools that now are available to the practitioners.

I would answer any questions that you might have.

DR. LESTER: Before we get to the questions, I want the record to indicate that Senator McDonough, Mr. Apruzzese and Mr. Sterns are here.

Are there any questions? Senator Dumont .

SENATOR DUMONT: Mr. Mason, what is your attitude with respect to changing the composition of the Commission?

MR. MASON: I really think that the Commission's capacity to function is enhanced by being entirely a

neutral body. I think there have been valuable assistances to the Commission's deliberations that have been made by both the partisan parties. But I don't think, given the responsibility for determination that it will now undertake, that it is appropriate that the Commission have a partisan membership. And I don't think that there is serious argument with regard to that.

Actually, part of the problem that exists, I think, you have already looked at, and that is,the partisan membership doesn't represent the particular people who are at the board in most cases. The State can feel comforted in knowing that we have a member, but not every county or municipality would feel the same way.

The education group may feel comforted in knowing that they have a representative there, but the firefighters or police, etc., etc., don't necessarily have that same feeling of confidence. It would appear to me that the way of creating the best balance is a neutral body.

SENATOR DUMONT: You mean all public members?

MR. MASON: Yes.

SENATOR DUMONT: Thank you.

DR. LESTER: Assemblyman Littell?

ASSEMBLYMAN LITTELL: Mr. Mason, you spent most of your talk on the right to strike and the alternatives to the finality. I think what you said was that we have a pretty good law as it exists now, as amended with the inclusion of the 1087 amendment. Yet, we have had requests for right to strike. We have had requests not to allow the right to strike. And we have had people, such as the firefighters,who want finality of some kind but don't necessarily want the right to strike.

My personal feeling is, after listening to a lot of

this testimony, that the right to strike would be a moot subject if we gave the courts of the State of New Jersey broad powers to handle any disputes beyond what could be resolved through the normal process of our public negotiating law. How do you feel about that?

MR. MASON: I think there is some logic to that. The question is not so much that you give the authority to the courts in terms of their disposing of such problems, but that you have to thread the fabric of the basis for which they are going to have to deal with these issues. It is not sufficient to say the courts can answer the problems unless you tell them what the framework is in which they have to operate and what are the circumstances under which they should do certain kinds of things.

I think that is the more difficult problem. I don't know that we have solved that. I have a good deal of sympathy for those who say, we need finality. Most of those people in another breath will tell you that nothing lasts forever - strikes go away and so do disputes of all kinds. There are none that have lasted ad infinitum. What represents finality may be a quiet resolution. It may sometimes be a retreat on the part of a management or on the part of a labor organization to acceptance of a proposition that has been made before. That kind of option is frequently lost when you look for absolutes and finality in the sense of a strike that somebody wins or loses, or in an arbitration award that does or doesn't satisfy anybody.

ASSEMBLYMAN LITTELL: You think that we need to set down guidelines for the court if we give them broad powers. We don't do that in many other cases. We give them pretty much the broad power to decide things the way they see them. We don't tell them they

have to put somebody in jail for a specific period of time.

MR. MASON: No, but I think you-- I think the court, in the case of a strike, has the historic circumstance that strikes are illegal, based on the understandings of what our laws really are and not on a particular piece of legislation.

As such, putting people in jail, etc., are not indications of whether or not a strike is illegal but, rather, a function of the court as it ordinarily reacts to people who refuse to obey court orders and, therein, they rest on another series of precedental kind of action that they take with regard to any kind of court order that is made.

The question that I think I am raising is, under what circumstances would you prescribe the court to act? The court generally looks to the Legislature for that kind of guidance; they want a framework in which you say, "now you step in and now you - you know - prohibit, or now you allow, etc." That kind of framework is what I view as being difficult to develop.

If there were going to be an expression of a right to strike, I think, logically, the court ought to be instructed, through the Legislative processes, with reference to the kinds of conditions that ought to be given consideration - in terms of the public's interest; the concept of health jeopardy or some other variety of things which you would view as being, perhaps, if threatened, the reason for the court to step into a strike situation and issue an order to stop it.

I don't think a clear statement that you have a right to strike would be, in any sense, in the best interest of the State of New Jersey.

ASSEMBLYMAN LITTELL: Thank you.

DR. LESTER: Are there any other questions? Mr. Apruzzese.

MR. APRUZZESE: Mr. Mason, what is your view - assuming there were a last best offer, or final offer arbitration - with regard to whether it should be issue-by-issue, as opposed to total final-package?

MR. MASON: My view is that if you went to arbitration on a last-offer basis that the issue-by-issue is the most practical. The reason for that is that when you are anticipating movement toward arbitration which would obviously be known in advance to the parties, it is awkward to decide what are the key issues versus what are frivolous ones, or what are key issues in terms of, let's say, fiscal items as contrasted to managerial rights and things of that kind.

If you go in on a once-across-the-board offer for all issues and you have a position on the one side of a management and the position on another side of a labor organization, the arbitrator's position is to choose one or the other. The predominance of the values of one or the other may, in fact, cause him to make whichever decision he makes; but in doing so, he may have overlooked many of the minor questions which will then fall whichever way his decision goes.

It would appear to me that those minor questions in his mind may not be the minor questions in the minds of one or the other of the parties and that each of these issues is subject to a distinctive evaluation.

I think in that circumstance, where a distinct evaluation is made, if he is persuaded that money is the more important issue for the labor organization and they have right on their side in terms of their posture, he could make that decision, without necessarily saying that they also have to throw in issues which are at stake but which

are really founded more in the management policy-making function, etc.

MR. APRUZZESE: Basically, that would eliminate the trade-off aspect of bargaining that normally goes on in the absence of an arbitration issue-by-issue. In short, what I am saying is, one side may be willing to give on a particular issue to get another and, consequently, they trade-off and come up with a final result.

With the issue-by-issue, there won't have to be a trade-off; every issue stands or falls on its own.

MR. MASON: A lot depends on the circumstances. Supposing, for instance, right now, the kind of circumstances you are talking about existed. If, in the case of the State, there was to be binding arbitration on a total package basis, with reference to the State's own bargaining and recognizing that the State, right now, is in a position of taking a no-improvement posture,- we can't offer a salary increase - it would appear to me that the well-intended, or well-advised union would keep everything at issue that it possibly could, because in the number of issues that they have interest in, if they take them all to arbitration and they go in and say "we want a 1% increase, and the State wants to give nothing", it would appear to me that an arbitrator in that situation would be hard pressed to say "you get nothing". Therefore, the entire package would go with 1%.

MR. APRUZZESE: That cuts both ways.

MR. MASON: Sure it does. And I am not suggesting that it doesn't cut both ways. All I am suggesting is that there is a basic lack of judicial judgment being exercised on an issue-by-issue basis there which I don't see any particularly good reason for.

MR. APRUZZESE: One other question. I gather

from your closing remarks, or the last subject matter you covered in your testimony, that - and I am referring to the area where you say if there was finality currently in the law, arbitration of some type - the situation could possibly be very chaotic because the compulsion of an arbitration decision - raising salaries, etc. - might come into a situation where there are no resources to handle that decision. So, I am intrigued by your cautionary remarks that that may not be a proper solution either.

In short, the essence of what you are trying to get across means that maybe we ought to sit back and watch this operate and make sure that the board has the finances to handle what they currently have been authorized under the statutes. I guess that is the sum and substance of it.

MR. MASON: In my situation I can address the Legislature with reference to the peculiar nature of the State's needs. They can address the issue with reference to, you know,"what does Cape May County do" a little bit more dispassionately because they don't have the problem of raising the revenue for Cape May County.

But, if they were sitting in the situation that they are, as we see it right now - where we have the major deficit problem that we have - and somebody were to come in and say, "why not pay out another $80 or $100 million", I am not sure how they would react to that. I don't think anybody in the Legislature can, and certainly there is noting in the Constitution at this point which would provide for the Governor the responsibility to make that kind of judgment without the legislative approval through the budget process.

Under what circumstance would we give that kind of authority to some third party whose basic

interest is a compromising of varying positions? I am not at all certain. That's why I said it is a peculiar kind of situation, as regards the State as such.

We are beginning negotiations for 55,000 employee for the next fiscal year. I think it is fairly evident that you are talking about a big problem.

Governor Carey, this morning, turned down a fact-finder recommendation for the State of New York at 6%. He says he can only go 3 1/2%. Their circumstances are that 1% represents about another $15 million. So, even in that situation we are only talking 2 1/2% as the difference between what he thinks they can afford - maybe the 3 1/2% -- and what the fact-finding panel sees as appropriate. At least it probably is appropriate there because of the fact that they have some other on-going contracts where people will be getting that by a contractual commitment that was previously made.

You are talking about, you know, over $30 million or $40 million and that's a lot of tax money to come up with, or it is a lot of cutting back in some other areas if, in fact, you don't get the tax support for the program. I think Governor Byrne, as I am sure most of you realize, is in a very awkward position at this point in time. I think he has been one of the chief advocates of responsible employee relations as far as political entities are concerned and I think he has made that quite clear. I don't think anything is more disappointing to him than to be in this kind of position where one doesn't have resources and it is obviously, however, a position where he must be responsible to the character of the office, and not irresponsible in terms of what apparently the public is still saying with reference to the provisions of those resources.

DR. LESTER: Mr. McGlynn.

MR. MC GLYNN: What I am concerned about is, what do you do on these long strikes as far as the public interest goes? You take the doctors or the garbage people, how do you solve this? Maybe you should cut back in other areas. Maybe that is the problem.

MR. MASON: I don't know that anybody has a very simple answer to that. Obviously, people strike whether they have the right to or not, and disobey court orders as far as that goes too in many of these situations.

All I am saying is that to the extent that the situation is bad enough for people to take that kind of extreme position, they will do so whether or not they have the right, as I see it. At least historically that seems to be the case. To grant them the right poses not only a specific intention of the Legislature to allow and to, perhaps, encourage this kind of thing, but it represents a temptation and it puts a labor leader in a position where, having it in his pocket, isn't he forced to, in order to demonstrate his manhood, at least threaten it?

As you know, it is like the Viet Nam situation. You can't just threaten, you have to back it up and either you back up what your threat is or you back down from it. Loss of face in the labor relations field is a very difficult problem - to superimpose more opportunities for that kind of difficulty to arise in each of the negotiations.

I think we are looking at an economic circumstance in our State and in the country right now which is clearly one in which there is going to be a test of that type of thing made because people do see an erosion of their economic resources and, yet, there is an equal erosion of our taxing facility. Our tax resources are lessening almost daily as the recession deepens.

Under those circumstances, aren't you taking

the bull by the horns and giving the people more and more fearsome weapons which really don't represent the public interest?

MR. MC GLYNN: Well, you are talking about strikes.

MR. MASON: Yes.

MR. MC GLYNN: I am not interested in strikes. I am just interested in how you resolve these disputes because of the fact that you don't have the right to strike presently.

MR. MASON: Oh, I thought you were speaking in reference to garbage strikes and doctor's strikes - how do you resolve them.

MR. MC GLYNN: I used those only as illustrations because you and I know that the public gets irritated when garbage is piling up on the front steps. They want it resolved. Now, instead of just leaving legislation the way it is, which obviously doesn't solve anything, how do you make an attempt to solve it?

MR. MASON: Oh, I think the attempt is frequently there.

MR. MC GLYNN: How do you solve the time problem from the public's standpoint? Why should the public have to stand for 80 days of teachers out, or doctors, or lawyers? I don't care who it is.

MR. MASON: Of course the simple answer to that is, if they don't want to stand for any inconvenience they should pay the freight for whatever somebody values his services as being.

Our experience is that you have a dichotomy here. On the one hand they want the services and on the other hand there is a limit to which they will go in terms of paying. I think the Legislature, right now, is clearly experiencing a very difficult time in

getting any substantial support for additional revenue development in this State, and I think they have some real justification in terms of dragging their feet on the problem. They see an erosion of the State's circumstances. In terms of its economic vitality, they don't see new industry coming to the State like it used to. They see a high rate of unemployment. They see prohibitively high property taxes and a variety of resistances on the part of the people who are still making an income to further those taxes.

In the face of that, when we come in and say we ought to be paying somebody more money, there is a question raised as to whether we can ligitimately afford to. They don't look strictly at a cost of living and say, "everybody's entitled to that" because many of those taxpayers are experiencing the same kind of problem: an erosion of their standard of living, based on the fact that they can't maintain a comperable kind of new income to offset these higher costs. They are resisting very strongly. A lot of them are very doubtful as to the necessity of some public services.

DR. LESTER: Are there any further questions?

Frank, let me ask you one, just as a final one. If wages and salaries are going up in the private sector and if wages and salaries are going up in the public sector in some areas - whether it is the federal government or neighboring states - how long would the State of New Jersey be able to continue not having its salaries and wages go up correspondingly? Now, assume whatever you want to in terms of a base. Whatever decision is made if we don't increase wages and salaries this year, or approximately next year, aren't you building up a so-to-speak deficit that will have to be made up sometime?

MR. MASON: Oh, I think there are some very

clear, practical guiding evidences which come to bear on that subject. The State has always been concerned about its competitive position in the marketplace. As a matter of fact it has independently come to the Legislature and asked for improvements, which are frequently not always met.

The evidences are whether or not you can acheive a work force. Can you, in the marketplace, reasonably compete for the quality of manpower that you want? We assess that regularly and, like any decent management, that kind of assessment is translated into policy. We assess the question of whether or not we are able to maintain the kind and quality of people that we do attract.

Again, there was a time when we couldn't - and it is not that many years ago - when the State couldn't go to a college and interview anybody because we simply weren't in the ball park. That time has passed. There was a time when we were hard-pressed to employ a lot of kinds of people. As a result, we went to the Legislature and talked about it and they came out with the necessity to mandate the overall evaluation of the system which resulted in the Hay Program.

That's a kind of binding arbitration, if you will. It was a well-intentioned kind of thing which, in fact, put into the system, annually, $30 to $40 million of new money by elevating and changing and improving many, many of our employees circumstances. It was, perhaps, the most ill-received of any kind of money that's ever been spent in the State in terms of public employment. The reason for this being that the people didn't feel they had a stake in the determination of it, and perhaps one of the evidences of the kind of receptivity you will get to a binding arbitration award.

DR. LESTER: Assemblyman Littell?

ASSEMBLYMAN LITTELL: Director, have you been able to, in these tight economic times, come up with any programs to provide for accountability and productivity with state employees?

MR. MASON: I think the question of accountability has been raised several times. We brought in some outside consultants to discuss the issue several times, particularly during the Cahill administration. I don't recall that we have brought in anybody and really seriously addressed ourselves to this question recently.

Part of the problem was that in viewing the kind of superficial recommendations that were made to us, with reference to the kind of program that the outside consulting outfits really were suggesting, it appeared that they found the three thousand, or more, varying titles and work activities of state employment almost mind boggling and their general attitude was to adopt the philosophy of "leave it to us and we will come in and we will tell you where you can cut out employment. The basic thrust of that being that probably any organization can get by with five or ten percent less people.

When you get down to the bottom line of their recommendations, they, essentially, appear to be talking about some form of machete which they would use to whack off some element of your overall cost. We have not really ever developed, as I see it yet in the State, a strong system of industrial engineering kind of measurement, coupled with a program of systems on a statewide basis.

That may come in the future. Part of the reason, probably, for that is that the State's organization has, historically, been departmental. The organization of our employees is no longer departmental; it is on a layered basis across the State and we are now imposing

conditions of employment through contract throughout all departments, as it applies to any one group such as our administrative employees, or our operations and maintenance and services employees.

Ultimately, that may call for the State to review its organizational structure so that there would be more attention placed on the question of productivity and on an equal basis throughout the State. But until this time, I think most of the operating departments have found that their need for new programs, their need for expansion of current services and their objectives that they would see as being ligitimately within the framework of their responsibility have usually been frustrated by some lack of basic funding. For instance, as an example, I am sure our Institutions and Agencies Department views that it does not have all of the resources it would like to run a model penal system, including the physical plant, etc., and they don't have the facilities to do all the mental health kinds of things that they would like to do.

By the same token, other departments have the same type of reaction, the view being that the State has been under-funded for these purposes over a long period of time. In that situation, the attention, typically, seems to be more on emergent issues and how do you handle what you have in the way of responsibility today with the quality of resources that you have available, which they frequently feel are bear minimum.

DR. LESTER: How do you feel about putting into legislation some sort of requirement for accountability and productivity? Do you think that is unreasonable?

MR. MASON: I'd be wide open to the question of accountability and to responsibility and productivity. I think you are talking about a different kind of study

than the resolution of disputes in employee relations matters and, based on the fact that we do have an employee relations problem to deal with, you may even find that you have some form of resistance to any such kinds of programs. Characteristically, at least, in other jurisdictions, labor tends to be resistant to the concepts of improved productivity. I don't think that's an across-the-board kind of attitude and I think there is an opportunity to do those kinds of things and do them well but I think you are talking about the need for a fairly sophisticated new activity in State government which can enter into this.

DR. LESTER: Thank you very much for giving us this opportunity to discuss these matters with you.

Is Les Aron from the New Jersey School Boards Association here?

(Mr. Aron distributes booklet entitled, "The Case for Fair and Final Offer Arbitration.")

DR. LESTER: You are just going to give us the main points?

MR. ARON: Yes, sir, if I can.

DR. LESTER: For the record, do you want to give your name and connection.

L E S T E R A R O N: Mr. Chairman and members of the Commission, my name is Lester Aron. I am the Director of Labor Relations of the New Jersey School Boards Association.

Please don't be frightened by the size of the document before you. A vast majority of it is research documentation in support of our position. I would like to read to you the first part of it and reserve the remainder of the time for questions and answers.

On behalf of the Association, I would like to take this opportunity to thank the members of the

Commission for permitting us to appear before you and present the view of local boards of education which are the largest group of public employers in the State.

My remarks today will encompass a wide range of school board concerns with respect to the substance and procedure of Chapter 123 of the Public Laws of 1974. With your permission, I shall reserve for the end of my statement a discussion of impasse resolution, which we consider to be the most critical issue facing this Commission pursuant to your mandate under Chapter 124.

At the outset, the NJSBA reasserts its belief in the collective negotiations process for public employees and its support for the Public Employment Relations Commission as the vehicle which assists in implementing that process. Although it is common knowledge that the Association opposed various provisions of the Senate Bill which has now become law, we were strong supporters of the major provisions of that bill which granted to PERC for the first time unfair practice jurisdiction. Whatever the law's deficiencies, we nonetheless support the need for adequate funding of the Commission so that it may assist local school districts and their employees to resolve their differences in the most expeditious manner.

The NJSBA believes that the Public Employment Relations Commission should be comprised of all public members. The National Labor Relations Board, which is the federal model for all state agencies, is comprised of five public members;and a vast majority of the state agencies, including our neighbors,New York and Pennsylvania, have followed that model. Particularly with the addition of unfair practice jurisdiction in the Commission, the potential for conflict of interest among partisan commissioners is increased. Simply stated, we believe that a public law, enforcing public rights, should not be

swayed by partisan interests. The parties' acceptance of the Commission and its action must be grounded in the belief that all decisions are impartially made in the public interest.

One of the major problems created for the parties by the passage of Chapter 123 is the ambiguous meaning of the following section, and I quote: "Nothing in this Act shall be construed to annul or modify or to preclude the continuation of any Agreement during its current term heretofore entered into between any public employer and any employee organization, nor shall any provision hereof annul or modify any pension statute or statutes of this State." The NJSBA strongly supports the grant of authority to PERC pursuant to Section 1.d of Chapter 123 to determine what matters are appropriately within the scope of collective negotiations. However, the administrative flexibility which Jeffrey Tener, the Executive Director of PERC, suggested to you, may be limited by the above-cited language. It may be that the Legislature was seeking to protect us from the kind of financial difficulties that our neighbor, New York State, faced with regard to the pension of its public employees. On the other hand, the Legislature may have intended something more substantial in an attempt to water-down the precedent established by our Supreme Court in the Dunellen decision.

It is the position of the NJSBA that PERC should have the authority to determine what matters are within the scope of negotiations on a case-by-case basis and that that authority should in no way be limited by an unclear amendment to another section of the statute. Therefore, we strongly urge this Commission to consider a recommendation to the Legislature which would alleviate this ambiguity.

As I am certain you are all aware, PERC has recently

promulgated emergency rules and regulations pursuant to the passage of Chapter 128. Overall, the Association is impressed by the actions of the Commission and its staff in such a short period of time. However, we are extremely concerned with their response to the following section of the statute: "The Commission shall adopt such rules as may be required. . . to regulate the time of commencement of negotiations and of institution of impasse procedures so that there will be full opportunity for negotiations and the resolution of impasses prior to the required budget submission dates."

The Commission's response to this perceived problem of budget submission time was to set up a sequence of events which limits negotiations to a thirty-day period and then mandates impasse with automatic mediation and fact-finding to follow. The NJSBA strongly opposes this mandated timetable approach for negotiations. The "problem" of budget submission dates is not a major obstacle to collective negotiations in the public sector in New Jersey and therefore creating this chronological straightjacket for all negotiations is an over-reaction to the problem. We believe that most school boards have been able to negotiate in good faith despite budgetary difficulties and that problems of this nature should be handled individually through the unfair practice route rather than the present administrative regulation which subverts the bargaining process for all public employee negotiations.

We share the concern previously expressed to you by Mr. Tener concerning the language of Sections 1.a(7) and 1.b(5) of Chapter 123, which makes it an unfair labor practice if either a public employer or an employee representative violates any of the rules and regulations established by PERC. This appears to be an extraordinarily broad grant of legislative-type authority to an administrative agency.

As a representative for local school boards which are by statute given the obligation and authority to operate the schools within their jurisdiction, we are particularly concerned about the following language which was contained in Chapter 303 of the Laws of 1968 and remained unchanged in Chapter 123: "Proposed new rules or modification of existing rules governing working conditions shall be negotiated with the majority representative before they are established." This provision takes on increased importance under the amended statute inasmuch as failure to abide by its apparent requirements would be the basis for an unfair practice charge. We strongly believe that during the term of a negotiated agreement, a local board of education must have the authority to take managerial actions without first having to negotiate over their intended course of conduct. Typically, if an employee organization disagrees with the employer's actions because they believe it to be a violation of their collective bargaining agreement, they have a right to grieve the employer's action. Potentially, this clause may tie the hands of public employers and prevent them from taking the necessary managerial actions without prior negotiations. Moreover, these negotiations must be invoked not when the employer proposes a change or a modification in terms and conditions of employment, but rather a change of, and I quote, "rules governing working conditions", a term which is not defined and is not utilized in any other section of the statute.

The NJSBA urges this body to give close consideration to the potentially unwarranted obligation that may be placed upon public employers under this provision of the statute. While we recognize a legitimate interest of public employees to be protected from unlawful unilateral actions by their employers, we do not believe that it is necessary to prevent public employers from taking any

actions during the term of a collective bargaining agreement on any "rule governing working conditions" without prior negotiations with the employee's chosen representatives.

This next section deals with PERC's authority or possibility of authority in the area of granting interim relief. I am going to pass this section. It is presently in the state of certain litigation. But I do submit it to you for your consideration.

I will pick up with the last paragraph on this page.

With the addition of unfair practice authority, it is most important that the parties fully and accurately understand their obligations to negotiate in good faith concerning terms and conditions of employment. It is unnecessarily difficult for the parties to understand that obligation because Chapter 123 lacks a definition of good faith negotiations. The NJSBA recommends that this Commission consider the necessity for such a definition and we specifically recommend that it consider the definition included in Section 8(d) of the National Labor Relations Act and adopted by other state agencies which has stood the test of time. That provision specifically requires the parties meet at reasonable times and to confer in good faith with respect to wages, hours and other terms and conditions of employment, but does not compel either party to agree to a proposal or require the making of any specific concessions.

The NJSBA supports the position taken by PERC and enunciated by Mr. Tener before this body that it would be wise to provide by statutory amendment that multi-year contracts are permissible. In interpreting N.J.S.A. 18A:29-4.1, the Commissioner of Education has held that a salary schedule may be binding for a two-year period

but that language items in a contract may only be binding for a period of one year. Since it is clear that the parties are well served by the stability and harmony which evolves from multi-year contracts, we believe that any impediment which prevents the parties from voluntarily entering into such agreements should be removed.

I would now like to turn the attention of the distinguished members of this Commission to the most important issue facing you - how to deal with and resolve negotiations impasses. Under the present statutory scheme, PERC is empowered to provide, at the request of the parties, a mediator and if necessary a fact-finder in order to aid the parties in resolving their negotiations impasse. Since the report of a fact-finder is advisory only, the parties are free to continue the negotiations process if one or both of them are dissatisfied with the recommendation. In sum, there is no finality to the negotiations process.

The NJSBA strongly believes that there must be finality to the negotiations process. Negotiations are an adversary-type procedure which can be, and frequently is, extremely time consuming. Both school board members and their employees are often forced to concentrate much of their effort in the negotiations process rather than in the process of educating the children of our State. Moreover, since negotiations are very much a human relations process, it is often difficult to make the parties reach a compromise without a mechanism that forces the parties to face the issues squarely and "fish or cut bait."

It is extremely difficult to find a mechanism which best serves the interest of all parties in reaching a final resolution of a negotiations dispute. The optimum procedure must contain three important attributes:

1. It must provide finality to the negotiations process.

2. It must encourage the continuation and success of bilateral collective negotiations.

3. It must be highly acceptable to both public employers and their employee organizations.

The NJSBA has given considerable thought to these requirements and it is our position that the best mechanism available to obtain the desired results is fair and final offer arbitration. I again refer you to our back-up documentation which is contained in this booklet.

It is our belief that fair and final offer arbitration best meets the three previously-mentioned criteria. It obviously provides finality to the negotiations process because the final offer selected by the arbitrator is binding upon the parties and becomes the nexus of the collective bargaining agreement. Second, more than any other mechanism presently evolved, it encourages the continuation and ultimate success of bilateral negotiations. In standard interest arbitration, the parties approach the arbitration process with the most extreme position on issues, expecting that the arbitrator will choose some middle ground more advantageous to them. Thus, the negotiations process is subverted because the parties are rewarded for taking extreme positions rather than for making concessions on the way toward a compromise. In contrast, fair and final offer arbitration rewards the party who takes the most reasonable position. By rewarding the parties for moderating their positions in negotiations, the process by its nature leads the parties closer to bilateral settlements. This is an extremely valuable approach because the best agreements are those which are reached between the parties themselves.

Finally, no procedure for finality can be of any value if it is not readily accepted by the parties. Our research indicates that in the jurisdictions where this mechanism has been applied, it has been very well received by the parties on both sides of the table. Although fair and final offer arbitration may not be a panacea, it appears to be the best procedure presently in use to resolve disputes in the public sector.

At this point in our presentation, I would like to list and explain for you those elements of a system of fair and final offer arbitration which we consider to be essential for the orderly resolution of disputes:

1. Elimination of fact-finding. While mediation is primarily a conciliatory function, fact-finding requires the identification of disputed issues, the respective parties' positions on those issues and a justification of those positions so that the fact-finder may make an intelligent recommendation to the parties for the basis of a settlement. Thus, the procedural aspects of any fair and final arbitration system are similar to those procedures which are presently followed in fact-finding.

We believe that it would be an unnecessary repetition of the procedures to follow mediation by both fact-finding and fair and final offer arbitration. Moreover, it seems unlikely that disputants will be able to resolve their difficulties in fact-finding if they have been unable to do so in mediation and know full well that a binding procedure will follow.

2. Either party may invoke fair and final offer arbitration after a predetermined period of time. We believe that the proper role for State regulation in the negotiations process is to assist the parties voluntarily where they have reached an impasse and request the services of a neutral party. We do not believe that a party should be thrust into impasse

procedures where neither of the parties has made such a request. Thus, it is our belief that fair and final offer arbitration should not automatically follow the mediation process but should only be invoked when requested by either of the two parties to the negotiations process.

3. H earings should be held at the request of either party. The NJSBA believes that if either party makes such a request of the arbitrator, hearings should be held as part of the fair and final offer procedure. Hearings frequently help opposing parties better understand the position of their adversaries and frequently result in the accommodation of issues which would otherwise have been resolved by the arbitrator. Since it is always preferable to obtain bilateral settlements, we support the use of hearings when requested by the parties in order to promote that goal.

4. Single arbitrator. Consistent with our support for an all public PERC, we believe that a fair and final offer decision should be made only by a neutral arbitrator and not by a panel comprised of a neutral and the respective partisans. Clearly, partisan arbitrators have partisan interests to represent and they do not benefit the process by resolving the dispute in a neutral, even-handed manner.

We further believe that it is unwsie to have a panel of neutral arbitrators. Not only is such a panel unnecessarily expensive, but it makes the decision-making process more difficult and more time consuming. The NJSBA supports the use of a single arbitrator in much the same fashion as fact-finding is presently conducted .

5. Legislative criteria. In order for any system of fair and final arbitration to work effectively, it must result in relatively uniform awards or, stated in the converse, the prevention of clearly unreasonable

determinations made by individual arbitrators. The best method of insuring reasonable awards is to provide legislative criteria upon which arbitrators must base their decisions. This has apparently worked well in many states which have fair and final offer arbitration because it provides guidance not only to the arbitrators in making their decisions, but also to the parties in developing their final positions.

6. Written Awards. Any mechanism for a binding determination of disputes by third parties must rest upon the promulgation of written awards. From the decision of the arbitrator, the parties are required to fashion their next collective negotiations agreement. This would be extremely difficult to do if the parties were required to rely upon oral decisions by arbitrators. In order to limit to the extent possible misunderstandings of arbitrator's decisions, it is wise to mandate that all decisions be in writing. With this document in hand, the parties are in a much better position to draft the subsequent agreement.

7. Decisions to be Based on a Package Basis. In a system of fair and final offer arbitration, the process may be structured so as to permit the arbitrator to choose among the parties' positions on each of the issues in dispute or require him to choose the entire package of one of the parties. The NJSBA supports the latter approach to fair and final offer arbitration.

Permitting the arbitrator to choose issue by issue among the parties' two final offers limits the effect of the fair and final offer system. When the parties know that the arbitrator can choose parts from their final offer and parts from the adversaries' final offer, an atmosphere similar to standard interest arbitration ensues where the parties are not compelled on all issues to take the most reasonable position.

A comparison of the Michigan experience, which uses an issue by issue approach, and the Wisconsin experience, which utilizes the package approach, indicates that while both states have a similar percentage of disputes entering arbitration, the rate of settlement during the course of the fair and final offer process is significantly higher in Wisconsin. We believe that the higher settlement rate in Wisconsin is desirable and that it is caused in no small part by the all or nothing atmosphere created by the package structure.

8. Arbitrators Authority to Remand Issues to the Parties for Limited Negotiations. We believe that the arbitrator should be given the authority to remand the issues before him to the parties for bilateral negotiations for a limited period of time. As previously stated, one of the major requirements of any system of finality is that it fosters bilateral negotiations. This authority of the arbitrator, which would be discretionary, would facilitate bilateral agreements in those circumstances where the arbitrator perceives that the parties are close enough to resolve the matters without his assistance.

9. Appeal of Arbitrator's Decision. Although we would expect that an appeal from an arbitrator's decision would be rarely taken, it is our belief that such appeal rights nonetheless must be written into any statute. Failure of the arbitrator to follow the legislative criteria imposed upon him would be one basis for appeal as would the traditional claims found in our arbitration statute.

That concludes our prepared statement. I again thank you for this opportunity to appear and stand ready to answer any questions that you may have.

DR. LESTER: Assemblyman Jackman.

ASSEMBLYMAN JACKMAN: Mr. Aron, I notice that you made reference in a general way to fair and final offer. I want to get some reaction from you of an experience I

had in Newark when the teachers went out on strike and some of the teachers had to go to jail. Do you think that it is fair to expect a teacher to accept the responsibility of going to jail when at the same time the board of education does not accept the responsibility of negotiating in a fair way?

When a fair and final offer is submitted and the arbitrator hands down an award in favor of the union which the board of education refuses to accept, do you then think the union should be given the right to strike?

MR. ARON: Well, I think that one doesn't necessarily follow the other, Mr. Jackman. This would be an arbitration award as would any other arbitration award under our statute. We have, in fact, court procedures for the enforcement of those arbitration awards and I do not see any reason why this kind of arbitration decision should not be enforceable in the same fashion as current grievance arbitration awards are enforced and subject to the same kind of court orders and the same kind of penalties for violation of court orders on either party that refuses to abide by such a decision.

SENATOR MC DONOUGH: Mr. Aron, let me ask you a question. I think I know what Assemblyman Jackman was getting at. Do you feel if a school board refuses to accept this fair and final offer, they should go to jail also?

ASSEMBLYMAN JACKMAN: That is what I am asking.

MR. ARON: I think that the normal court procedures should be followed.

SENATOR MC DONOUGH: What we are both getting at here is: When they refuse, isn't that the same as the school board going on strike?

MR. ARON: I think the answer is rather simple; and, that is, that the union or association is in a position to enforce its award, that upon enforcing its award, the public employer involved is obligated to

institute that award, and, if it does not, then the local union involved has the same right seek contempt proceedings from the court as would the board or public employer when an association or a union would refuse to abide by an award or in the circumstances we now have where court orders requiring employees to go back to work have been violated. That is within the court's discretion. I think Mr. Mason described it quite accurately.

ASSEMBLYMAN LITTELL: Mr. Aron, I think we all know that strikes fester because of unrest and because people are frustrated in their attempt to resolve a dispute. What we are talking about here is what you call finality and other people call flexibility, and we have had all sorts of views and opinions on it. As I said before to Mr. Mason, my opinion is that the strike subject would be a moot subject because,in the event there is an impasse or a frustration to the point where they were ready to strike, either side would have complete flexibility of going into court to resolve that dispute. We are a government of checks and balances and I think,if in a democracy,we continue to carry through that theory of checks and balances, we would have a much better system than we have where we leave one side completely frustrated by the fact they know as soon as they go into court they are going to be faced with an injunction to go back to work. How do you feel about that?

MR. ARON: If I can give you kind of a circuitous answer and get back to your main point - at least speaking for myself personally, I am not particularly pleased to see either school employees or any other public employees go to jail. I think from management's point of view, what eventually happens is that that individual or those individuals in one sense also become martyrs and create more antagonism and more bad feeling between the parties, and I don't think that is particularly helpful.

On the other hand, the reason they went to jail is because they violated a court order; that is contempt of court. Whether it is for that reason or any other reason, where an individual refuses to abide by a court order, the court has that kind of authority. I might say I, personally, don't like to have public employees be put into the position of having to have the order enforced. I obviously would much prefer to see the public employees abide by the order in the first place. When they don't, contempt proceedings are naturally the next step.

What I would like to see is for us to get away from that problem rather than to continue it. I think that in large measure is why we are supporting this concept of fair and final offer arbitration, hoping that we are going to get away from the kinds of circumstances where the employees either are or perceive to be without the kind of equal bargaining power that they want.

I would like to more directly answer your question with respect to the court; and, that is, labor relations - public sector labor relations in particular - is a rather specialized field. I think that the Legislature recognized that and created the Public Employment Relations Commission in 1968. I think that was done not only to give employees the rights they are entitled to, but also to create an agency with that specific expertise to handle the labor relations problems. I, personally, would not favor in some fashion - I am not sure exactly what you have in mind -- but I, personally, would not favor sending back the kind of authority to resolve these disputes to the courts. I think the courts are overburdened enough and have not had the time or involvement to develop the expertise.

I think we have an agency to deal with it. It is an expert agency. I think it will be continuing in that

role, and I prefer to see them involved directly in the process.

ASSEMBLYMAN LITTELL: I didn't mean to bypass PERC or any of its processes. I am talking about the one percent of the cases that are going to get to a frustration point where someone is going to want to walk off the job and may even feel after a fair and final offer process that he doesn't want to work. That is what it is all about. That is what a strike is. When somebody feels frustrated to the point that he can no longer tolerate working under those conditions, he is going to walk off the job, call in sick or do something in terms of a slow-down. We all know that's what it is all about.

What I am saying is, rather than allowing the courts to just issue an injunction, I think they ought to have to hear the case and decide it. They ought to have complete latitude in hearing anything that either side wants to present to them. And they ought to have clear latitude in deciding a case in either direction.

MR. ARON: My only response to that can be, one, I think the extent to which it is a problem now would be significantly, if not nearly totally, alleviated through the kind of proposal we have discussed with you today. Secondly, it is the position of the Association that school district employees,and presumably other public employees,should not have the right to withhold their services from the citizens. If you are interested in the reasons for that position, I can go through them with you at some length.

ASSEMBLYMAN LITTELL: That is not what I am asking.

MR. ARON: I understand what you are asking.

ASSEMBLYMAN LITTELL: I am asking you if you think that the courts should be able to resolve disputes

where there is frustration up to the point where somebody wants to stop providing services.

MR. ARON: I do not think that the courts should get involved in making determinations on what they believe to be the merits or the reasons for the alleged employee dissatisfaction. I think if the public employer or the employ ee organization is acting in bad faith, that the system to remedy that has now been given to the Public Employment Relations Commission in their unfair practice jurisdiction; and, rather than withholding their services and going again to court, which is less expert in these matters, either party should be filing charges with the Public Employment Relations Commission to determine whether the other party is acting in bad faith.

ASSEMBLYMAN LITTELL: May I ask one more question? How do you feel about putting some sort of responsibility or accountability and productivity into the legislation?

MR. ARON: I think that is an excellent suggestion. I think from the management viewpoint obviously that is one of the major areas which protects its concern. I think there are a whole slew of possible legislative criteria. I think the Michigan and Wisconsin statutes specifically have quite a few. They are good, although that is not one of them. To me, it glares by its absence. That is an excellent suggestion as one of the potential criteria.

DR. LESTER: Any other questions?

MR. STERNS: I would like to ask several questions with regard to other aspects of your statement.

First, following through with regard to what Assemblymen Littell and Jackman stated, given the fact - and I think you have made it clear you would prefer the system that you advocate here - of the present situation, I wonder if you perceive that there is any substantial inequality now in the bargaining process when a court can

send one side to jail without a hearing. I assume since there is no right to strike in New Jersey, you are saying the judge shouldn't look into any facts. He should say, "Go to jail; you are striking." Is there not some substantial inequality right now in bargaining because the judge can't look into it, can't decide whether the public health, safety and welfare are impaired or jeopardized by a strike, and, at least, make some kind of determination other than just acting as a robot and saying, "No, go to jail; you have violated the injunction against the right to strike"?

MR. ARON: Public employees' going to jail is a rather emotional issue and we could talk around and around about it. I think I have indicated to you at least my personal position is that I don't think that is helpful. But I don't think that is the basis of inequality. We are talking again about a violation of a court order. Looking at it in a very theoretical sense, that there is no finality to the process, that conceivably management could just always say, no, and employees have no alternatives, and if they strike, they go to jail, I think that is the basis of the kind of argument you have in mind. But, again, I think there are some distinctions which are not being drawn.

Public sector employees have a host of statutory rights and protections that private sector employees don't have, which they enjoy and which makes the situation substantially different.

Secondly, and I think equally important - again you are talking on a theoretical level - on the practical level, at least as I can speak from the School Boards Association point of view with respect to their teaching staff, their teaching staff has been honestly very well represented in negotiations. I think if you look at their contract benefits in terms of salaries, fringe

benefits and other terms and conditions, you will see they do rather well. I think if you combine those with their statutory benefits, they probably do better than their private sector counterparts. So, although on what I consider to be a theoretical or philosophical level there is an inequity there, I think the ultimate result, the end product we are all talking about and which doesn't get discussed very much, is what the collective bargaining agreement says. I think in that regard, school district employees have done very, very nicely.

MR. STERNS: I appreciate that fact, but I think we are kind of having to deal here on a theoretical level because, after all, you can't tailor the laws of the State - and I suppose that is what o u r job is, to look at the law - to apply to specific situations. They have to apply to the general situation. So I think we do have to be involved with it theoretically. If the law was going to be specific, it wouldn't be too elastic and it wouldn't be too applicable. But I appreciate your viewpoint on that.

I would like, if I may, to turn to a couple of other questions. First, I would like to ask what you had in mind with regard to the ambiguity that you referred to in one of the first points in your statement. You referred to the part of the act which said: "Nothing in this Act shall be construed to annul or modify or to preclude the continuation of any Agreement during its current term heretofore entered into between any public employer and any employee organization, nor shall any provision hereof annul or modify any pension statute or statutes of this State." I believe you feel this raises an ambiguity with regard to PERC's scope of negotiations. Will you specify what kind of ambiguities you have in mind?

MR. ARON: In Section 1.d, it specifically gives PERC, the way I read it, in very clear terms the authority to determine on a case-by-case basis what items fall within the scope of negotiations and what items do not, without any direction in terms of a list of management rights or anything like that - clear, broad, wide-open authority to determine on a case-by-case basis. That is one discussion of scope of negotiations. In an entirely different section of the statute, I read to you that section which you just repeated to me. Chapter 303, specifically said that nothing in this statute shall supersede any pre-existing statutes; it was all-encompassing any pre-existing statutes. The courts of our State have relied on that, at least in part, to say, "okay, those pre-existing statutes are superior to the bargaining statute and, therefore, certain items found in those other statutes will not be subject to collective negotiations." That section which our courts have relied upon has been amended by the Legislature to include the word "pension." It now says "pension statute or statutes." So we had previously this broad, all-encompassing statutory exemption, which included pension, by the way; it now by implication appears to be saying that pension matters are clearly not subject to negotiations.

But are we still excluding those other things? That seems to me to be an enormous step to take by implication. I have discussed this with many professionals in the field, union, management and neutral, and nobody can seem to agree on what it does mean, although parties are certainly starting to take positions one way or the other to their advantage, which is certainly understandable. But I think you have a situation where you seem to be giving PERC authority on one hand very clearly and then possibly taking it away on the other hand in a somewhat ambiguous manner. In my mind it certainly

raises a question, one that I think should be addressed.

MR. STERNS: I understand your point clearly now as to what you mean by ambiguity. I can say parenthetically that I do not feel it is an ambiguity, speaking as one person. I think the courts of the State asked in making these decisions, and literally I think the decisions read -- they said, "look, we have to find X, Y and Z are not bargainable because the statute says that the PERC law does not supersede the education statute or the civil service statute." I think Justice Jacobs, if my memory serves me correctly, specifically said the Legislature ought to make clear. I think the Legislature's reaction was to make clear that the collective bargaining statute was superior to these other laws, except for pensions, which it chose to keep out. In my mind there is no ambiguity, but I appreciate what your statement is now and, obviously, I don't know how the other members of the Commission or the Legislature feel about it.

MR. ARON: I guess we have proved reasonable men can differ.

MR. STERN: Let me turn to one other question, if I may, Mr. Chairman; and, that is, the language of the statute: "Proposed new rules or modification of existing rules governing working conditions shall be negotiated with the majority representative before they are established." That language, as you indicated, is a carry-over. You indicate that you think it has a hamstringing effect, to paraphrase you, on management. I wonder if you could give some examples of what working conditions you think management ought to be free to change prior to negotiation.

MR. ARON: I wish I could give you those examples. Maybe we could take unfair advantage of Mr. Tener sitting here in the audience. But I think we all recognize that there have been no decisions out of the Commission

determining what rules governing working conditions are. I think that is one of the greatest problems with this section, that it is the only place in the statute which refers to that phrase rather than terms and conditions of employment. Of course, at this point in time, we only have through court decisions limited decisions on what items are and are not bargainable. So we have, I think, an extremely undeveloped area here in the first place.

In the second place, it is a kind of requirement which does not appear to my knowledge in the National Labor Relations Act or any of the other state statutes. I don't know if it came across clearly in my statement, but as a labor relations professional, I certainly agree with the concept that employers do not have the right to make unilateral changes in matters which are covered by the agreement during its term and that, if they do, the employees have the right, through the grievance procedure, to grieve over such changes.

Now we have a term called rules governing working conditions, which is undefined and which says that the employer cannot take the action first and have it grieved; if it is something in the agreement, he must negotiate it first. My problem with that is when you talk about the potential for year-round negotiations, even though your contract is signed, sealed and delivered, every time you want to do something, your association or your union, one or the other comes to you and says, "We think this is a rule governing working conditions and we want to negotiate it." Is that a rule governing working conditions? Do you have to negotiate it? If you can't agree upon it and even though you have an existing contract, do you have to go through PERC's impasse resolution procedures on it? There is just a whole host of unanswered questions in this area.

I am giving you a long-winded explanation which is

not in answer, but simply more questions to say that, hopefully, this body is in a position to give that area some look and give us some more definite guidelines.

MR. STERNS: As you say, PERC has not to my knowledge yet made a determination under this. We both feel, I think - you have stated and I certainly feel it - that PERC has developed and should develop the expertise. Why shouldn't they be given the opportunity to make some decisions before we change it? Why shouldn't we see which way we are going? Why is this something that has to be struck preemptorily before PERC has had an opportunity to make the parameters under which it will work?

MR. ARON: It is a two-fold problem. The second thing, what you are suggesting, is that it would certainly be a lot clearer once they have had some time. My retort to that would be that even if they had the time and were given the opportunity to make it clearer, I don't think that is the way to go. I think any management must have the right to take its actions and, if its actions are violations of the collective bargaining agreement, they could and should be grieved. I don't think that any employee group should have the right to, in effect, hold you up for making your management decision and implementing it by forcing you to negotiate with them first. Private sector employees don't have that right and I don't think public sector employees in New Jersey should either.

MR. STERNS: Did you have a second point with regard to that?

MR. ARON: That was it.

MR. STERNS: I don't want to dominate this so I am going to just turn to one last question which does have to do with your final settlement proposal and in that you talk about legislative criteria. I was wondering

what did you have in mind as legislative criteria, your point 5 on page 10? You also indicated, I think, in there that there is some experience with legislative criteria in other states. I was wondering what states you were referring to and what jurisdictions.

MR. ARON: If this material isn't available to the Commission, I would certainly be glad to make it available. Michigan and Wisconsin both have criteria in their statutes. I believe they are identical. The Chairman is shaking his head, so I suppose you have them available to you.

Those are certainly good examples. I think the other point raised here concerning productivity is another consideration which is not found in these and accountability, which I think is in addition a valuable criteria.

MR. STERNS: But you would say the Michigan statute, for example, is the kind of legislative criteria you are talking about?

MR. ARON: I think in the general approach, absolutely.

DR. LESTER: Any other questions?

ASSEMBLYMAN LITTELL: I would like to ask one other question. Mr. Aron, there was a great folderol when they passed 1087 about the fact that anything was going to be negotiable. One of the things that came up was: Would tenure be negotiable? What is your opinion on whether tenure was negotiable? Suppose the Legislature passed an act that there would be no more automatic tenure, but this would not disturb anybody that already had tenure and it would all be left up to negotiation on a contract basis. In your opinion, do you think it would be any different than it is right now?

MR. ARON: Clearly, local boards of education are

extensions of the Legislature and you can support them or do away with them, quite frankly, based upon your decision. So whatever pre-existing statutes there are, you can change, amend or do as you see fit. However, I have considerable difficulty - and this is I guess where reasonable men differ - believing that by implication, or what I consider by implication, whole hosts of pre-existing statutes have been superseded in one fell swoop without a clear either repeal or flat-out statement by the Legislature that that, in fact, was its intention. I don't think we have either that repeal or flat-out statement in Senate Bill 1087, and that is what creates the ambiguity in my mind.

I think the Legislature certainly could make those changes if it wished to. I don't believe it has to this point. It may be determined through our courts that they have, but I think we are going to have to find that out.

ASSEMBLYMAN LITTELL: Suppose we had it; suppose we did. What do you think would happen with regard to tenure if you left it up to a negotiating item in each school district? Do you think it would be any different than it is right now?

MR. ARON: Well, there are basically two things that are found in Title 18A. One is employees' minimum statutory benefits and the other is what I call board or management rights or authorities or management prerogatives, whatever you want to call them. I think it is extremely important that management - local boards of education; and, in 40A, municipalities and counties - retain certain management rights. They are the political representatives of the citizens and have been elected to provide the services through that political entity. Therefore, I would not like to see local boards of education, and other public employers for that matter, being obligated to negotiate

over everything butpensions. I don't think we are particularly interested in negotiating back employees' minimum statutory benefits. I think we are much beyond that stage. The negotiations process has been in effect since 1968 and we have learned and we will continue to learn to live with it and develop with it and improve in it. But I would not like to see local boards of education have the right or obligation to negotiate everything as found in Title 18A with their employees. I don't think that is to the benefit of anyone.

ASSEMBLYMAN LITTELL: Do you think it would be any different? That is what I asked.

MR. ARON: Do I think it would be different? Certainly ---

ASSEMBLYMAN LITTELL: As far as tenure, do you think there would be any school district that would not end up with tenure pretty much the same as it is right now?

MR. ARON: I think the parties given to their own interests would very much --- I think we would see strong proposals from both sides of the table in the tenure area, if I had a guess, very strong proposals. I certainly know we would see that from the management side and I would anticipate you would see the exact opposite in an attempt to lessen the length of time from the employee side.

ASSEMBLYMAN LITTELL: Do you think it would be any different?

MR. ARON: I think there would be changes in many of the locations, yes.

ASSEMBLYMAN JACKMAN: I just want to ask one question. Mr. Aron, do you feel that a union has the right to negotiate rules and regulations with the board during the term of an agreement or do you believe that it is the right of the board of education, during the

term of agreement that has been negotiated, to change the rules to its liking? If that happens, the only alternative I would think would be binding arbitration. Then, if an award is not granted, if they don't agree to binding arbitration, do you think the teachers - using the teachers as a barometer again - would have the right to strike where the contract was changed during the term of an agreement?

MR. ARON: We are talking about two things, Assemblyman. One is what you called rules and regulations and the other was terms of the agreement.

ASSEMBLYMAN JACKMAN: Correct.

MR. ARON: I strongly believe in the system we have already developed with respect to terms and conditions in the agreement; and, that is, if the board or any employer seeks to change them, the employees do and should have recourse through the grievance procedure, once the board has attempted to make that change, to grieve over the board's action. The historic employer-employee relationship is that management is the actor and the employees are the reactors, the employee organizations. I see that system working and working well. But I think "rules and regulations," whatever they are, are fairly indefinable; and,if they are not covered by the existing agreement, I think management retains the right to make those changes. Now if the employees think those changes have affected them, even though it was not part of the agreement, they have every right and responsibility to come to the negotiations table the next go-around and say, "We want X, Y and Z, which has affected us because of changes you made during the last contract period."

ASSEMBLYMAN JACKMAN: Do you think the boards of education will agree to final and binding arbitration - final and binding arbitration?

MR. ARON: You are speaking of interest arbitration, contract types?

ASSEMBLYMAN JACKMAN: Contract types.

MR. ARON: I am here today telling you that we not only would agree to it, but that we are supporting the concept of fair and final offer.

ASSEMBLYMAN JACKMAN: Not fair and final -- I am saying final arbitration. Never mind the fairness now; I am just talking about the situation where we go to arbitration and X amount of money is granted and it is finalized. That's all. When you bring that "fair" up sometimes, here is where we part company. What you consider fair and what I consider fair is not the same sometimes.

MR. ARON: My answer is yes.

ASSEMBLYMAN JACKMAN: Okay. That's all I want to know.

DR. LESTER: Thank you very much.

MR. ARON: Thank you. We appreciate it.

DR. LESTER: The next speaker is Randall Flager, New Jersey State Employees Association.

R A N D A L L C. F L A G E R: I am Randall Flager from the new Jersey State Employees Association. I am here today representing our Executive Director, Edgar G. Samman. I would also like to report to the Commission that Don Saunders of the New Jersey Civil Service Association will not be here this afternnon. I am speaking on behalf of both organizations.

The New Jersey State Employees Association, which is a labor organization which, in affiliation with the New Jersey Civil Service Association and with the New Jersey State Supervisory Employees Association, is the exclusive representative under the New Jersey Employer-Employee Relations Act of the Administrative Clerical

Services Unit and the Primary Level Supervisory Unit, representing approximately 20,000 State employees. In addition, the New Jersey State Employees Association and the New Jersey Civil Service Association have filed a petition to represent the Professional Unit of State employees, consisting of approximately 7,000 State employees. In a recent election regarding the Professional Unit, the Civil Service Association and the State Employees Association obtained 299 more votes than their opponents. However, no certification has been issued regarding the Professional Unit, since the challenged ballots may be determinative of the election for that unit.

The New Jersey State Employees Association feels that changes are necessary in the New Jersey Employer-Employee Relations Act.

In particular, it is our feeling that there should be different methods for resolving disputes in public employment when such disputes arise during the course of negotiations. At the present time, public employees generally are denied the right to strike and are subject to fines and jail sentences in the event of a strike or job action. These punitive penalties may take place regardless of the justification of the strike or job action in question. For instance, it is conceivable that a public employer might grossly violate existing laws regarding employees. Nevertheless, a strike or job action to protest this gross violation is illegal. Therefore, either or both of the following remedies are suggested:

1. Strikes or job actions should be made legal.

2. At present, in the event of impasse, the law provides only for non-binding mediation and fact-finding. In lieu of this procedure, there should be a method for binding arbitration to resolve all matters as to which impasse has been reached during negotiations.

Notwithstanding the recent changes in the statute, negotiations generally are one sided in favor of the employer in view of the absence of the right to strike and of binding arbitration. On a regular basis, public employers throughout the State seem to have failed to engage in meaningful negotiations since these employers are aware of the fact that strikes are illegal and mediation and fact-finding are merely advisory. Accordingly, we think that a major and significant change which must be made in the present statute is the legalization of the right to strike and the effectuation of binding arbitration in the event of impasse.

Further, we feel that the full-time employee staff of the Public Employment Relations Commission consists, generally, of fair-minded, non-political, full-time employees. However, nevertheless, measures should be taken to insure that all employees of the Public Employment Relations Commission are experienced, impartial professionals. We note that the Commission itself presently consists of representatives of public employers, public employees, and of the public itself. We feel that it is extremely important that members of such a Commission be entirely impartial in background and outlook, so that all determinations which are to be made by them may be made fairly and impartially. In this regard, it is our feeling that the Study Commission should look into the possibility of creating a public employment relations commission which is totally impartial in its composition. It is particularly important that the individual who is the chairman of the Commission be experienced in labor relations and be divorced from politics. Therefore, it seems to us that criteria should be established to be sure that such person, who formerly was the Executive Director of PERC, be experienced, impartial and divorced from politics.

We further note that under the present statute,

there is a lack of clarity regarding the relationships between the Department of Civil Service, the Public Employment Relations Commission, and public employers. In addition, there is considerable vagueness with regard to the power of public employers and public employees to modify existing laws in contracts which are negotiated and executed. The Study Commission should clarify this situation. We will be very happy to participate in furture discussions and conferences regarding these matters.

This is signed by Edgar G. Sammon, our Executive Director.

DR. LESTER: Thank you. Are there questions that members of the Commission may have?

ASSEMBLYMAN LITTELL: Mr. Flager, you say that one of the remedies would be that strikes or job actions should be made legal. I have asked two other people here the same question I'm going to ask you. Don't you think the strike question would be a moot question if you had the power to go into court and address your grievance, in the event you had exhausted all negotiating process through PERC and still felt frustrated in your attempt to acquire or receive what you felt was justly due?

MR. FLAGER: Am I to understand by your question you are also referring to the fact if we had binding arbitration for deadlocked disputes ---

ASSEMBLYMAN LITTELL: Whatever the process is, going through the process ---

MR. FLAGER: Short of a strike?

ASSEMBLYMAN LITTELL: (Continuing) --- whether it was resolved or unresolved, if you got to the point where you were frustrated - and that is what happens when there is a strike; people get frustrated to the point where they are going to stop providing their services --- if you reach such a point, do you feel if you were able to

go into court where both sides could be heard and a decision could be rendered in the court with regard to the impasse, whatever it may be, that you wouldn't have any need for the so-called right to strike?

MR. FLAGER: The organization's position is that they still would like to have the right to strike and they would like to have, of course, with that, as an alternative, the binding arbitration in disputes.

The most I can say is that the organization is not planning at this very moment a strike of any sort. However, in recent weeks, we have become increasingly frustrated with some of the actions at the bargaining table and, therefore, we feel that without the threat, at least, of some sort of job action on the employer that this can happen. I think the other forums are weakened. Therefore, we feel that we would like to have that right.

ASSEMBLYMAN LITTELL: But the threat is there anyway. The threat is there whether the law or the Constitution says you can or you can't because once people get frustrated to the point that they are not going to work, they are not going to work. So that is not really the crux of the problem. The crux of the problem is that when they get to that point, they have no place to go.

MR. FLAGER: I would agree with you there.

ASSEMBLYMAN LITTELL: If they end up in court, they are going to end up in jail.

MR. FLAGER: In our negotiations, the problem has been that we have made demands which we felt were reasonable and justified and they were flatly turned down with virtually no explanation by the employer. Therefore, that is why we also suggested binding arbitration as another route to avoid a strike. In other words, our organization's position is to use every means possible, but to have that in reserve in case everything else should fail. I can't give you a definite "yes or no," but I would clarify it in that way.

ASSEMBLYMAN LITTELL: May I ask you how you feel about accountability and productivity as being part of the obligation of this legislation.

MR. FLAGER: In other words, whether that is negotiable?

ASSEMBLYMAN LITTELL: No, that there be some sort of requirement for accountability and productivity put into the law so that the public's interest would be best served and we could expect the most accountability and the most productivity out of the employees you represent.

MR. FLAGER: It is my understanding now that we have that in a sense. We have the merit system. We have testing. We have evaluations every year. So I think we already have that in that sense. Are you suggesting making it tighter than it is?

ASSEMBLYMAN LITTELL: I don't quite agree with you on that. We have a civil service system, as I understand it, that provides for increases just because you are a warm body and you are on a particular step in a particular position and, when your anniversary comes around, you get an increase.

MR. FLAGER: Let me just say from my experience, in order to get your increment you have to have a satisfactory rating for the year. I just came this morning from a grievance hearing on that very matter, an unsatisfactory rating. The person did not get his increment because of the fact he was considered by management to be unsatisfactory. That is the only way you can get an increment in the State the way it stands now.

If you are suggesting the State has been too lenient in giving out satisfactory ratings, that is another question. But we do have a rating system at present.

ASSEMBLYMAN LITTELL: How many don't get their increments because of poor ratings?

MR. FLAGER: I saw something in the paper a few weeks ago saying it was a few hundred, but I don't know how much stock to put in that report. That is because most of our State employees are very dedicated and hard-working.

ASSEMBLYMAN LITTELL: I would agree with you that most of them are. But there are some that aren't. I think they do a great disservice to those that are. And I think the unions have a responsibility to make their members accountable and have a responsibility to make them productive. If they don't, the whole thing is self-defeating because they will end up with everybody suffering the consequences rather than everybody gaining the benefits.

MR. FLAGER: Let me just say that the leadership of our organization is made up of career employees in State service. Our President has been in State service now for approximately 25 years. Of course, we always encourage employees to be productive and to be good State workers. So I don't think you will have any trouble in that respect from the organization.

I would say as far as strengthening the present system of evaluating, I don't see the need for it right now.

DR. LESTER: Thank you very much.

We are running a little behind schedule. We have two other people who are scheduled for this morning. We will have to adjourn for lunch and I am wondering if they might have written statements they would be willing to submit without giving their presentations orally and being questioned or whether they would prefer to be called this afternoon after lunch.

(Messrs. Nardolilli and Porcello preferred to return for the afternoon session.)

Then the hearing is adjourned until 1:30 this afternoon.

(Recess for lunch)

AFTERNOON SESSION

DR. LESTER: The afternoon session will now come to order. Mr. Nardolilli. Please identify yourself, sir.

P A T D. N A R D O L I L L I: I am Pat Nardolilli, Business Agent for Teamsters Local 286. Mr. Chairman, do you want me to go through our entire statement, or do you want me to go over one point at a time and then answer your questions pertinent to that point?

DR. LESTER: Why don't you go through the whole statement, and, if we have questions, we'll interrupt you.

MR. NARDOLILLI (reading statement): In reply to letter dated 2/19/75 from Dr. William M. Weinberg, Executive Director, PERC Study Commission, below are the statements and opinions of Teamsters Local 286 regarding recommended changes in "New Jersey Employer - Employee Relations Act," (P.L. 1941, c100) and amended by P.L. 1968, c303 (c34:13 A-1 et seq.).

QUESTIONS AND ANSWERS

Q 1. Whether changes are necessary to insure that the statute is a more effective tool for encouraging the impartial, timely, and effective resolutions of negotiating impasses in the public sector?

A Yes. As the past has proven, impasses are not just created by two parties not agreeable to terms, conditions of employment, benefits, or salary disputes. More often, the impasse is provoked by the employer's inability to meet as often as possible to negotiate a settlement. Thus, the memberships of the respective Unions involved in the negotiations are forced by the stalling tactics to take actions in order to speed up negotiations. Only after the illegal action is taken does the employer find time to negotiate in good faith. The Union realizes that as of January 1, 1975, the right to charge "Unfair Labor" was enacted, but, again, between the charging dates and the time that such a hearing becomes a reality, time again

becomes a factor and budgets are passed and impasses become more difficult to deal with. It is essential that time periods be utilized to coincide with the budget adoptions and that a minimum waiting period be spelled out between negotiating sessions. Local 286 is certain, because of past experiences, that this could eliminate many problems and speed up negotiations.

Q 2. Whether the statute should provide different methods for resolving disputes in public employment, based on an examination of the laws and experience of other States?

A Yes. Surely, we are all aware of the strikes (illegal?) that have taken place since the enactment of (303) PERC. The Act itself was helpful to a point but not forceful enough to function as it might have been intended to function, as witnessed by the numerous job actions taken by public employees since 1968. The law proved to be one sided (in favor of the employer). The Union admits that many gains were made to insure public employees better salaries and other benefits, but the question of the scope of bargaining often hampered negotiations. The employer hid behind unwritten laws in an effort to deny public employees benefits that are enjoyed by other employees in the private sector and the public sector: dental plans, agency shops, disability compensation, seniority clauses, unemployment compensations, Social Security and some other less important benefits.

Dental Plans - Why should a benefit such as this have to become a political football before it becomes a benefit to be enjoyed?

Unemployment Compensations - Again, this benefit is enjoyed by all employees in the public sector, and by certain employees in state government. Why the discrimination? (Rutgers University) Newark College of Engineering and many other state employees enjoy this

benefit. Why should it not be included in the "scope of negotiations"?

Seniority - Why shouldn't seniority be recognized as a benefit to be improved on during negotiations? The Civil Service statutes are not broad enough to reward senior career employees the full benefits of their seniority. If vacations and other permissive Civil Service rules are allowed to be negotiated, why not seniority? Much too often, the employer plays the Civil Service rules to its advantage thereby causing problems during negotiations. To resolve disputes, Local 286 suggests the Public Employee Law adopted in Pennsylvania be the law adopted here in New Jersey, outlined here below:

Compulsory Arbitration, Pennsylvania:

1 - Negotiations

2 - Impasse - Mediations

3 - Fact-finding - Advisory opinion for settlement

4 - Arbitration - final and binding

5 - Right to strike

ASSEMBLYMAN JACKMAN: Excuse me. If your number 4 was adhered to, number 5 would be superfluous.

MR. NARDOLILLI: Absolutely.

(Continuing with statement) Labor Department statistics have shown that in 1958 there were 15 strikes in the U.S.A. involving 1,720 public employees. Since 1973 there have been 386 strikes involving 196,000 public employees. Where anti-strike laws, legal prohibition, and penalities were adopted, New York, Michigan, and Ohio, strikes were more multiple. It is apparent that these laws did not help, but challenged, the public employees and created militancy within their ranks. In States like Alaska, Hawaii, Minnesota, Montana, Oregon, Pennsylvania, and Vermont, there are laws that prohibit employees in essential services, police, fire, and correctional guards, the right to strike. Compulsory

arbitration does help here. In Pennsylvania, there have been no strikes, work stoppages, or slow downs connected with negotiations or arbitration proceedings since 1971, the year the law was adopted.

Bill now in Congress:

1 - National Labor Relations Act - to include state and local government employees.

2 - To set up a new agency to regulate the labor relations of state and local government to establish a flexible mechanism to resolve impasses. Federal courts would be empowered to prohibit strikes posing a danger to public health and safety. Other strikes would be legal, unless arbitration had been involved.

Q 3. Whether various functional groups of public employees should be differentiated in dispute settlement procedures based on the "essentiality" of their services?

A The answer to this question is included in the immediate paragraph above.

Q 4. Whether the existing structure and composition of the New Jersey Public Relations Commission should be changed in any respect?

A Yes. It is important that the staff be enlarged. The hearing officers should be involved principally in disputes, and be involved in fact-finding processes and arbitrations. There should be separate officers involved mainly in the election processes and the actual elections.

Q 5. Whether particular provisions of the statute should be changed or new provisions should be added?

A Local 286 feels strongly about these added provisions:

If and when a negotiated agreement and the Rules and Regulations of Civil Service appear to conflict, a settlement to the dispute should be reached in this manner:

> A request shall be filed to PERC for an appointment of an arbitrator selected from a list of five (5) arbitrators, NJBM or AAA, and for an appointment of a hearing officer from the Civil Service

Commission. The arbitrator and the hearing officer selected shall hear all arguments and examine all proof presented and present their separate opinions to the PERC. An arbitrator shall then be selected by both parties involved in the dispute. He shall study the opinions presented by the arbitrator and the Civil Service hearing officer and render a decision that is final and binding, the cost to be borne equally by both parties to the grievance.

Maintenance of Membership:

In the scope of negotiations, the maintenance of membership clause should be allowed as a negotiable item. If a group of employees has ratified a one, two, or three year agreement, should not the representative Union have the right to collect dues during the term of the agreement? A long-term agreement with good benefits and salaries is a guarantee to the members that, for the term of agreement, they shall receive said benefits. When the Dues Deduction Act was enacted, it was effective at a time when one-year contracts were only negotiated. In this day and age, long-term contracts are preferred by the memberships and the employers alike. So, to allow members to cease paying dues during the term of a contract negotiated for more than one year certainly is unfair to the representative Union. To serve and maintain a long-term agreement is more costly to the Union during the term of the agreement than during the negotiations.

Change of Representative Union during a Calendar Year (Dues):

If a group of employees has chosen to elect a new representative Union because it is dissatisfied with the present Union before June 30th, and after June 30th, but before December 31st in any calendar year, why should the employees be forced to pay dues to the Union that has ceased to be their bargaining agent?

As the new law stands, this is a must. Teamsters Local 286 recommends that, when a new Union is elected through PERC representative elections, the dues paid to

the ousted Union should cease on the date of Certification. The newly-elected representative Union may then submit its dues authorization cards for dues deduction thereby insuring the employees that only one Union, the Union they elected, will receive the dues entitled to it.

All other changes or provisions would be related to the statements outlined above.

Thank you for considering Teamsters Local 286's statements and opinions in your study. We are hopeful they are informative and can be utilized for the good of both public employees and the public employers. (End of statement.)

DR. LESTER: Are there any questions?

ASSEMBLYMAN JACKMAN: I have one question. Pat, I understand from your statement - and you mentioned this in two places - that your Union would be receptive to final and binding arbitration. Do I understand that correctly?

MR. NARDOLILLI: Absolutely.

DR. LESTER: Does that represent the view of not only your Local, but others in the Teamsters Union?

MR. NARDOLILLI: I can speak on behalf of our Local, because our Local happens to be chartered to represent public employees. That is the only one so chartered in the State.

DR. LESTER: Throughout the State?

MR. NARDOLILLI: Yes.

DR. LESTER: That would be the only one, presumably then, involved in this particular public employees matter.

MR. NARDOLILLI: That's right. There may be others that I'm not aware of.

ASSEMBLYMAN JACKMAN: I think that might be misleading. You don't represent all the members. There are other Local Unions--

MR. NARDOLILLI: There may be other Local Unions.

ASSEMBLYMAN JACKMAN: --that represent others within the State.

MR. NARDOLILLI: There very well may be.

ASSEMBLYMAN JACKMAN: Mr. Chairman, he represents a portion of them. There are other Local Unions, I think, representing other factions of public employees that could be represented by the Teamsters.

MR. NARDOLILLI: There very well may be.

DR. LESTER: Are there any other questions?

(No questions.)

Pat, thank you for giving us the benefit of your statement. We will take it into consideration.

MR. NARDOLILLI: Thank you, sir.

DR. LESTER: Michael Porcello of the Newark Teachers Union. Mr. Porcello, we have copies of the statement you distributed earlier.

M I C H A E L A. P O R C E L L O: Mr. Chairman and members of the Commission: My name is Michael Porcello. I am a staff representative of the Newark Teachers Union. I would like to first take the opportunity to thank you for allowing me to appear here today. I am going to read a statement of Mrs. Carole A. Graves, who is President of our Local. She was unable to attend today's hearing. The statement does address itself to a few sections of the regulations. If you have questions in reference to other areas, I will try to answer them. (Reading statement):

The Newark Teachers Union is categorically opposed to many of the rules and regulations that were drafted by the Public Employment Relations Commission for commencement on January 20, 1975.

New Jersey Statutes Annotated 34:13A-5.4 (e) provides that the Commission shall adopt such rules as may be required to regulate the time of commencement of negotiations and of institution of impasse procedures so that there will be full

opportunity for negotiations and the resolutions of impasses prior to required budget submission dates. We feel the Commission's rules and regulations will greatly hinder these provisions.

In chapter 12, subchapter 3 dealing with Mediation, the Commission has given itself the right to appoint a mediator without a request from the parties involved in a negotiating process. Request for mediation should be made solely by mutual agreement between the public employer and the employees recognized representative. The Commission's decision to on its own, appoint a mediator, is highly impractical and very unrealistic. Local school boards throughout the state have a budget submission date of February 1 of each calendar year. The Commission time schedule of starting negotiations at least 120 days before this and allowing only 30 days before appointment of a mediator takes away the element of good faith bargaining. It subverts the negotiating process and allows for possible stalling tactics during that 30 days. By allowing for mediation only by mutual agreement, the two parties will be forced to negotiate instead of the Commission arbitrarily sending in a mediator when in effect, there may not be an impasse.

The section dealing with the appointment of a mediator (19:12-3.2) is very vague and leads one to believe that the Commission could appoint a clerk or some other "officer of the Commission" to act as mediator. The Commission should appoint a member of the American Arbitration Association or at least someone with a background and basic credentials for such a position. Again, in the best interest of the negotiating parties, this mediator should be selected on the basis of mutual agreement and not arbitrarily by the Commission.

In Subchapter 4 dealing with fact-finding, the invoking of the time limits, which may or may not result in an impasse, severely restricts the negotiating process. The Commission's decision to provide fact-finding is an arbitrary position. The repeated words "mutual agreement" are as important as were previously stated.

In Chapter 13, which involves the scope of negotiations, either party iniate scope of negotiations proceedings. The theme of mutuality is missing and allows either party a lateral movement which could delay the negotiating process. Mutual agreement is extremely necessary on items which may fall within the scope of negotiations proceedings.

The unfair practice proceedings in chapter 14 presents questions which should be seriously considered. If the Commission is allowing 30 days before appointing a mediator, the negotiating process is in its earliest stage. For either party to quickly claim an unfair practice seems to contradict the intention of PERC for employers and employee groups to negotiate in good faith. If the Commission is so intent on hearing the unfair practices, a more specific criteria should have been designed so that a case would be heard without the time element allowed for deciding if it is in fact an unfair practice. The structure of these rules and regulations tends to promise an enormous amount of future defining on the part of PERC rather than pure enforcement of adopted guidelines.

The Commission totally fails to recognize the importance of "mutuality". It seems they are intended upon making public employer - employee negotiations fall under a master contract guideline. All public sector contracts will resemble each other. In effect, the employee groups will be negotiating at the state level rather than the local public employer.

It is imperative that the Commission revise its rules and regulations so that proper and good faith negotiations will take place among all public employer and employee groups. PERC should have the power to rule, enact, and enforce. However, the parties at the bargaining table should have the right to reach an equitable agreement that will enhance collective bargaining. It is hard to foresee any equitable and agreeable resolutions with the present structured rules and regulations.

Thank you. (End of statement.)

DR. LESTER: Are there any questions?

(No questions.)

That being the case, I want to thank you very much indeed for coming here and presenting this statement.

Phil Yacovino.

P H I L I P P. Y A C O V I N O: My name is Philip Yacovino. I am President of the New Jersey State Policemen's Benevolent Association.

The New Jersey State Policemen's Benevolent Association consists of 20,000 police officers in the State of New Jersey. The Association itself is composed of approximately 250 P.B.A. affiliates located throughout the State of New Jersey. These P.B.A. affiliates represent law enforcement officers in all phases of government: State, County, and Municipal. The affiliates represent police officers in the spectrum ranging from the "cop on the beat" to correction officers in our state prisons to motor vehicle inspectors.

The State P.B.A. has received the notice from the Public Employer Employee Relations Study Commission. We applaud the efforts of the Commission to give some meaning, some force of law to the statutory and constitutional provisions which,

presumably, were enacted to protect the rights of public employees. The State P.B.A., in turn, hopes that it can be of assistance to the Commission.

Much can be said about the many things that can and should be done in the area of collective negotiations. Rather than dissipate our time addressing those questions, which no doubt will be treated by others, the State P.B.A. wishes to speak to the primary question which, in its opinion, threatens the stability of employer-employee relations in the public sector. That one question is: What can be done about the outrageous lack of resolution of impasses occurring in negotiations?

The State P.B.A. can no doubt take the position that all public employees including law enforcement officers, should have the right to strike. (We do believe that non-essential services, such as teachers, should have that right). Indeed, there may well be sufficient legislative support for police officers having that right. In any event, as a "fall-back" position, the State P.B.A. would then urge that, alternatively, the Commission endorse some sort of "terminal point" in the bargaining process for the resolution of impasses. That kind of gamesmanship is hardly appropriate at this point, which, as noted above, is a critical point in public employer-employee relations in New Jersey.

Our position is equitable, simple, and direct. We hope we will be treated in kind. We do not ask for the right to strike. We do urge that this Commission endorse,

recommend and do everything possible to establish the kind of terminal point needed. It is significant that, as a practical matter, law enforcement officers in the State of New Jersey have almost without exception refused to engage in job actions. While there has been an occasional deviation from the norm, such exception has been rare. This willingness on the part of the P.B.A.s to abide by the rule of law is of course in stark contrast to the experience in other states and cities including New York, Philadelphia, Baltimore, Montreal, etc. While such restraint may well be commended, and, indeed, has been lauded by public employers and law enforcement officials throughout this State, our members' patience has its limits. As much as the P.B.A.s may be philosophically opposed to job actions, at this very moment there are numerous examples in the State of New Jersey where the public employer, because of its conduct, is forcing us to that very position and any job actions are equally the responsibility of the public employer. Indeed, perhaps more so. In a secondary sense, and we say this with all due respect, such untoward consequences will ultimately be the responsibility of the legislature in general and this Commission in particular...unless something is done and done promptly.

As we see it, the only meaningful answer is some form of binding arbitration. We leave the form of binding arbitration to the sound judgment and good sense of this Commission. There is much to be said for the last best offer proposition. However, there is concern that an arbitrator may

well feel that an area in between the last two offers represents the most equitable approach and, under last best offer, would be precluded from so making a determination, which might be an entirely appropriate compromise. Leaving to the arbitrator discretion to make appropriate binding determinations in all areas, rather than being forced to make a choice, may be the most sound approach in the last analysis. And yet the last best offer is undoubtedly attractive because it will force the parties to truly negotiate in good faith rather than assume the risks inherent in the last best offer concept. We emphasize, however, that it makes little difference what the final form of binding arbitration is, so long as something is done, and done now.

We do not believe that our request for prompt relief is inappropriate. Aside from the fact that the tactics of certain municipalities and their agents is both illegal and immoral, it is to be remembered that police officers place their lives on the line daily in their battle against crime. And it is hardly melodramatic to note that some police officers lose that battle-and their life-every year. It is not unreasonable, therefore, to ask that we receive some parity of bargaining power at the negotiating table in return for the risks that police officers always take and sometimes lose. In this connection, it should be noted that the firefighters of the State are in a similar position and we therefore endorse in general the position taken by Mr. Heller, President of the

New Jersey State Firemen's Benevolent Association, on March 5, 1975.

We further observe that the arbitration process should not only be binding but should also be final. That is, it makes little sense to subject the arbitrator's determination, whether it favors the public employer or the public employee association, to further appeals. The only exception to this rule should be the same exceptions that apply to arbitrator's awards generally such as proof of corruption, etc. It makes little sense to otherwise make the arbitrator's award generally reviewable by either PERC or a court.

We would further support the proposition that the Public Employment Relations Commission and/or the charging party have the right to seek injunctive relief against parties committing an unfair labor practice , if it does not already have that right. We do not intend at this time to develop this concept at length, unless requested. We believe that other parties have treated this most serious issue in greater detail.

One final observation. At the present time there is enormous confusion over the status of superior officers in police and fire departments as to whether they can be represented by an organization that also represents "rank and file". PERC's decisions on this issue vary, and perhaps understandably. Some legislative relief must be given to these superior officers in order that they too may enjoy the equal protection of the laws. Accordingly, we urge that

the representative of the police or fire organization be allowed to represent both superior officers and fire officers.

It is no answer to say that superior officers can form their own organization. As a practical matter in numerous municipalities the number of superior officers is so small that it is a practical impossibility for them to organize and bargain. Ten or fifteen superior officers simply do not have the financial wherewithal to effectively exercise their statutory and constitutional rights. Virtually all realists in the field acknowledge this fact. We simply desire, again, effective equal protection of the laws.

Nor is there any real danger of conflict of interest. In this regard superior officers in police and fire departments are sui generis. Significantly, in many towns, the superior and police officers are both currently represented by a P.B.A. without any adverse consequences. We are merely asking for a codification of a practice which, admittedly, might be subject to collateral attacks, rightly or wrongly. In any event, any concern may be cured by requiring that police and superior officers must be covered by separate agreement applying in their separate units in those cases where the P.B.A. represents both. Reluctantly, we can live with this adjustment, if necessary.

In sum, we reiterate the need for finality in the bargaining process. We need not give illustrations of this need but, if requested, we will be pleased to detail

cases where public employees have perverted the negotiation process by their tactics. Indeed, those details might well prove most embarrassing to various municipalities and their representatives. Suffice it to note that our files, and PERC's, are rife with indicia of bad faith conduct. Yet it makes little sense to engage here in a rancorous and unpleasant discussion of who, what, where, when and why. We all know the why: Certain municipalities and counties do what they do in order to frustrate the statutes and Constitutions. We say "certain" because all municipalities are not culpable. There are those who respect the rule of law and fundamental concepts of distributive justice. But there are all too many exceptions. There is something basically wrong with a system where public employers can drag out negotiations for 15, 20 or 30 sessions making no more than one or two concessions in those negotiations, and one year or eighteen months there is still no contract. It is no answer to say that such conduct is remediable by filing an unfair labor practice charge. The only answer is a meaningful form of finality.

We thank you for the opportunity to air our concerns. We know full well the many challenges and difficult tasks before you. Towards the end that you may meet your statutory mandate, the services of the New Jersey State Policemen's Benevolent Association, recognized as one of the finest such associations in this nation, are at your disposal.

DR. LESTER: Thank you. Are there any questions?

ASSEMBLYMAN JACKMAN: Yes, I have one or two. Phil, in your remarks, you made reference to superior officers. I believe there is presently a bill before the State Legislature to remedy the inequity that exists.

MR. YACOVINO: Right.

ASSEMBLYMAN JACKMAN: However, is my understanding correct that, at the present time, these people are not represented at all based upon law?

MR. YACOVINO: Based upon some of the decisions by PERC, we do represent some superior officers' groups.

ASSEMBLYMAN JACKMAN: You do?

MR. YACOVINO: Yes. They have been in our Association for the last 80 years. It has been a past practice, and we are trying to maintain that past practice.

DR. LESTER: There has been a kind of grandfather arrangement then? If they have been in, then you---

MR. YACOVINO: That's what we're saying. We want to have that right.

ASSEMBLYMAN JACKMAN: Mr. Chairman, that was the only part of the PERC law that was defeated by the Legislature. The individual superior officer could no longer be represented by---

DR. LESTER: On the assumption that he was part of management.

ASSEMBLYMAN JACKMAN: Right. We are trying to correct that with further legislation, but there has been a hold-up. Incidentally, the bill passed the Assembly, and it is now in the Senate. I think there is a possibility that it will be passed there.

I want to ask you one other question, Phil, in reference to something that I think is very important because of some experiences that I have had in negotiations. Do you think that your organization should have the right to negotiate, for example, the

type of automobile that should be used by a policeman or fireman, for that matter, in his daily work? Do you think that should be part of the negotiations?

MR. YACOVINO: Absolutely, because the primary factor in negotiations, as far as we are concerned, is the safety of the man and the job he can do with the public. Without the proper equipment, we feel he cannot do the job, and the safety of the man could be in jeopardy. He could be injured or lose his life, and actually this would be a burden on the taxpayers. So we feel that any type of equipment used by the man should be within the scope of negotiations. We are the ones who use it, and no one knows better than we what type of equipment we really need to do the job.

ASSEMBLYMAN JACKMAN: One final question: Knowing the public sentiment, and knowing the type of position that you hold in the community, do you think that a policeman or fireman should have the right to strike, or do you think he should be bound by final and binding arbitration?

MR. YACOVINO: It is not the PBA's stand that we should have the right to strike, and it never was. We feel that we should have that final and binding arbitration. It could settle a lot of differences.

DR. LESTER: Assemblyman Littell.

ASSEMBLYMAN LITTELL: In reference to superior officers being included in the same Union, there is an obvious discrepancy in that kind of situation where you are involved in negotiating for benefits while, at the same time, you are responsible for writing evaluations of your employees. Isn't there an obvious conflict there where a Captain, Lieutenant, or Sergeant has to evaluate the men under him? Wouldn't he be thrown into a compromising position if he were represented by the same Union?

MR. YACOVINO: No. That has never been the case before. We have a code in our by-laws where the superior officer has to maintain his job and position in the police department. We don't hold that against a man, and he shouldn't feel that the PBA would retaliate because of any of his actions. We feel that is part of his job just as it is part of my job to take orders and do my duties.

ASSEMBLYMAN LITTELL: But if you had a Union within your Union to represent superior officers, wouldn't that be better protection for the public than to have them in the same Union?

MR. YACOVINO: It would be the same Union. We do have superior officers that sit on the negotiating committee. The State PBA by-laws allow them to negotiate on their own if they want to. The bill that we are talking about would allow them to remain with the PBA, in negotiations, if they wished, but they wouldn't have to. Our by-laws allow them to do this, and we don't hold it against them. Many police departments have superior officers' groups that are so small that they have no clout, and it would be ridiculous to say that they could receive any benefits without the PBA behind them. We have been doing this for almost 80 years, and I think the past practice is a convincing argument for our continuing to do so. There haven't been any conflicts in the past that I know of.

DR. LESTER: Have you had much experience with arbitration under voluntary arrangements? Have there been any cases where the PBA and the communities went into arbitration of questions without any law providing for binding arbitration? Presumably, if you went into arbitration, the determination would be binding.

MR. YACOVINO: That's right. There have been quite a few Locals that have done that.

DR. LESTER: Have the experiences been satisfactory?

MR. YACOVINO: The thing is that there aren't that many municipalities that would sit down with us and negotiate positions. We have had too many bad experiences where the contract negotiations have dragged on and on and too many experiences where the municipalities would not consider the PBA's requests.

DR. LESTER: But you have had some where you---

MR. YACOVINO: There have been some where the municipalities have been friendly. We have that.

DR. LESTER: From your point of view, that has worked in some cases?

MR. YACOVINO: That has worked, but the majority throughout the State would need binding arbitration.

DR. LESTER: Then you feel that it is necessary by law because you haven't been able to make enough progress on a voluntary basis.

MR. YACOVINO: That's right. We haven't made that much progress. We have made some, but not enough.

DR. LESTER: Has it been increasing year by year?

MR. YACOVINO: Decreasing.

DR. LESTER: Decreasing?

MR. YACOVINO: Absolutely.

DR. LESTER: Voluntary arbitration has been decreasing?

MR. YACOVINO: That's correct, especially when you ask them to give you a contract. They think you're a monster with a big club. It's nothing but a piece of paper; you come to some sort of agreement, and you put it down in writing. Some of them refuse to do it.

DR. LESTER: Is the main issue money or are there other conditions?

MR. YACOVINO: Money is one of them, of course. Everybody is looking for decent wages. Most of the issues fall into the categories of money, benefits, and equipment.

DR. LESTER: Are there any other questions?

(No questions.)

Thank you very much for giving us the benefit of your thinking on this matter.

Mr. Lacatena.

M A R C O A N T O N I O L A C A T E N A: I am Marcoantonia Lacatena, President of the Council of New Jersey State College Locals, American Federation of Teachers.

Mr. Chairman, the changes that we see as necessary in 1087, if we are to have a viable Employer-Employee Relations Act, are as follows:

First, the right to strike should be extended to all public employees without qualification except in those instances where it can be proven that the public safety and welfare are at stake. Such restrictions should be carefully spelled out so as to not have abuses of the applications of the restrictions by public employer groups that are seeking injunctions. Clearly the extension of such restrictions beyond police and fire groups should be carefully scrutinized and the need for the injunction proven beyond a shadow of a doubt before the issuance of any such injunctions.

Secondly, there is a need for PERC to be adequately funded so that it might be able to handle the case load of unfair labor practices, calls for its mediation services, and calls for its fact-finding services. We find that, at present, it just takes too long to get the kind of service that is needed in order to be able to prevent a deterioration in the negotiations relationship.

DR. LESTER: May I interrupt you there? On that point, does it take too long between the time you ask for a mediator and you get a mediator, or does it take too long to get the mediator that you wish?

MR. LACATENA: Both. We find that it takes too long to get the mediator. Under the changed statute, 1087, I don't know if that would still be the case, but I would assume so, because I know they have not put on that much additional staff for the cases that they are getting. I can only allude to our experience last fall. In that experience, PERC was, in fact, as I understand it, practically powerless to step in except in an advisory role, in a sense, to the parties, but not necessarily in a mediation role.

Along those lines, I would like to suggest that the funding rate be a part of the legislation so that, as the load increased, there would be an automatic increase in the funding of PERC for these purposes.

ASSEMBLYMAN JACKMAN: I want to ask you a question.

MR. MC GLYNN: How are you going to get the money?

ASSEMBLYMAN JACKMAN: That's what I was going to ask.

MR. LACATENA: I guess it would have to be in the budget.

ASSEMBLYMAN JACKMAN: You're talking about mediation, and you're talking about funding. If there was a mediation decision handed down, would you then be guided by that mediation award, or do you expect that you would go back to mediation again on that same question?

MR. LACATENA: There is no award for mediation as I understand it unless you are referring to fact-finding.

ASSEMBLYMAN JACKMAN: All right, or an interpretation. Maybe "award" is not the proper word. If there was an interpretation handed down on one particular case, would you then be bound by that interpretation, or do you think that you have the right to go back to mediation on that same question?

MR. LACATENA: I don't think we are on the same wave length. I think there is a little confusion here.

What I'm alluding to---

ASSEMBLYMAN JACKMAN: You're talking about unfair labor practice charges; that's what you're talking about.

MR. LACATENA: There are three parts there. There is the unfair labor practice---

DR. LESTER: I'm afraid we've gotten things mixed up here.

MR. LACATENA: Right. There's the unfair labor practice, there's the call for mediation, and, ultimately, the calls for fact-finding. As far as the unfair labor practice charges are concerned, I would assume that PERC would eventually build up case histories, such as in the courts, upon which they would call in order to make decisions. While I wouldn't want a decision of PERC to be immediately applicable on the next complaint, it nevertheless would make it easier for them in terms of precedents that have been set in previous cases.

ASSEMBLYMAN JACKMAN: You would be bound by binding arbitration?

MR. LACATENA: No, you're talking about something else.

ASSEMBLYMAN JACKMAN: Well, answer that question.

MR. LACATENA: Why do you need the right to strike if you have final and binding arbitration in disputes? We are opposed to final and binding arbitration in disputes except in those areas, as in fire and police---

ASSEMBLYMAN JACKMAN: I'm talking about your specific group. You are AFT, right?

MR. LACATENA: Right.

ASSEMBLYMAN JACKMAN: On that basis---

MR. LACATENA: We're opposed.

ASSEMBLYMAN JACKMAN: You don't want anybody to come in?

MR. LACATENA: Right.

ASSEMBLYMAN JACKMAN: If you cannot resolve your

own differences, you want the right to strike?

MR. LACATENA: Right.

ASSEMBLYMAN JACKMAN: That's all I wanted to know.

MR. LACATENA: All right.

DR. LESTER: I want to follow up on one thing that I'm not clear on, and that is that more funding or more mediators would have solved the problem that you talked about.

MR. LACATENA: It wouldn't have solved the problem back then because the law wasn't operational. It required other changes in the law, I think. It required the ability for them to step in which, I believe, they now have.

DR. LESTER: I was going to say that. So that is perhaps solved now.

MR. LACATENA: Yes, that is solved. In fact, in our statement, we indicate that PERC should be allowed to opt for use of the federal mediation services when necessary. Had they been allowed to opt for that in November, that might have avoided some of the trouble we were in.

DR. LESTER: Would you want to use federal mediation services for impasses in the college and education area?

MR. LACATENA: Not necessarily. I would like that to be an option that is available, but not mandatory.

DR. LESTER: I see.

MR. LACATENA: Again, I can allude to the experience of last November. We did ask for the intervention, that a federal mediator be allowed to intervene, and this was not allowed. I think that, had it been allowed, we may have had a different situation. I wouldn't guarantee it though.

A third provision we would like to see would be for enforcement of "cease and desist" orders where PERC

finds that one party or the other has been engaging in an unfair labor practice. As I see it now, if we get an award that there is an unfair labor practice, the attitude is almost "So what?" As alluded to by Mr. Yacovino, who preceded me, we are engaged in negotiations with the State where they can just sit tight, sit tight, and sit tight. Currently, I have a case before PERC on an unfair labor practice, in fact, a failure to negotiate in good faith, because of the State's failure to move off its zero-offer position in spite of the fact that we have a written agreement from Mr. Kaden - in terms of the agreement that ended the strike that was signed on November 27 - which clearly indicated the State's intention to negotiate in good faith. We have had about a dozen sessions since that time, and, in those dozen sessions, we haven't seen the good faith negotiations. There has been either a refusal to talk about money or a simple answer, "Our position hasn't changed." It's "zero, zero, zero," as Mr. Mason likes to put it. As it stands now, being optimistic, I expect to win the unfair labor practice, but then what? What enforcement is there other than the moral persuasion of having won the case? I think provision has to be made so that these unfair labor practices can be enforced.

DR. LESTER: Is there no provision at all in the law for enforcement?

MR. LACATENA: As far as I know, there isn't.

DR. LESTER: There has to be.

MR. LACATENA: I'm sorry.

DR. LESTER: Yes, here it is. In 34:13A-5.4, it says: "The commission shall have the power to apply to the Appellate Division of Superior Court for an appropriate order enforcing any order of the commission issued under subsection c. or d. hereof, and its findings of fact, if

based upon substantial evidence on the record as a whole, shall not, in such action, be set aside or modified."

MR. LACATENA: My apologies.

ASSEMBLYMAN JACKMAN: Well, then you have a winner in that situation--

MR. LACATENA: Right.

ASSEMBLYMAN JACKMAN: --and I think you ought to pursue it.

MR. LACATENA: It is being vigorously pursued.

ASSEMBLYMAN JACKMAN: All right.

MR. LACATENA: We find another area of difficulty as it stands now: the prerogatives claimed by Civil Service in terms of establishing rules and regulations which they claim have the force of law. We have a collective bargaining agreement, and, if we win awards under the collective bargaining agreement, we run smack up against the Civil Service regulations. Civil Service refuses to have the award carried out if it is in conflict with their regulations.

DR. LESTER: Can you give us concrete examples of that?

MR. LACATENA: Yes. I can give you a concrete example. Our Union had a grievance involving two individuals; they were similar but not identical. In the interviews, it was indicated that they would be hired at a particular step - let's say "step 3" on the guide. On July 1, a wage increase went into effect which, let's say, essentially raised the guide by the equivalent of a step. So, when these people came in, they were at the dollar figure they were told they would be hired at, but the step had been dropped to "step 2." Nevertheless, in the interviews, it was indicated to them that it was expected that the guide would be increased over the summer. So the people were fully expecting to remain on "step 3." We had two cases of this, and we took them to grievance.

We won those grievances, but Civil Service indicated that this was contrary to their regulations, whatever they were when the CS 21s were filled out, or some such, and, as a result, they have refused to carry it out.

DR. LESTER: Was this decision that you won a decision in arbitration under the grievance procedure?

MR. LACATENA: It was a decision that was won under the grievance procedure at Step 3 prior to arbitration.

DR. LESTER: It didn't go to arbitration?

MR. LACATENA: No, it did not. It was won at Step 3, a hearing at the DHE office, and the DHE itself saw the justice of our position and awarded us the grievance. In my discussions with other Unions, I find they are encountering similar difficulties. There is the whole area of the collective bargaining agreement. The things that go into collective bargaining agreements seem to run counter to the uniformity of the Civil Service idea, and, as a result, it seems as though the Civil Service is engaged in a struggle for preservation of its existence, or something.

DR. LESTER: They may be a little worried about setting a precedent if they let you do something.

MR. LACATENA: Exactly, and the loss of whatever authority they have accumulated unto themselves over the years.

Another area which is perhaps even more complex than the previous one I mentioned, but somewhat like it, is the whole area of the statutory authority and limitations of agencies of the State to make policy which impacts on terms and conditions of employment. This has to be more clearly defined. As the law is presently constituted, at least in areas such as education, we are seeing that their wanting to promulgate various rules and regulations appears to be in constant conflict in

what we consider to be negotiable items as their rules impact on terms and conditions of employment. In fact, in the short time that 1087 has been in existence, we have also filed a scope of negotiations proceeding there. In fact, there is a very hot item that we are in discussion with the State on now that could very well lead to a very complicated scope of negotiations proceeding. This one is a really difficult one because the DHE has indicated to us that they consider some of these questions important enough that, even if we go to scope of negotiations and win it, they ultimately appeal to the courts. I am at a loss to make any concrete suggestions as to how this could be cleared up. But, perhaps, in areas such as agencies like the DHE where they claim that specialization is of such a degree that PERC would be incapable of determining just what is scope of negotiations and they would ultimately go to court anyway, some kind of arbitration could be worked out.

ASSEMBLYMAN JACKMAN: When you say that some kind of arbitration could be worked out, would you be bound by it? I cannot understand the thinking of your particular group in the colleges on arbitration and then not being bound by it. What good is arbitration if you're not going to be bound by it?

MR. LACATENA: I think this is the first time I've mentioned it, Assemblyman.

ASSEMBLYMAN JACKMAN: I ask you because, if my memory serves me right, I specifically asked you before if you would be bound by final and binding arbitration, and your answer to me was "no."

MR. LACATENA: Right.

ASSEMBLYMAN JACKMAN: Keeping that in mind, you just mentioned that you would recommend arbitration, and I asked you---

MR. LACATENA: I think we're talking about different

things. I am unequivocally opposed to arbitration, binding arbitration, of disputes in negotiations.

ASSEMBLYMAN JACKMAN: On that basis, if you don't come to an agreement with the other party - and I'm saying this based upon my background in negotiations - you will then have only one alternative, and that is to strike. That is the only power you have, and you have no other power because you're not going to be bound by any third party. The only alternative then is to strike. So your recommendation to PERC then is that, if you're not successful in negotiating an agreement, whether it be for working conditions or what have you, you have the right to strike, is that correct?

MR. LACATENA: Right.

DR. LESTER: Wouldn't this issue of scope of negotiations, under the new law, be handled by PERC?

MR. LACATENA: Yes, it is.

DR. LESTER: I am not quite clear as to whether you want to pull that out of PERC and have it go to arbitration.

MR. LACATENA: Not necessarily. This is something, as I say, that is going to take a great deal of thinking through, but I can foresee, again, a big backlog of scope of negotiations questions, and perhaps some other mechanism within the auspices of PERC, but not necessarily the hearing proceeding, might be worked out. I am thinking in particular of the Department of Higher Education which constantly claims that it is an area of such delicacy and expertise that no one but a member of the field could make any reasonable decisions within it. In that case, we might consider, under the auspices of PERC and within a scope of negotiations kind of thing, some use of that outside expertise in the area.

DR. WEINBERG: I am still not clear, Mr. Lacatena, on your last point, scope of bargaining. Are you saying

that the bargaining unit, the employer's side, should have the unilateral right to determine the scope of bargaining?

MR. LACATENA: No. God, no.

DR. WEINBERG: I asked that because you said to give it to DHE.

MR. LACATENA: No, I don't think that's what I was saying. If that's the way it came out--- No.

DR. LESTER: Let me see if I got some glimmer of what you have in mind. Are you saying that, even though PERC may try and handle it, it is still restricted in handling it because of the Department of Higher Education's rules?

MR. LACATENA: Let me put forth an example: The Department of Higher Education may wish to promulgate a certain rule or regulation which the Union clearly sees as impacting on terms or conditions of employment. It makes its request for negotiations, it is denied, and it files a scope of negotiations petition. We are now discussing one situation with the Department, for instance, but it has not yet reached the scope of negotiations stage. In any case, they would not be satisfied with what PERC did, and we would ultimately wind up in the courts on the issue anyway. Anticipating that this may be the attitude of the employer, certain agencies, perhaps it would be wise to look into some mechanism under the auspices of PERC, within the scope of negotiations proceeding, but expanding it so that expertise of a certain kind could be utilized in making the determination.

DR. LESTER: I can undertstand the expertise part of it, but I am not sure that that could increase PERC's power, whether it arranges for arbitration or makes the decision and then appeals to the court to enforce the decision. I am not clear as to why you think that PERC should arrange for arbitration---

MR. LACATENA: "Arbitration" was a poor word to use. Perhaps I should have suggested that PERC arrange for the use of the expertise that might be available.

ASSEMBLYMAN JACKMAN: Is this the position of the Council of New Jersey State College Locals or the position of the AFT?

MR. LACATENA: I speak for the Council of New Jersey State College Locals.

ASSEMBLYMAN JACKMAN: Just the Locals?

MR. LACATENA: Right. However, as a member of the Executive Council of the State Federation, I can assure you that it's their position also.

ASSEMBLYMAN JACKMAN: They are not for binding arbitration?

MR. LACATENA: They are not for binding arbitration of disputes, no, sir. They are for the right to strike.

DR. LESTER: You differentiate between grievances and disputes of interest or contract terms?

MR. LACATENA: Right. Let me say that I am opposed to compulsory arbitration, which is the term that is usually used, for the settlement of negotiations disputes. I fought for binding arbitration, and will fight to retain it, for enforcement of the contract.

ASSEMBLYMAN JACKMAN: I assume there is no need - and perhaps you will think this facetious - for arbitration under your plan because you wouldn't be bound by it anyway, and I assume that the other party would feel the same way. So basically there is no need for arbitration from the standpoint of negotiations of a contract dispute. There would be no need for arbitration unless you were the winner; unless you got what you wanted by the arbitrator, you would not be bound by it. Is that so, or isn't it?

MR. LACATENA: Well, first of all, I wouldn't be

in favor of the arbitration process. I wouldn't be in arbitration in the first place.

ASSEMBLYMAN JACKMAN: In other words, if you cannot resolve your differences, whether it be a grievance or anything else, do you want the right to strike?

MR. LACATENA: We have to leave grievances out of it. Grievances are within the contract, and, for the enforcement of the contract, that's one kind of arbitration. What I'm talking about is for negotiations, when negotiations break down---

ASSEMBLYMAN JACKMAN: I am talking about a specific instance where, for example, the school board takes a position that they are going to change the class size or increase the hours contrary to your contract. You wouldn't want an arbitrator on that unless you were the winner. If you weren't the winner, you would strike.

MR. LACATENA: No. If it's covered by the contract, it's subject to arbitration.

ASSEMBLYMAN JACKMAN: Say, for example, that the class size was 20, and the college decided to increase it to 30. Let's say they went to an arbitrator, and the arbitrator decided that 30 was a fair figure. Would you be bound by that?

MR. LACATENA: If it were an arbitrable issue under the contract, I would have to be bound by it.

ASSEMBLYMAN JACKMAN: If you had an agreement of 20--

MR. LACATENA: Right.

ASSEMBLYMAN JACKMAN: --and they changed it to 30, and you decided that wasn't right because you had negotiated 20 - we're talking now about a grievance - and the arbitrator agreed that 30 was fair, would you then be bound by it?

MR. LACATENA: I would have to be bound by it, except that there are avenues of appeal through the

courts. Let me say this: As of Monday, I received a letter from the State of New Jersey, and we did receive an arbitrator's award - this was binding arbitration - in a case of sex discrimination.

ASSEMBLYMAN JACKMAN: Have you recourse on that one?

MR. LACATENA: Well, we're going into court in order to have the award enforced.

DR. LESTER: You won the award?

MR. LACATENA: Yes, we won it. We won the case, and I received a letter from Mr. Mason's office indicating that they felt the arbitrator had overstepped his bounds in making the award and, therefore, they were not going to abide by it. I feel that I have no recourse other than to go into the courts.

ASSEMBLYMAN JACKMAN: I hate to do this to you because I'm a Union representative myself. I am a little bit perplexed because I know that I am bound by arbitration. Once I agree on arbitration, it becomes final and binding. Yet you take the position that it is not final and binding on negotiation of a contract. Is that true or isn't it?

MR. LACATENA: Yes. The negotiation of a contract is not covered by the binding arbitration clause in the contract.

ASSEMBLYMAN JACKMAN: I am saying that you don't want it to be.

MR. LACATENA: I cannot conceive of writing a contract in that way where the next negotiation will be subject to binding arbitration.

ASSEMBLYMAN JACKMAN: We are talking now in terms of public employees' right to strike.

MR. LACATENA: Right.

ASSEMBLYMAN JACKMAN: You mentioned policemen and firemen, and you are saying in essence that they shouldn't

have the right to strike because of the public safety factor involved. By the same token, the young people who are going to college and who are going to be denied the opportunity for education while you're out on strike are saying to us, "Why can't they be bound by an arbitrator's decision?" I am asking you, would you be bound by it? If you say "no," it's clear that you will not be bound by an arbitrator's award and that, if you disagree with the other party, the only alternative you want is the strike. Now, if I'm wrong about that, I want you to tell me.

MR. LACATENA: I would like to use other alternatives.

ASSEMBLYMAN JACKMAN: What would be the other alternatives?

MR. LACATENA: The other alternative is not compulsory binding arbitration.

ASSEMBLYMAN JACKMAN: It wouldn't be compulsory or binding unless it was in your favor. If it was in the other party's favor, you would say, "I'm still going to strike." If you won, the other party would say, "You don't get it," and you would still strike anyway. How do we resolve this difference? What kind of legislation can we enact that will take care of these ills. We are pro-working man and woman. I think almost every man up here, even though he may represent other factions, agrees that the working man and woman should get his or her just due. But what you and I might consider just due may not be considered that by someone else. How do we resolve this? Do we get a third party to recommend something even though that may be only a half-way measure? Do we accept that or don't we?

MR. LACATENA: Assemblyman Jackman, I am kind of confused as to why public employment differs from private employment.

ASSEMBLYMAN JACKMAN: We have binding arbitration contracts.

MR. LACATENA: Sure, but you don't have compulsory arbitration of negotiation disputes.

ASSEMELYMAN JACKMAN: Yes, I do, in some sections.

MR. LACATENA: You might in some sections where you find it in your favor. I would say that, in those instances where you have come to that kind of an agreement, it is the result of a long history of collective bargaining between the employer and the union group where they have matured to this point. But that is not the case in the public sector. In the public sector, we're getting screwed, and we have to put a stop to that. The only way to put a stop to that is for us to have the right to strike. There may be a point somewhere down the road where the employer will respect the employees. I invite you to come to the negotiating table and sit opposite Frank Mason and just get told in a million and one ways, all very politely, "No." You cannot do anything about it.

The thing that precipitated last November was when Mr. Mason said, "There isn't a thing we can give you right now, so there is no use talking." I said, "I think you should sit down and continue to talk." He said, "I don't see any reason why I should waste my time talking to you if there is nothing that we can do." That precipitated the strike. You don't get that kind of treatment in the private sector.

ASSEMBLYMAN JACKMAN: In all fairness - I'm not going to take anybody's side because I'm a pro-labor man; I think my colleagues recognize that - perhaps Mr. Mason is governed by a budget. In most cases, you must realize that the legislators are the ones that set the budgets. We approve the budgets in the State. I am - and I think my colleague, Bob Littell, is - pro-

working man and woman, and I think most legislators feel the same way. Like everyone else, we have to draw the line too. There is a saturation point that you have agreed to. Tax structure-wise, we are going through that right now in our State. We haven't got the answer right now to the tax program. Now, somewhere along the line - and I am very emphatic about this - if people cannot agree in principle, somebody should be able to bring the two parties together. Now, you may not be able to get all of what you want, and Mr. Mason may not like what we gave, but, somewhere along the line, we are going to have to bring the two sides together. I think you are going to have to be guided by that.

Basically, when we try to set up legislation, we cannot include some employees and exclude others. If we do that, soon the policemen will say, "How about us?" Then the firemen will say, "How about us?" and it will continue down the line. When we pass legislation, it has to cover everybody. In doing that, we want to be fair.

I see Mr. Don Philippi sitting in the back of the room. He represents 15,000 or 20,000 people in the State. He recognizes our position. We are trying to resolve this. My colleagues on the Commission, on both sides, understand our problems. How do we resolve this if we don't have compulsory arbitration in the public sector? You have to remember, you're a different breed of cat.

MR. LACATENA: In the public sector, compulsion will come as it has come in the private sector when the Unions in the public sector get enough strength so that they command the respect of the employer. You know, to some degree, it is a power relationship.

We don't have a right to strike law. They say that it is even illegal in the State. But we do have

strikes in this State. We have them by public employees because, without the right to strike, the public employers feel secure in their position to not have to negotiate fairly with the employees. Occasionally a miscalculation takes place, and then you have the disruption of the service of which you were speaking.

You talked about negotiating in good faith. Assemblyman Jackman, I know you were one of the people who voted for 1087.

ASSEMBLYMAN JACKMAN: I was one of the sponsors.

MR. LACATENA: Right. I know of your pro-labor proclivities, but how do you explain to me, when we are in the midst of negotiations with the State of New Jersey, that I can read in this morning's paper that the Legislature has decided that there will be only increments for the public employees, $2.5 million for certain benefits, and nothing else? What good are the negotiations that I have been sitting through all of these months if the sponsors of the legislation that says that we are to negotiate ultimately circumvent the negotiations with this kind of thing?

ASSEMBLYMAN JACKMAN: I'm going to give you a very quick answer: You do your homework like I did. I voted for the income tax in order to provide the wherewithal for you to get the increases that you are entitled to. Now, if the money doesn't come in, we cannot spend it; we cannot have deficit spending in this State. We are governed by a Constitution, and we cannot have deficit spending. Now, you do your homework; go back and tell your people to vote for an income tax. In that way, we will have the money to expend to make sure that the teachers and all the public employees get their just due. Until that happens, we have to be guided - and I think you recognize this - by the amount of money that comes

in. Unfortunately, you're the whipping boy; I'm going to be honest with you; I'm not going to con you. The people who work for a living today within the state structure and the people who have to pay the taxes say, "We are not going to spend any more; keep the status quo." We are either going to have to cut back on the number of people or give the increases and cut back on the services. We are going to have to do without something. These are the things we are up against as legislators.

We have to put our necks on the line. The people are looking at our records. Nobody is kidding the public today; you know that. They want to know what you've done and how you're spending their money. If I said to them, "By the way, the college teachers are entitled to a $30,000 salary base---

MR. LACATENA: I'll take it. (Laughter)

ASSEMBLYMAN JACKMAN: I was just using that as an example. But, if I was dopey enough to vote for that, I wouldn't be around for a second term.

DR. LESTER: Thank you very much, Mr. Lacatena.

MR. LACATENA: Thank you.

DR. LESTER: John Brown.

J O H N J. B R O W N: My name is John Brown, and I am Secretary-Treasurer of the New Jersey State AFL/CIO. I am here at the request of your Executive Director, Dr. Weinberg, who has asked our views concerning five items relative to the New Jersey Public Employer-Employee Relations Act of 1968, as amended.

We were asked whether changes are necessary to insure that the statute is a more effective tool for encouraging the impartial, timely, and effective resolution of negotiating impasses in the public sector.

The present law provides for mediation and fact-finding which are effective tools but which cannot, of and by themselves, assure resolution of impasses. The

AFL/CIO believes the Legislature should grant public employees the specific right to strike. We believe that this would encourage employers to reach timely and effective resolutions of impasses.

We deplore the present situation wherein employers, with impunity, feel that they can reject proposal after proposal for the improvement of wages, benefits, and working conditions. We feel the lack of a right to strike creates such an imbalance between employers and employees that effective negotiations are difficult and, in some cases, impossible.

We especially deplore the action of those employers who resort to injunctions to restrain job actions and work stoppages and who, with an apparent lack of concern for those employees and their families, permit the jailing of public workers. There is little doubt that this so-called solution to impasses is bad.

We believe that chapter 123, P.L. 1974, which provides for PERC's establishing time frames for the progress of negotiations and the utilization of mediation and fact-finding has enhanced the procedure. We also believe that the State's assumption of the cost of fact-finding has moved this role from a matter between the parties to an exercise of state intervention which should emphasize to the parties the interest of the people in a fair and equitable settlement based on facts. Nevertheless, the lack of a right to strike leaves the final solution in the hands of the employer and, therefore, negotiations are unequal.

ASSEMBLYMAN JACKMAN: Excuse me. I asked this same question of the previous speaker. If there was, within the structure of PERC, that there would be final and binding arbitration for both sides, do you think that would be acceptable by the employees of the State?

MR. BROWN: If they had the right to strike, and

as a person who has been a representative in both the private and public sectors, I would have to say "yes," if that balance was there. You know, we have the little lady who holds out the scales---

ASSEMBLYMAN JACKMAN: The scales of justice.

MR. BROWN: That's what they call it, but, when it comes to the working man, I have my doubts. If that balance was there, the right to strike, I think the solution of either compulsory or binding arbitration would be more palatable to the public employees and to the public employers also. They would have to face, as the private employers do, their responsibilities to the workers.

ASSEMBLYMAN JACKMAN: Thank you.

MR. BROWN: You asked us whether the statute should provide different methods of resolving disputes in public employment, based on an examination of the laws and experience of other States.

Our review of those matters indicates that anti-strike laws are unsuccessful and experience indicates that they are merely punative and seldom resolve issues. In those States where public employee strikes are permitted, no appreciable harm has resulted, and employers and employees enjoy a much more respected bargaining relationship. In this area, the laws and experiences of other States, as a whole, are no better or no worse than New Jersey's. In most situations, they are of such limited experience that drawing conclusions other than those we have stated would only be self-serving.

Concerning the utilization of various forms of arbitration, no conclusions can be reached. For some it works; for others it does not. But one point is clear: Arbitration is not negotiation, and settlements are generally more unsatisfactory to the parties than pure negotiations with the right to strike. However,

arbitration is preferable to the indiscriminate jailing of workers. We are opposed to both, preferring the right to strike.

We were asked our view on whether various functional groups of public employees should be differentiated in dispute settlement procedures based on the "essentiality" of their services.

To our knowledge, no one group of public employees are in so essential a position as to deny them the right to strike in a negotiations situation. We realize, of course, that some services are more essential than others but we know of none which could not endure a strike. Not one department or division of public employees truly represents all the people; it is total government that is representative of the people, whether that government be national, state or local. One can compare the position of government to the human anatomy; the body does not die because one arm ceases to function and government will not cease to perform because one section of that government is in collective bargaining with a department of public employees. The fact is that, except for the most callous employer, public employers would have to weigh their negotiation positions based on each individual situation and public employees would have an equal responsibility.

We are aware of the hand-wringing in school situations of the "harm" to children and their use as "pawns." We do not believe this for one minute. Children are out of school all summer and we know of no harm. Inconvenience, perhaps, but harm, no. The ultimate good of true collective negotiations in the United States far outweighs any damage of a strike or all of the strikes which have taken place.

The fourth question raised is whether the existing structure and composition of the PERC Commission should be changed. If you mean should the

legislature consider releasing the partisan members from the conflict-of-interest statutes so that they may fully participate in the working process of the Commission, our answer is: "Yes!". The balanced voting of the partisan members is sufficient protection against conflict and is further balanced by the presence of three so-called "public" members. We believe that, if there is any change, it should be to reduce the number of public members to one inasmuch as there is no assurance of the neutrality of public members.

In fact, just the opposite has happened. Of the eight so-called "public" members appointed since PERC was formed, five were management-oriented and four were not only management but were also in management labor relations. All three existing public members represent management in labor relations, although one is semi-retired. This is the imbalance to which this Study Commission should address itself. If anything, safeguards should be built in to the selection and appointment of public members to prohibit their being from management in either private or public employment. It should be noted that no public member, to date, has been an active labor organization official during the term of his appointment.

Lastly, we were asked whether any particular provisions of the statute should be changed or new provisions, added.

We support:

1) The right of public employees to strike.

2) The enactment of Union Shop and/or Agency Shop provisions.

3) The exclusion of partisan Commissioners from the conflict of interest statutes.

4) The reduction in the number of public members of the Commission and a prohibition on their being management people, public or private.

5) The extension of the provisions of this law to employees in bi-state or multi-state agencies, authorities, etc.

6) A prohibition on the fining and imprisonment of striking workers.

7) An opportunity to be heard by the responding party before an injunction can be issued in a labor dispute.

We consider our positions outlined here to be advantageous to the public collective bargaining process and therefore in the best interest of the state, its subdivisions, and its people. We would oppose any reduction in the rights of employees or their organizations which, even with the improvements under Chapter 123, are still less than equal at the bargaining table.

We thank you for the opportunity to appear here today, but hope that our appearance will not indicate support for or opposition to the results of the work of this Study Commission. Nor would we want it misconstrued that any legislation containing favorable action in the areas we have outlined to have our support if it contains restraints on public employees and/or their organizations. Any legislative product of this Commission will have to stand the test as to whether or not it is in the interest of the state, its people, and its employees.

For the most part, we have viewed Chapter 303 of the Public Laws of 1968 as progressive legislation. It did not come as the result of a Study Commission although such a commission existed at the time. Its product was unfeasable, unworkable, and gave to employees more limitations than benefit and could hardly stand the light of day.

Chapter 123 of the Public Laws of 1974 improved relations in the public sector and closed some loopholes many of us thought did not exist in the original law. Despite several legislative hearings on PERC between 1968 and 1974, chapter 123 was not the product of a study commission but of some sound judgments and principles of this administration supported by the Legislature.

We would hope that this Commission not recommend change for change's sake, or change for unnecessary experimentation, or change to inhibit, deter, or regress the present state of public negotiations.

On the other hand, we hope you will recognize the imbalance and frustration derived from that imbalance on the part of public employees and their organizations and seek to recommend change which will improve the equality of the parties.

Thank you, gentlemen.

DR. LESTER: Are there any questions?

MR. APRUZZESE: Mr. Brown, as to the composition of the Commission, what would your reaction be if the Commission were to be composed of people who would be full-time and could have no other outside interest? In other words, a man would have to sever all of his contacts no matter what he did formerly, whether he was a labor union official, a management representative, or a lawyer representing the Union or management, and he would have to serve full-time as an impartial member. Would you find that type of arrangement acceptable?

MR. BROWN: Yes, I would.

MR. APRUZZESE: You would find that acceptable?

MR. BROWN: I'll tell you why, Mr. Apruzzese. I was involved at the time when the attorney, Thomas Parsonnet, who was deeply involved in the formation of PERC and did a tremendous amount of work not only in the area of the public employee, but also in the area of the

private employee, was removed because of a conflict of interest, even though he was not representing, at that time, my Local Union in the case before the West Orange Board of Education. Since then, previously, and at the same time, we had situations where other members of the Commission had what you might say were outside conflicts. Yet, there were no charges brought against them, and they were not asked to resign as was Mr. Parsonnet. I think that, if you have someone with neutrality and with expertise, you will have come a long way.

MR. APRUZZESE: I have one other question. I meant to ask the previous witness this same question, but I didn't have the opportunity, and I would like to have your reaction to this. I have heard very responsible Unions and union officials say this publicly and write about it. In the public sector, they are not so certain they should be pressing for the right to strike for the following reasons. If you'll listen to me, I would then appreciate your reaction because it will be interesting to know the viewpoint of an organization like your own and like that of the previous speaker. I have heard some of these responsible union officials say - incidentally, these are people who might be considered very militant in attempting to gain rights for public employees - that they have found that, where they have struck in many situations, they haven't really been able to bring much pressure to bear, and, indeed, in many situations, they have done nothing but incur the dissatisfaction and the wrath of the public. For example, with colleges, where tuitions are charged in order to grant higher benefits or higher wage rates or to do some of the things that the Unions would want, this would mean a hike in tuitions. As Assemblyman Jackman has said, we have lots of trouble these days getting more money. The State of New Jersey, for example, has tremendous difficulty in getting

referendums passed for school boards of education. The vast majority of these that are put up for public referendum are defeated, my point being that the public is concerned about added money; consequently, they are very unhappy about added expense. These responsible Unions and union officials that I am referring to have said that, in situations like that, where there have been strikes against colleges or schools, they think that perhaps a good deal of harm has resulted in many of them, and they are not too anxious to press this issue.

As an alternative to that, of course, you have the possiblity of arbitration of one sort or another to resolve the problem.

But my specific question to you is this: Have you given thought to this type of comment by what I consider to be some very responsible Unions and union leaders, and what would be your reaction to that?

MR. BROWN: I would maybe have to take you back to the second World War. You may have heard about it; it was in the papers at the time. Let's take the public even previous to that. My attitude isn't one of "the public be damned," but the public has never, never been satisfied with the Unions' right to strike. The history of American labor was not based on a peace-loving attitude of workers striving to attain conditions by throwing their arms around the employer, nor was it based on the employer accepting labor as we know it today. We only have to go back and see the hardships and the blood. I won't get into the history of labor, sir; you know it better than I do.

The public charges itself, as we might have in our many municipalities, by saying that responsible union leaders do not take a liking to the right to strike. Let me say to you unequivocally: No responsible union leader would ever deny a worker the right to strike. No

responsible union leader that I have ever seen - and I've been around a few years in the business; I'm going on 50 - would do that.

When you talk about added expenses, I think you have to accept the fact that some of the fringes that the public gives to the b o a r d s rather than to those who are brought in to teach the children have brought this about rather than salaries, pensions, or benefits to the workers, the instructors, and the professors.

Let's bring out the fact that, because New Jersey has never really come out of many of her recessions and because of the - and I might say this as a union leader - anti-business attitudes that have developed within the State, some of the environmental laws that have stopped business from coming into the State, we have chronically suffered the highest unemployment rate in the nation. When the rest of the nation was talking about 4 percent unemployment, we were talking about 7 percent. While the rest of the nation is now talking about 8 percent, let me assure you that we are somewhere between 12 and 15 percent, if New Jersey wants to bring out the true figures of our unemployment picture. I say that with all due respect to Joseph Hoffman because he does not know the true figures. He does not know of the people who have gone off the unemployment rolls; he does not know of the leaders of households who have accepted part-time jobs.

So any time that you talk about added expenses, it is because a man is out of work, he has started to suffer, and he is watching his taxes go up. I know of no man who ever complained of paying the price of a pound of butter as long as he was working and had the money to pay for it.

When you say, "a good deal of harm," a good deal of harm to who? To the public?

MR. APRUZZESE: No, a good deal of harm to the

Union and the people who are on strike. Let me rephrase this.

MR. BROWN: I wrote it down, and I tried to answer it as you asked it.

MR. APRUZZESE: I understand. George Meany is quoted in the Labor Law Journal of February, 1972, as saying that, "It might be better for employees if organized labor moved beyond the strike and considered alternatives such as binding arbitration."

MR. BROWN: Oh, Vince, read again what George Meany said. He said that they already have the right to strike, the inalienable right of every worker to stand up and say, "I quit if you don't treat me like a human being and if you don't give me the conditions." He never said they didn't have the right to strike. He said there are better ways than striking. We'll never deny that.

MR. APRUZZESE: But here is the point: The point is that, in the public sector, one of the problems that our Commission is studying is whether there should be some finality to negotiations. Currently, there is no mandated statutory basis for arbitration of any type, and there isn't the right to strike. One of the issues that we are charged to explore is whether there should be some kind of finality.

I noticed with great interest that, in your statement, you clearly indicated you would like the right to strike. You said, "However, arbitration is preferable to the indiscriminate jailing of workers." You did say that you oppose both but prefer the right to strike and that arbitration is preferable to what we have. I fully understand when you say you want the right to strike. That is your best alternative as you see it. But, if there is an advantage toward binding arbitration, as suggested by George Meany, if, in the public sector, because we have the problems of running government--- You know,

the State of New Jersey cannot pick up its Legislature and move to Pennsylvania.

MR. BROWN: It might help the people of New Jersey. (Laughter)

MR. APRUZZESE: Okay.

We cannot take our court system and move it elsewhere; nor can we do that with our institutions, etc. The point I am trying to make, John, is that, in the private sector, there are certain options available to employers. They may decide to move or do other things. So we have a different animal. In searching for some better way, if there is a better way to handle these problems, and to tackle the question of finality, that is how arbitration comes into the picture.

To follow up on the question concerning what I say are some responsible Unions, they get hurt by the strikes, not the people, not the students, but the very Unions that are striking and the people they represent. They become more vulnerable to harm, if you will, by this expedient than the schools or the students because they incur the wrath of everybody affected by it.

MR. BROWN: Vince, I have to say in all sincerity that, if a man joins a Union, he doesn't want to incur the wrath of the public. He has to because he has a problem, and he has to incur their wrath to bring it to the attention of the public. I think, before we can ever have binding arbitration without the right to strike, we have to take the public employee out of the role of servant. This was given to him since the days of our ancestors from England, Italy, France, and everywhere else. They came over here, and the public employee became a servant, and he has been known as a servant of the people. Yet, he has faced over the past few years political and economic conditions that he never had to face before. Let's take, for instance, lay-offs. You talk about the

responsibility to the public. Yet, we have elected officials today laying off policemen and firemen. They say they don't have the monies, and they are laying them off. So where is their feeling of safety for the public?

You have court injunctions; it's automatic. A judge goes to court, and a good-looking, young lawyer can go in there and get an injunction slapped on so fast that your head would spin. This was true in the City of Newark when the teachers went to jail. My God, a rapist gets out in less time than what these teachers served in prison. It's ridiculous. Woodbridge: they went to jail. Long Branch: they went to jail. Is this the only answer in a democracy: to jail a public employee?

My answer to you is to take them out of the role of public servants. Make the public employee just like a private employee; give him the same benefits and the same rights, and I think you will find the same conditions of collective bargaining can be worked out in the long-run.

ASSEMBLYMAN LITTELL: John, I think you know I voted for the original bill in 1968, and I voted for 1087 this time around. I have always tried to be fair and impartial in these matters, and I think you have to recognize that we are really talking about a relief valve. That's all the strike is, a relief valve. I have asked this question before, and you may have heard it: How do you feel about the strengthening of the court position if an impasse is reached in the proceedings? This is the language in the Oregon law: ". . . equitable relief including, but not limited to, appropriate injunctive relief." So it wouldn't be automatic when that good-looking, young lawyer went into the judge and said, "These people are in violation; order them back to work." And, if they don't comply, they are going to be in contempt of court. There would be some latitude within the judge's power. How do you feel about that?

MR. BROWN: If we're talking about courts, it's pretty tough. I think many of us recognize that too many of our courts have no knowledge at all of labor negotiations. In fact, many of the people on both sides of the table, whether you're talking about private management people or our own labor people, and especially public people, have no knowledge. Some of them are elected every year and step into labor negotiations. If you are talking about some kind of court system that would look into the problems, such as a workmen's compensation court that specializes in the area, or if you are talking about unemployment where there would be certain areas where you could go in and get yourself checked out, I think it bears looking into. Too many times we have found that courts look very unfavorably upon the labor movement. I don't think we could ever, down through the years, say that we have received what is known as justice for labor people because it is not there. Anything we have gained - and this is not meant to be facetious - has been gained through the political field, through the Legislature. We never gained too much through the courts of our land until it was adopted by the Legislature.

ASSEMBLYMAN LITTELL: You're complaining about the fact that, when you go into court, the only result is that the judge looks at the case, orders you back to work, and says that, if you don't go back to work, you will be in contempt of court, and he'll lock you up.

MR. BROWN: Right.

ASSEMBLYMAN LITTELL: What we're talking about is that people are frustrated. When they get to that point--

MR. BROWN: They're going to strike.

ASSEMBLYMAN LITTELL: --they don't want to provide the services that they are getting paid for. How do you stop that kind of frustration? Find us a relief valve.

Tell us how to build one, and we'll build it. That's what we want. We don't want to inconvenience the worker and we don't want to inconvenience the public. All that we are trying to do here is find a system to do that that is fair and equitable to both sides with the least amount of inconvenience to everybody involved.

MR. BROWN: If you are talking about a relief valve, again I will have to revert back to the principle of the right to strike. It would generate the pressure in that relief valve if the public employer knew in the beginning - and I think I mentioned this in my statement - that there would be individual negotiations. Let me revert back to my old days. My Union represented close to 250 plants of different type industries within the State. I could not negotiate the same contract in breweries that I could negotiate in a department store. The wages might have been the same, but conditions were different. The employer always knew in negotiations that he was faced with the worker's right to strike, and it brought a new light to it. They sat down and they listened. I see myself so many times before the public employer a year and a half or two years, looking for a contract or looking for some kind of settlement, and being completely ignored. The private sector knows that they don't have that. I think that, if they ever realize that they have to sit down and face the music and then go from there, I would say that I'd return to the Legislature.

ASSEMBLYMAN JACKMAN: We're dealing with two different types of cats. You're talking about a situation where the public themselves, who are members of my Union, are the ones who criticize, unfortunately, the policemen, the firemen, and the college professors because, while they are out on strike, their youngsters are not getting an education. Then they look to us; we're the type cat they come to: the Littells and the Jackmans. We're

part of the legislative process. They say to us, "Now you come up with the answer." The only alternative answer we have is a tax structure. Money, in almost all cases, is the issue behind strikes with some exceptions. With very few exceptions, it is the monetary gain. We don't have the money to give to the college professors, the policemen, or the firemen. Somewhere along the line, there is a breakdown. I think you'll agree in principle that you wouldn't expect the firemen to go out on strike and let the town burn down on the basis of the difference between a $500 increase and a $750 increase because they had the right to strike for the additional $250. We're talking about the wherewithal to put it together.

I agree with you in principle that sometimes it becomes frustrating, even for the college professor, who has the educational background, and he may be making less in remuneration than some of the people working in my industry. My people working in the manufacturing of paper get $10 to $12 an hour with no college degree or anything of that nature. Consequently, the frustration is there.

The biggest complaint that may come may be from the individuals who have to pay more in taxes in order to pay for these services. They will become very critical, and they'll look to Bob Littell and Chris Jackman and say, "Hey, wait a minute. You're down there representing us. Keep that budget down."

Now, you're in here fighting for a just cause, and I think they should be truly represented. But what is the answer if, for example, you have an impasse in the public sector? For argument's sake, we'll say that the public themselves say, "Hey, we just knocked down that budget. Don't increase it." In knocking that budget down, it meant that you wiped out the increases for the teachers. Somebody with some common

sense has to come back and say, "Wait a minute. Instead of $100,000 being cut out of the budget, the recommendation now is that only $25,000 be cut." So a half a loaf of bread, in essence, is now given to the teachers as compared to nothing. The other alternatives would be that they would strike or that they would be bound by the decision of an arbitrator.

Unfortunately, John, we cannot put the public sector and the private sector in the same category. In many cases - and I don't mean to be facetious when I say this - there are some conditions that the public sector enjoys today that we don't enjoy in private industry. For example, in many cases in the public sector, you can retire after 25 years of service. In the private sector, you have to wait until you are a minimum of 55 or 65 before you can get your retirement from the pension fund program. So, even though the public sector was downgraded at one time, today that job has become attractive enough that an awful lot of people are aspiring to those jobs.

How do we keep it competitive, taking care of the people that we represent and you represent, and, at the same time, be fair to both sides? Now, I was against seeing the school teachers in Newark go to jail when I felt that the board of education didn't truly make an effort to resolve the differences. We are saying here that we are going to try to resolve those differences, and we are going to give you legislation and the enactment of laws that will enhance your position, but, in doing that, you are going to have to be bound by some criteria, namely, binding arbitration. Now, you heard the policemen and firemen say that they would be bound by it. Now, once they have it, if the other party - the municipality or the State - does not comply, those people should go to jail or be held in contempt, or the right

to strike should be given to those individuals. On that basis, I think maybe we could resolve it.

John, you know my position as far as labor is concerned. I think that the public - and I'm talking about all of the public, union-minded people and people who are not members of the Union; they're the ones who are paying the freight for the public employee - is saying, "Wait a minute; they cannot strike." If they cannot strike, at least give them something so that they don't strike; don't just say, "No, you don't get anything." This is the frightening thing.

MR. BROWN: Chris, I think I answered that in my statement, and I agreed with you before. I think that, if the public employee had the right to strike, he would find this monkey on his back, binding arbitration. You have already heard the PBA say today that they would accept binding arbitration.

ASSEMBLYMAN JACKMAN: I said that.

MR. BROWN: You also mentioned the firemen. I don't know how long the firemen might continue. I know they are going into a convention in June with their backs up, and they may no longer accept it. I think, if they had the right to strike and negotiations started, you would find binding arbitration palatable. You have it, and there are many contracts where I have it.

ASSEMBLYMAN JACKMAN: Yes, I have it.

MR. BROWN: I'm not fighting you on it.

When we talk about monies - and, again, going back to the days when the public employee was classified as a servant, and that's all he was - let's take into consideration what happens to a company when it faces a contract. It goes out and borrows monies.

What is the private debt? Let me put that to you right now. What is the private debt of all of the utilities and the private business that we have in the

State of New Jersey? What is that compared to the public debt? We have a great State here. We have $7 billion worth of assets. To have the State say that the public employees will not get the raise because - period--- Why not set aside for the college teachers? The State said to the college teachers, "We do not have the money." Why couldn't that thing have been settled with money, let's say, put into escrow? If it had been settled, the monies would have been there. Are we so afraid? Take GM: What happens when General Motors has a problem? It goes out and borrows monies. What happens when RCA has a problem? They are big, competent, and known companies. Do you mean that New Jersey isn't?

ASSEMBLYMAN JACKMAN: John, by Constitution, we cannot have deficit spending here. You know that. We are bound by a Constitution. It says that we must bring in enough money and spend that kind of money. Now, we have to raise that kind of money.

MR. BROWN: This is a study commission. Why not review the Constitution?

ASSEMBLYMAN JACKMAN: Wait a minute. You have an ally. I am not bound by the fact that we shouldn't have the right. Right now - and I think almost everyone in this room will agree - if you put an income tax on the ballot in the State of New Jersey, I'll tell you what the vote would be, and I'm willing to stake my life on it. It would be something like 85 to 15 percent against an income tax. You know that. Forty-one of us took a chance; we voted for the income tax. We saw the logic to it. We felt that the people who are making the money should pay it rather than those who are not. We were criticized up and down this State, and I believe there are going to be a lot of strange faces here come the next election because people don't want the tax. The

same goes for the boards of education. I think about 347 knocked down the increases. Now, I don't say it was fair. I don't think it was right any more than I think the college professor should go with his hat in his hand. I think we have to justify these things.

Let's say, for argument's sake, that they want $1000, and we can only offer $500 or $750. Somewhere along the line, somebody has to be bound by the $500 or $750. If they say, "No, it has to be $1000," where do we get the $1000. We would have to go back to the same public again, and the public says, "No, you're not going to get it." Where do you draw the line?

MR. BROWN: Where do you get it in the private sector when you bring in arbitration?

ASSEMBLYMAN JACKMAN: Once you have arbitration, the public has to be guided by that too. The public says, "Hey, wait a minute. We're not going to give that professor $750. We're not going to give him anything." Then that public employee should have the right to strike and remove his services. If you are asking me, as an employee, to be bound by arbitration, or mediation, or whatever phrase you want to use, and I don't accept it, then I am doing a disservice. By the same token, the employer should be guided by the same thing. If he says, "No, I'm not going to give it," then I think the right to strike should be granted. But, if they don't give them anything, then I say that somewhere along the line, they have to fish or cut bait.

MR. BROWN: And I say the only way to do it is to give the public employee the right to strike and let him go in with equal rights when he faces that employer, which, right now, he does not have.

ASSEMBLYMAN JACKMAN: I'm talking about law right now, John. You and I are in agreement on this basis. I say to you right now that the public themselves - and that

includes an awful lot of our own people; our own people sometimes forget; they look inside their coat, and the label doesn't say "union"; it says "Hong Kong", and I get a little worried about that - have to be educated to the effect that somewhere along the line, we have to truly give them what they are justifiably entitled to. If you say the only way they can get it is to strike, then I am afraid we are going to have some real problems. I'm not talking about me, and maybe not Bob, and maybe not some people sitting at this table, but the public themselves are going to say, "No way."

The frightening thing is what happened in this State, John. Three hundred forty-seven school budgets were knocked down. I think that was atrocious. I think it was unfair to the poeple who had dedicated their lives. In fact, in my book, I think the average school teacher today is underpaid.

MR. BROWN: You're talking about an economic condition that exists today that hasn't existed since the days of the Great Depression. I think you have to take that into consideration when you talk about the school budgets being knocked down.

I think you also have to take into consideration that the public employee, from the beginning of this country, never had to worry about being laid off; he had something going for him. Today he doesn't. Today he is faced with a lay-off, so he is entitled to the same rights. He is being told that his job is no longer secure.

ASSEMBLYMAN JACKMAN: John, you'll get no argument from me.

DR. LESTER: Are there any other questions?

ASSEMBLYMAN LITTELL: John, I asked you about a relief valve. I'd like you to think about this. You said that, over the years, you have made more progress with the Legislature than you have in negotiations or in court.

MR. BROWN: I didn't say "in negotiations." I just said "in court."

ASSEMBLYMAN LITTELL: All right.

MR. BROWN: Name a labor judge who was appointed that you know of.

MR. APRUZZESE: Arthur Goldberg to the U.S. Supreme Court.

MR. BROWN: That's one.

ASSEMBLYMAN LITTELL: The point is, John, that we have a good public employees law in the State of New Jersey, and with that we changed the philosophy. I can remember in 1968 they wanted me to co-sponsor a bill. I said, "No, I'm not going to co-sponsor that bill." Do you know what that bill was? It was a minimum salary bill for teachers. They put that in every year, and they put it in for a year or two after that. They recognize now that they have the right to negotiate. I said, "I'll vote for the right to negotiate, but I'm not going to also vote for a minimum salary bill." We would be g i v i n g them the right to negotiate and then turning around and saying, "That's what your salary is going to be," and that's contrary to the thinking of allowing them to negotiate.

John, you speak of an agency shop. That's an item that is negotiable. You can negotiate that with your employer if you want to. Why do you have to come to the Legislature and say, "We need that as legislation"? Why do you have to come to the Legislature? That's a negotiable item.

MR. BROWN: For the same reason that the banks come to you and say, "We want an increased interest rate." The banks of this State went on strike against the people, and you gave them the interest rate. We come to you for an agency shop because we know that the only way we can get an agency shop is through the Legislature. Our public

employer will never give it to us because it would take away the little game he plays with the public employee, and he has played with the public employee for years. You show me anyone who will give you the agency shop.

ASSEMBLYMAN LITTELL: The point is that you used to get everything done legislatively; now you are getting a lot of things done by negotiating.

MR. BROWN: Only through the Legislature. You gave us the right; you gave us the authroity.

ASSEMBLYMAN LITTELL: Through the legislation?

MR. BROWN: Right.

ASSEMBLYMAN LITTELL: But you are getting a lot more done that way than you would by getting special bills passed, and I think that is fairer to everybody involved, and it takes that business into the sector where it belongs. It belongs at the negotiating table and not in this Legislature.

MR. BROWN: I agree with you.

ASSEMBLYMAN LITTELL: All I am saying to you is this: Help us find and build a relief valve that will solve our problems. I don't think the right to strike is the absolute answer. I don't think that it is necessary. I think there are other ways, and I think you have to start thinking of other ways because we need help in finding the solution to the problems.

MR. BROWN: Until you can make the public employer sit down and recognize the public employee as a working person - not as a servant, a public employee, who has a lifetime job - we have to have the right to strike. We have to be in the same position as others who can walk in and say, "You cannot stall us for two years, and you cannot, after we win in arbitration, go into the courts so that we won't know for another two or three years whether we have won or lost." You have to be able to say to the public employer, "You are faced with an

alternative. Sit down and bargain with us in collective bargaining or, when we have reached an impasse, we will go out."

ASSEMBLYMAN LITTELL: But I think we can find a way, and I think we can make this the best law possible.

MR. BROWN: We look to you for it.

ASSEMBLYMAN LITTELL: We will need your help. I don't think you should take an arbitrary attitude that the only answer is the right to strike. I think you ought to help us find the alternatives because I think that, when you help us find the alternatives, you will help us tell those employers just as we originally told them that they had to sit down and negotiate. I caught hell from a lot of school board members and a lot of mayors and councils--

MR. BROWN: It did generate a little heat.

ASSEMBLYMAN LITTELL: --who said they didn't want to bother doing that. They didn't want to waste their time sitting down to negotiate with the people who worked for them. I told them that I felt that was an obligation they had. I thought they should at least know the employees' names, what their jobs were, what they were doing, and what they were getting paid for. I think it belongs there at the local level, not the state level. We shouldn't be deciding what the teachers will be paid. It should be decided at the local level.

MR. BROWN: I fully agree with you. As I said before, the greatest relief that we have ever had, the greatest fairness that has ever been given to the public employee, has been through the Legislature. There is no question about it.

ASSEMBLYMAN JACKMAN: Thank you for your presentation, John.

DR. LESTER: Thank you, Mr. Brown. We appreciate your coming here.

Mr. Zazzali of the New Jersey State Bar Association has submitted a statement for inclusion in the record. (See page 7 X.)

Mr. Kostura.

R A Y M O N D K O S T U R A: Mr. Chairman, members of the study commission: My Name is Raymond Kostura. I live at 634 Lalor Street, Trenton, New Jersey. I am married, a father of two children, a life-long resident of Trenton, and a florist by profession. I am also an elected Democratic Committeeman in the South Ward, District S-9, the Vice-President of the South Ward Democrat Club, and Chairman of the Recreation Committee for the South Ward Civic Association.

I welcome the opportunity to speak before you today regarding the right to strike by all public employees. I wish to express to you the viewpoints of a concerned private citizen and those of a very active civic association, the South Ward Civic Association, Trenton, New Jersey.

Perhaps the most significant development in industrial relations during the past decade has been the rapid growth of unionism and collective bargaining in the American public service. With collective bargaining comes the possibility of strike. That's what it's all about. Should the public sector have the right to strike?

In many cases and in most jurisdictions, the public sector strike is either inappropriate or illegal. In the private sector, the strike is an economic weapon, aimed primarily at the employer's vulnerable spot, his pocket-book. In the public sector, the public employee is a unique person by the fact that he or she is both an employee and employer at the same time when employed by the municipality in which he or she resides. By the last statement, I mean that a public employee is a taxpayer.

Theoretically, if granted the right to strike, he or she would be striking against himself or herself, because he or she is also a recipient of the services performed. Striking against yourself is rather ridiculous.

In the public sector, the strike becomes a political weapon aimed at the electorate to bring pressure to bear on the city through the inconvenience that a strike forces on a long-suffering public. It should be pointed out at this time that a government does not operate on the basis of a profit motive and, in most cases, is able to pass any wage increase along to taxpayers in the form of higher taxes. The right of public employees to strike would promote one-sided collective bargaining contracts favoring Unions. Where, gentlemen, is the balance of power? Moreover, since most government services are essential in nature, any interruption in service due to strike could generate intense public pressure upon political leaders to settle the dispute at any price.

When addressing ourselves to the right to strike by the public employee, we must look at the total impact that it has on municipal, county, state and federal governments. It goes beyond the President, Governor, County Executive, Mayor, City Council and the individual Unions; it goes to the city's people, the taxpayer and the public employee.

The reason for this is the kind of services involved: police, fire, education, and health services which are vital to the welfare of the community. If these services are withheld, the potential for danger is present. This is also true at a state and federal level: institutions, prisons, hospitals, and military services. It is inconceivable to me that the U.S. Armed Forces would be permitted to go on strike.

Another issue in the public sector, somewhat more difficult to resolve, is that top management is elected

by the people and put there in order to effectuate public purposes. Who is really running the city? The Department of Public Safety? The Department of Sanitation? The Board of Education? Is it the people in a democracy, or is it the public employee Unions, compelling government to do for its purposes rather than those of the people?

It is not that I am, or the civic association I represent here today is, against public employee Unions or the right of public employees to bargain collectively. It is a very important fact to the people of this city that we know that services will not be curtailed. An example: If Trenton public employees were granted the right to strike, the most severely curtailed areas would be safety and education. Why? State laws have been passed that grant police, firemen, and teachers the right to live outside the municipality which employs them. They could cripple our city and, yet, after a day's work, go home and enjoy their safe, peaceful homes and not worry if their children are not getting a proper education or if they are not safely protected. Why would this happen in Trenton? I'll tell you. Approximately 50 percent of our policemen and firemen reside outside of the city, and approximately 70 percent of our teachers reside outside of the city. Need I explain in more detail?

At first the right to strike was essential to labor and was claimed as its most treasured possession in the battle for recognition fought from the onset of the Industrial Revolution through the passage of the Wagner Act, which guaranteed workers the right to organize and be represented by a Union of their own choice. As a product of this history, the right to strike for recognition has now been relegated to a minor role.

We do not object to public employees organizing for recognition. We do not object to public employees joining Unions for collective bargaining. They should be able to

seek better wages, increased pension benefits, vacation and sick pay. However, we do object to public employees having the right to strike. In our opinion, the right to strike by public employees is not in the best public interest and, in fact, is a direct violation of the Constitution of the United States. I quote the Preamble:

> We, the people of the United States, in order to form a more perfect Union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

Will the right to strike insure domestic tranquility? Will it provide for common denfense? Will it promote the general welfare?

May I conclude by saying this: Could you, your spouse, and your children do without the services performed by the public employee? Gentlemen, we would be foolish to leave our families and homes knowing that they were without any police and fire protection when these public employees are out on strike.

I thank you for your time and attention. I thank you for allowing me this opportunity to be heard.

DR. LESTER: We thank you for the time and effort that went into your statement.

MR. KOSTURA: There are a couple of things I would like to comment on.

ASSEMBLYMAN JACKMAN: I have a couple of questions for you. When you say "we do not object," I assume you are talking about your association.

MR. KOSTURA: That's right, sir.

ASSEMBLYMAN JACKMAN: When you say that you object to public employees having the right to strike, what would be their alternative if you, in your town, said, "We won't give them any increase"? Would you be bound by arbitration if a decision were handed down that would increase your taxes?

MR. KOSTURA: Yes, sir, I would.

ASSEMBLYMAN JACKMAN: I assume then that you are saying that they shouldn't strike but should be bound by arbitration.

MR. KOSTURA: That's right, sir.

ASSEMBLYMAN JACKMAN: Thank you.

DR. LESTER: Do you have some further comments, sir?

MR. KOSTURA: Yes, I do.

A previous speaker made a statement about the balance of power in talking about the private sector. There is a balance of power in the private sector because management has the right to close up shop and leave. Where is the balance of power in the public sector? If the Unions have the right to strike, does government have a right to move out of town? Where is the balance of power? Can we close up shop? Not really. So there would really be no balance of power if they were granted the right to strike.

Another statement was made comparing government to a body. If the arm were taken off, the body would still exist. If that were the case and the Pentagon went on strike and our Armed Forces went on strike, where would our government be? We wouldn't have a government. We would be non-existent. So it really isn't true.

When we talk about government employees, it takes everybody into consideration: our Armed Forces, our federal employees, our state employees, our county employees. There are a lot of people involved.

So the key thing here is that, if you are going to grant the right to strike for teachers, police, and firemen, are you going to grant the right to strike to the Armed Forces?

ASSEMBLYMAN JACKMAN: In answer to that question, of course, that would be kind of ridiculous. That wouldn't

be the case any more than it would be the case that you, as an individual, would have the right to govern the wages paid to a Private in the United States Army. You don't have anything to say about his wages, and you and I don't have anything to say about the amount of money that is spent by the government for armaments. We don't have any control over that. Consequently, what you are saying about the Armed Forces wouldn't even enter into it.

We are looking at the public sector and the private sector. We are saying to the public employee, "We are trying to enact legislation that will govern you in your bargaining efforts."

Incidentally, we heard from your Mayor this morning. Your views are different from his. I don't think your Mayor wants binding arbitration, and you do. So at least we have made some progress.

MR. KOSTURA: I quoted the Preamble to the Constitution, and we are guaranteed certain things by the Constitution.

ASSEMBLYMAN JACKMAN: Do you know what you're guaranteed--

MR. KOSTURA: Pay taxes and die.

ASSEMBLYMAN JACKMAN: --in this life? What you put into it, my friend. You pay taxes, and, if you don't, you go to jail. When you die, you can go to Potter's Field or you can have a $10,000 funeral. That's about all you're guaranteed today. I'm not even guaranteed I'm going to be here two years from now; I may not even complete this term.

MR. KOSTURA: Going back almost 200 years, our government had a beginning---

ASSEMBLYMAN JACKMAN: I only hope the ending is as good as the beginning.

MR. KOSTURA: I enjoy, I appreciate, and I am

thankful that I live in America.

ASSEMBLYMAN JACKMAN: You better believe it; it's the best country in the world.

MR. KOSTURA: I agree with you there. I don't think anybody's going to leave it for any reason.

ASSEMBLYMAN JACKMAN: I'll buy that.

MR. KOSTURA: I appreciated your example of the coat label that says "Made in Hong Kong."

ASSEMBLYMAN JACKMAN: Mine doesn't say that. (Laughter)

MR. KOSTURA: I know that, but you used that as an example, which I thought was very good. If you were to ride around General Motors on Parkway Avenue in Trenton, New Jersey, which manufactures General Motors cars, I'm sure you would find a lot of foreign cars in the parking lot.

ASSEMBLYMAN JACKMAN: I'm not against importation. You have to remember one thing: we export too. I don't want to get into that. I, myself, am going to make sure that everything I wear is made here in the United States in order to keep people working.

MR. KOSTURA: I appreciate that.

DR. LESTER: Thank you very much, sir.

Mr. Kurtz of the New Jersey Manufacturers Association was unable to be here today, but he has submitted a statement for inclusion in the record. (See page 19 X.)

William Carroll.

W I L L I A M P. C A R R O L L: Thank you, Dr. Lester. I am Lieutenant William Carroll, President of the New Jersey Association of Police Superior Officers, Incorporated, and I thank you for this opportunity to address some remarks to you, the members of the PERC Study Commission.

Gentlemen, I represent the New Jersey Association of Police Superior Officers, Inc., an organization of middle-management personnel of the various police departments of the State of New Jersey and of other law enforcement

agencies that are affected by the New Jersey Public Employer-Employee Relations Act.

About a year ago, on April 16, 1974, Senate bill 1087 was introduced to the New Jersey Legislature, amended on September 30, 1974, and signed into law by Governor Byrne on October 21, 1974, to become effective on January 20, 1975.

Today, we are here to report to you, the PERC Study Commission, any recommendations for change, amendment, or dilution of the present law.

Gentlemen, our baby, S-1087, conceived about a year ago, and after a rough prenatal period, was born on October 21 and began to exert its influence on the world of public labor relations at the age of three months on January 10, 1975. It has had some shots taken at it already in its short life, and today we have it on the operating table at the age of six months--

ASSEMBLYMAN JACKMAN: It's too late for an abortion. (Laughter)

LIEUTENANT CARROLL: --preparing to cut it up and perhaps, in the minds of some, to bury it.

Gentlemen, we are here to assist you in your determinations as to the effect of S-1087 on public employer-employee relations. I think it is really too early to make any drastic changes in this legislation. At this point, after three months, the fears of management that this law would bring chaos to the bargaining process have not materialized. However, we are concerned with the attempts to deprive some supervisors in police departments of their bargaining rights. As the law now stands, supervisors can bargain, but not with a nonsupervisory group, except where established practice, prior agreement, or special circumstances exist.

In Jersey City, where supervisors of police have negotiated successfully, separately, for many years, there

has been a harmonious relationship, not only with the bargaining agent of the City of Jersey City, but with the nonsupervisory group as well.

To put supervisors and nonsupervisors in the same group would not be viable for at least the following two reasons:

1. Supervisors might exert authority over nonsupervisors in the bargaining process.

2. Nonsupervisors, by sheer numbers, would have a decisive vote over the supervisors.

We are aware of the fears of line police organizations of allowing supervisors to vote or hold office because of the possibility of intimidation of members by the officers of higher rank. While we do not ascribe to this idea, we do recognize that the fear is there and must be acknowledged.

On the other hand, we heard at our state meeting of the New Jersey Association of Police Superior Officers that, when supervisors and nonsupervisors are in the same bargaining unit, the ratio of the bargaining team is about one supervisor to four or five nonsupervisors, and, if the agent of the supervisors is not satisfied with the terms of the negotiations, he is told by the majority to "take it or leave it." Of course, this does not provide for harmonious relations.

We feel that the appropriate bargaining unit should be as presently set up in the law and that there should continue to be a separation in the police area of bargaining units for Sergeants and above including Deputy Chiefs and Chiefs of Police. We feel that the Chief is not a "managerial executive" in that he is subject to the orders of a Police Director or similar title. The right to hire or fire lies exclusively with the Police Director, and, to my knowledge, no Police Chief can terminate a subordinate's employment on his own, but must

go through the channels of the Police Director's office.

Gentlemen, in conclusion, it has been a long day for you, I'm sure, and certainly we cannot determine conclusively all of the necessary aspects of such an important law in one sitting. So, with your kind permission, I would like to submit a further statement for the record at a later date.

I respectfully thank you.

DR. LESTER: Thank you, and you do have our permission to submit a further statement. What would be the earliest date on which you could submit that statement?

LIEUTENANT CARROLL: I have a caucus meeting with my group on Friday of this week, and I should have the statement for you within the course of next week.

ASSEMBLYMAN JACKMAN: I notice in your statement that you are asking for a separation. Yet, there has been a suggestion by the PBA that some supervisors be given the opportunity to be represented by the linemen in some categories. For example: Take a small town where there is one Chief, one Lieutenant, one Sergeant, and ten men. Do you think it would be practical for those superiors to be represented by a Superior Officers Association, or do you think it would be more advantageous for them to be with the linemen?

LIEUTENANT CARROLL: Chris, in some small departments, and we have gone over this problem---

ASSEMBLYMAN JACKMAN: Excuse me. That question is relative to legislation sponsored by Al Burstein and myself that is now in the Senate; it has passed the Assembly, but is being held up in the Senate. Do you see anything in that that would be contrary to your thinking?

LIEUTENANT CARROLL: I presume you are referring to A-2349.

ASSEMBLYMAN JACKMAN: Right.

LIEUTENANT CARROLL: We have no problems with that, because there is a practical situation that exists in small departments where it is more practical for those units to negotiate together. Of course, we would like, as that bill permits--

ASSEMBLYMAN JACKMAN: It permits it.

LIEUTENANT CARROLL: --that group, if they become unhappy with such a situation, to have the right to apply to PERC for a bargaining agent and to negotiate on their own. This seems to be the problem that develops over a period of time, even after long, amiable relationships with other groups. So we have no objection to that bill as it stands.

MR. APRUZZESE: In a different vein, but in private sector employment, it is illegal, under the Taft-Hartley Act, for men who are watchmen or guards, security people, to be in the same Union with other people. So, if you have a manufacturing plant of 100 employees, and there are only three, four, or a half dozen security people, it is illegal for even that small group to be members of the same Union, under the Taft-Hartley Act. The reason for that is that one brother in a Union doesn't normally report another brother for infractions or larceny, etc. In your situation, because of the chain of command, and because of the superior officers having some authority they can exercise over their subordinates, it makes for a bit of a difficult situation to have them in the same Union, I would suspect. Consequently, I would be interested in your reaction to the thought that perhaps, for that reason and others, these units should not be mixed.

LIEUTENANT CARROLL: To start with, Mr. Apruzzese, this exists also in the current law: Police cannot be part of an organization for bargaining purposes that admits other employees. The question is, what is most

practical for the units. In Jersey City, since 1968, we have negotiated separately as supervisors, and we find that that is most practical for our unit. We find as well that the subordinate units are happy with their situation, that is, they prefer to negotiate on their own. We find, when we ask questions in other units, that, in areas where they have employed this practice of separate negotiations, they are happy with it, that they are able to talk more freely in negotiations, and that they are each able to seek the biggest piece of the pie, so to speak, of what is available.

Certainly, we recognize the fact that men of higher rank might exert influence over men of lower rank. The by-laws of the State PBA prohibit an officer of superior rank from holding office in the State PBA, probably based on the same theory of coercion, intimidation, or whatever the word might be. We don't see that in Jersey City. Even though there are separate units in Jersey City, we work together with subordinate units in a harmonious relationship.

In my mind, the object of the whole process of collective bargaining is to achieve harmony. So, when we talk about harmony, we don't have to talk about strikes or impasse. We realize, though, that, on occasion, no one can reach a solution, sabres are rattled, and we get into an impasse situation, and we get into a slow-down or strike. That is when we really need some kind of guidance, the PERC laws, and, maybe, the Court of Appeals. But, generally speaking, I feel that, if negotiations are properly conducted, we can come to a happy solution without anyone getting too excited about it.

I hope I answered your question.

MR. APRUZZESE: I think your opening remarks gave me a good idea of your views on this.

LIEUTENANT CARROLL: As I said, we have been

separated since 1968.

DR. LESTER: Have most of your members come up through the PBA?

LIEUTENANT CARROLL: Yes, sir.

DR. LESTER: Do they retain membership in the PBA?

LIEUTENANT CARROLL: Some may, and some may not. Some may feel they don't want to retain membership in an organization in which they cannot hold office or vote.

ASSEMBLYMAN JACKMAN: Mr. Chairman, under the old law, the PBA had a right to accept superior officers in the organization. They were exempted in that one section of the law that was knocked down in the Assembly. Consequently, we amended that to give them the opportunity only where there is an injustice. There is an injustice existing today in the State in the small municipalities where there are three or four officers who are not truly represented. In that case, the PBA could go in and get a $1000 increase, and the officers, because they have no bargaining agent, could very well get $500.

MR. APRUZZESE: Isn't this optional with the superior officers?

ASSEMBLYMAN JACKMAN: Oh, yes, this is optional, Vincent, only with the amendment that we made.

DR. LESTER: Are there any further questions?

(No questions.)

Thank you very much.

Mr. Shaw.

W A L T E R S H A W: I am Walter Shaw of the Firefighters of Jersey City. We had a prepared statement, but our senior delegate was detained at a fire today, and he couldn't get off because of minimum manpower, so I came in his place and made a few notes in the car on the way down.

In regard to impasses: The 1972-1973 contract was ratified 18 days before it expired. In August 1973, we started on our 1974-1975 contract. It was ratified in

February of 1975. Now, you have talked about strike and binding arbitration. I guess "strike" is a bad word, but, if we had it, maybe it would give us a hammer; I don't know if we would ever use it, but we would have it there to use on some of these politicians.

In regard to ratification of contracts: When a contract is ratified, after a member reaches his retirement date, he receives all monies prorated retroactive to the starting date of the contract, but his prorated monies are not applied to pension.

On December 29, 1974, one of our firefighters, died while fighting a fire in Jersey City. Our contract was ratified in February 1975. His widow received $888 retroactive as his prorated share, but, because this money was not applied to pension, she was beat out of $3000 as a death benefit.

ASSEMBLYMAN JACKMAN: Isn't that a negotiable item?

MR. SHAW: No. As a matter of fact, I don't feel a pension should be negotiable. You guys down here should do this for us.

ASSEMBLYMAN JACKMAN: Are you citing a specific case and instance that you think should be corrected by legislation--

MR. SHAW: Yes.

ASSEMBLYMAN JACKMAN: --or do you think this commission should enact some legislation that would cover this in the future?

MR. SHAW: Right, as long as you don't make it a negotiable item on all pension statutes. If it gets in the wrong hands, in some contracts, they would break our pension.

ASSEMBLYMAN JACKMAN: In essence, then, this is an isolated situation?

MR. SHAW: Right.

ASSEMBLYMAN JACKMAN: --because of a death.

MR. SHAW: Yes, he died in a fire. This could happen to anyone, Chris.

ASSEMBLYMAN JACKMAN: But, at this time, it is an isolated situation that is being brought to our attention. Could we, the PERC Commission, correct this by legislation, or are you desirous of special legislation?

MR. SHAW: If they would uphold it and make it retroactive---

ASSEMBLYMAN JACKMAN: If who would uphold it?

MR. SHAW: PERC.

ASSEMBLYMAN JACKMAN: Have you asked for PERC's intervention?

MR. SHAW: I guess that's what we are here for, that is, to make recommendations to this committee and let it finalize them.

DR. LESTER: I think the question is whether this kind of thing should be handled under the PERC law or under the pension law.

MR. SHAW: This is my reason for stressing the point about impasse. They can drag these contracts out. The 72-73 contract was ratified 18 days before it expired.

DR. LESTER: Ratified by whom?

MR. SHAW: By the City and the Local.

ASSEMBLYMAN JACKMAN: You mean a year and 18 days before---

MR. SHAW: No, no.

DR. LESTER: Do you mean that it was already negotiated--

MR. SHAW: That's right.

DR. LESTER: --and it took all that time to ratify it?

MR. SHAW: The contract was started in August or September 1971.

ASSEMBLYMAN JACKMAN: In your contract, did it refer to retroactivity, that is, that it would become retroactive to the date of signing--

MR. SHAW: Yes.

ASSEMBLYMAN JACKMAN: --or did it become applicable on the basis of the negotiations regardless of ratification?

MR. SHAW: No. We get retroactive money. The contract must be ratified before the city can introduce an ordinance to pay us our retroactive money.

ASSEMBLYMAN JACKMAN: Now you're ratified?

MR. SHAW: Right.

If a man is on the job, he gets his money retroactively, and he gets all his pension benefits paid retroactively. If he retired before the contract was ratified, he would get his money prorated, but it would not be applied to his pension.

ASSEMBLYMAN JACKMAN: Could that not have been negotiated on the basis of the language in the contract?

Vince, he is talking about ratification of a contract that was agreed to by both parties. Upon the ratification, the monies then became retroactive. In the interim, before the ratification, somebody died. The question is: Should that person's widow receive retroactivity on the pension since the contract was fully negotiated? It would seem to me that, where you refer to retroactivity in the contract, it would cover all conditions of the contract.

MR. APRUZZESE: I don't understand why it wasn't applied to the pension. Are you saying it was because of something in the PERC law?

MR. SHAW: It was caused by a delay in the signing of the contract.

ASSEMBLYMAN JACKMAN: Vince is asking you if there is something in the PERC law that refers to this in

particular that could be corrected by us.

MR. SHAW: I don't think so.

MR. APRUZZESE: I have been looking for a copy of the current law. It is my recollection that there is a provision in 1087 that says that pensions are not negotiable.

MR. SHAW: That's right.

MR. APRUZZESE: Consequently, this problem may be the result of this provision. When did you say it was ratified?

MR. SHAW: It was ratified in February. The 74-75 contract was started in August 1973, and it was ratified in February 1975.

MR. APRUZZESE: Our 1087 became effective on January 20, 1975, the law that says you cannot negotiate pensions. So probably what is happening - I'm not saying this is definitely what is happening - is that someone is saying that the new law prohibits negotiations with regard to pensions, and, because it did not become effective until after the new law, someone is probably saying that it doesn't apply.

ASSEMBLYMAN JACKMAN: I would think you would still be entitled---

MR. APRUZZESE: That raises an interesting question which this commission is not here to decide, but I would say that it is worthy of investigation.

MR. SHAW: These contracts take too long to resolve.

MR. APRUZZESE: The agreement was arrived at before the law went into effect; it was just the ratification that was not completed; is that correct?

MR. SHAW: Sure. The wrong people are being hurt. Here is a widow who is being deprived of the money.

ASSEMBLYMAN JACKMAN: Couldn't that be worked out at the local level by putting these monies into a fund? Was that refused you?

MR. SHAW: This is state law, Chris.

ASSEMBLYMAN JACKMAN: That law took effect in 1975. The contract you negotiated was for 1974. On that basis, if you had ratified that agreement in 1974 when you should have, it would have been applicable. How can you say that, even though it wasn't ratified, it became applicable under the 1975 statute? I still say that was governed by the 1974 law, and that is a question that, I think, could be arbitrated. Is there an arbitration pending on this?

MR. SHAW: There's an appeal.

ASSEMBLYMAN JACKMAN: With PERC?

MR. SHAW: No, with Pension.

ASSEMBLYMAN JACKMAN: Okay.

MR. SHAW: In regard to bargaining units: In Jersey City, we have two separate units; we have one for the privates and one for the officers, and we would like to keep it that way. As a matter of fact, it came about when the officers applied for a charter to the International. We had to get their permission in order for us to get a charter from the International. They saw fit at that time that we should have two separate units, and it has worked out very well.

ASSEMBLYMAN JACKMAN: That's good; keep it that way.

DR. LESTER: Thank you very much.

Mr. Philippi.

D O N P H I L I P P I: I am Don Philippi, Business Manager, Local 195, International Federation of Professional and Technical Engineers, AFL/CIO. We represent three state units, three groups of state employees, all operation, maintenance and service employees, all craft employees, and inspection and security employees.

In regard to suggested changes we feel are needed:

For an individual employee going to the PERC Commission, we feel there should be a very simple procedure for him to file a charge, and he should be assisted by a

board agent. In our organization, we have our attorney or myself file charges, but if an individual employee in the unit is fired, for instance, for organizing or distributing union literature, he goes to the board. It is a very complicated procedure for him to fill out four or five forms and serve them to all the parties, etc. We feel that it should be a simple procedure for him and that he should be assisted by a board agent.

It is our position that we should have the right to strike because of various unfair labor practices continuing right along during negotiations with the State. I could cite you case after case of abuse by the Office of Employee Relations to the union organizations currently bargaining. Marcoantonio Lacatena testified here of some serious violations they have had. We have had some that we feel are far worse than those. We've had job actions; we have had strikes with state employees as far back as 1970 which, I think, was the beginning of our contract. We had one strike in a snowstorm, and the next day Mr. Mason and the people from Employee Relations all of a sudden found money they never knew they had.

I think the whole bargaining process that we went through under Governor Cahill was no bargaining process; it was merely an announcement of a package that was to be given to state employees. We had hoped that was turned around last year by Governor Byrne when he first institutued $2 million for fringe benefits for collective bargaining. You could get whatever you could bargain out of that $2 million. For instance, if we wanted a dental plan, another Union wanted a drug plan, and another Union wanted a legal plan, each would individually bargain, and they weren't told they had to accept any type plan with the State. That was the first real negotiating we had seen taking place in the State. As far as the money is concerned, it is still dictated by the increments in the

Civil Service system, and we feel it is a failure.

Right now, it is our position that, under 123 as it exists in the law, if the State creates an unfair labor practice and the PERC Commission issues a "cease and desist" order, and if a strike takes place after they have been found guilty of an unfair labor practice, we feel that is a legal strike. That is our position right now. It hasn't been tested yet, but we feel it might have to be.

All of the Unions are running into the problem of - I think Marcoantonio Lacatena and other groups told you this - having something in the law that says what takes precedence. Is it Title 18, Civil Service regulations, or is it Title 40? I thought that was cleared up when S-1087 passed. I thought that the contract was going to be the governing document that superseded any rules and regulations, policies, orders, and administrative memorandums which are changing every day without negotiations with any of the Unions.

We just had a case where we picked up the New Jersey Register and found out that they unilaterally cut off the Major Medical type payments with the Blue Cross for certain people and added a drug plan without any negotiations and without any discussions.

This is a continuing practice. Civil Service rules and regulations are changed without any negotiations, and they claim that they are law, and they conflict with certain Articles in the contract, and we are faced with a serious issue.

We just finished one on lay-offs and seniority yesterday at Rutgers. We had about 12 cases that went to fact-finding last year, and we had a big one yesterday regarding seniority because our contract says one thing, and the Civil Service rules say another thing.

The organization has a right to know that, if they

sit down and negotiate in good faith and sign the agreement with a state official, who is an agent of the Governor, that is the document that takes precedence over everything and not have to worry about them coming later and saying, "This rule and regulation supersedes that document." That is the fault with the current procedure for negotiations, and all the groups are running into problems with it.

We have been very satisfied with the staff at PERC and the services we have gotten from those people. We think they are going to need some trial examiners because of unfair labor practice cases. It is an important part of the Public Employee Relations Act to have qualified trial examiners to hear certain cases. We have also been very satisfied with the way in which elections have been held. We are involved with one now, a run-off of some 8000 state professional workers, and we are very happy with the way it has been done.

I don't really understand why one provision is in the law, chapter 303, because it was beat on the floor in a 35 to 35 vote. I really think it was a misprint, but they put it back in. It was an amendment that said that Civil Service regulations wouldn't be affected. That amendment was definitely beat on the floor - I was there - but if you'll look at the law, it was put back in. I would like to know who put that back in. I think that's wrong.

ASSEMBLYMAN LITTELL: Are you talking about 1087 or something else?

MR. PHILIPPI: It was Mr. Burstein's amendment, and it was defeated 35 to 35, and it said that Civil Service regulations wouldn't be affected by anything in 1087. In other words, under 1087, you could negotiate a contract, but it could be superseded by Civil Service regulations. That was beat on this floor, but, when the bill was reprinted, it was put back in. I say it was done illegally.

ASSEMBLYMAN LITTELL: It couldn't have been put in

if it was beaten on the floor.

MR. PHILIPPI: It was beaten on the floor; it's in the records.

ASSEMBLYMAN LITTELL: Then it must have been brought up again.

MR. PHILIPPI: It was not brought up again. I think it should be checked out.

ASSEMBLYMAN LITTELL: Why wasn't something said about it before this?

MR. PHILIPPI: It has been said by us many times to the Office of Employee Relations.

ASSEMBLYMAN LITTELL: This is the first I've heard of it. I've talked to you many times, and you never said anything about it to me. I would certainly be glad to check on it. What is the paragraph?

MR. PHILIPPI: It was the old chapter 303. One portion was inserted to say that the law would not affect certain rights under Civil Service, and that was the same amendment that was brought up and beat on the floor.

ASSEMBLYMAN LITTELL: Could you find it in the bill?

MR. PHILIPPI: I could find that in a minute.

MR. APRUZZESE: I think you're probably talking about paragraph 10.

MR. PHILIPPI: It's on page 7, line 41: "Nothing herein shall be construed to deny any individual employee his rights under Civil Service laws and regulations." I claim that was beaten on this floor 35 to 35. When that bill was reprinted, you put it back in illegally.

MR. APRUZZESE: We didn't, but somebody did if what you say is correct.

ASSEMBLYMAN LITTELL: There would have to be amendatory language.

MR. PHILIPPI: That was Mr. Burstein's amendment.

ASSEMBLYMAN LITTELL: Was it in the bill, and it was Mr. Burstein's amendment to take it out?

MR. PHILIPPI: To leave it in.

ASSEMBLYMAN LITTELL: To leave it in?

MR. PHILIPPI: That's right, to leave it in, and that amendment was beaten; it's in the record; it's definitely in the record.

ASSEMBLYMAN LITTELL: We'll check it out tomorrow.

MR. PHILIPPI: I have one last thing, Mr. Chairman, and I don't think anyone mentioned it today. We think there is a need to have funding for training for both labor stewards and management supervisors for grievance procedure handling and labor relations policy. In the state service, there have only been a few departments that have done this. Some of them have done it in conjunction with us. The Motor Vehicle Department ran some schools together with the union stewards at Rutgers Labor Education Center, and they were very effective, and they really helped both sides. The Department of Transportation has also done that. They have sent their people for special training. As far as the other departments are concerned, some of them have never handled a grievance and never held a hearing. I definitely think there should be something in this legislation for more funding for this type of training.

DR. WEINBERG: Some money has been appropriated, and Rutgers does have these training programs.

MR. PHILIPPI: It's for management's side, not for labor's side.

DR. WEINBERG: For both.

MR. PHILIPPI: I'm glad to hear you say that because, now, the money goes directly to the management school; it does not go to the labor school.

DR. WEINBERG: The Act was amended.

MR. APRUZZESE: Yes, it was.

DR. WEINBERG: If you would check with Dr. Levine at the Labor Education---

MR. PHILIPPI: It used to be $50,000 that went to the management school, and it wasn't in this budget; it was in Higher Education's budget. That's where the line item was found.

DR. WEINBERG: The money never went exclusively to management. It was divided.

MR. PHILIPPI: We sent many people to Rutgers for training - probably 200 stewards and officers last year and the same the year before - and we never received any money from that.

DR. WEINBERG: If you would check with Dr. Levine who is head of the labor program, I think you would find that there are some training opportunities available to you.

DR. LESTER: Are there any further questions?

(No questions.)

Thank you very much. You have been very patient in waiting until this time of the day.

George Sampson.

G E O R G E S A M P S O N: My name is George Sampson. I am the President of Mercer Council Number 4, New Jersey Civil Service Association. I am also the legislative agent for the Civil Service Association as a whole.

In reference to the hearing on amendments and changes to the PERC bill, there are several things I would like to bring to your attention. If you wish, I can also send you a short letter giving our views in the next week or two.

DR. LESTER: It may be desirable, from your point of view, to submit something in writing to us after you have testified.

MR. SAMPSON: The Civil Service Act, RS11, provides in 11:5-1 f. that the Civil Service Commission shall, in addition to its other duties, "Establish procedures for maintaining adequate employer-employee

relations, and for the orderly consideration of disputes, grievances, complaints and proposals relating to the employer-employee relationship, in the classified service of the State; and make investigations, conduct hearings and make rulings with respect thereto. Such rulings shall not be interpreted to compel or require the expenditure of monies which are not available or the incurring of obligations not otherwise authorized by law."

I read this for the simple reason that there is no necessity, as far as the Civil Service employees are concerned, for PERC. PERC, in reference to Civil Service employees, is the usurper, PERC adds nothing, PERC creates problems, and PERC costs money. Just the mere fact of dividing the state employees, 40,000 or 50,000, into different groups has cost the State millions of dollars in just conversation and lost time.

When the bill, PERC 303 in 1968, was passed, it contained the following: "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 board 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."

So 303 was passed, and the initial 303 contained a paragraph which read that "no provisions of the said act should apply to Title 11 employees." Before the bill was passed, it was changed to read, and currently is in 34:13A-8.1: "Nothing in this act shall be construed to anull or modify, or to preclude the continuation of any agreement . . . heretofore entered into

between any public employer and any employee organization, nor shall any provision hereof anull or modify any pension statute or statutes of this State."

Obviously, RS11 is a statute of the State. It's been a statute since 1909, and 303 excluded it. They set up the so-called public section, so-called governmental section, because "The personnel of the Division of Employment Relations shall include only individuals familiar with the field of public employee-management relations."

MR. APRUZZESE: You take issue, then, with the last speaker--

MR. SAMPSON: I very definitely do.

MR. APRUZZESE: --about that provision?

MR. SAMPSON: I think PERC is the usurper. RS11 employees should be excluded from the provisions of PERC and the supervision of PERC.

MR. APRUZZESE: Quite apart from that, would you take issue with what he said happened?

MR. SAMPSON: I don't know what the details are; I didn't look it up.

Under the further provisions of 303, I quote: "The personnel of the Division of Public Employment Relations 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." In other words, PERC decides who is an expert in employee management. This strikes a funny note in that everybody wants to say who is qualified in public relations management.

We have Assembly 3150 which was introduced on February 24, which provides that "The Board of Chosen Freeholders of any county may, by resolution, create the position of labor relations negotiator and appoint qualified persons to such positions. Any such appointment

shall not exceed two in number and shall be for a term of three years. The Board shall fix the compensation and prescribe the duties and functions of the position of labor relations negotiator. The labor relations negotiator shall be under the direction and supervision of the County Personnel Director." So they set it up. Everybody is in the act to set up who shall be what and who shall not be what.

The point I wish to make is this: By the exclusion of the public employees, or the governmental employees, especially on the state level, you are going to eliminate 30,000 or 40,000 people who are potential problems. We have these potential problems, and the potential problems are growing at a substantial rate because, since 1967-68 when this 303 was put in--- At that time there were about 32,000 state employees including the unclassified. Today there is an argument as to whether there are 55,000 or 60,000 people in the classified and unclassified categories. In setting up the several groups, people have been eliminated from the voting as members of the group. People have been eliminated on the basis that what they were doing was confidential and they therefore could not vote. It is surprising how many people, at the present time, will be excluded from the benefit of the drug program, tentative drug program, which presently only applies to three groups, the health group, the clerk administrative group, and the legal group. The rest of the state employees are not considered yet.

Incidentally, it is surprising that there are approximately 150 to 200 state employees in the classified service who get more than $35,000 a year in salary. These are the people who are very reluctant about taking less than they are entitled to. When it comes time to pay for prescription drugs, they are

going to see those in the clerk administrative group getting the drugs for $1.25 on a $20 order, and the $18.75 will be paid for by the State. We have two different write-offs: We have a $1 deductible, and we have a $1.25 deductible. We have two ways of handling it.

MR. APRUZZESE: Did I hear you correctly when you said that, in 1968, there were 32,000 governmental employees and now there is a dispute as to whether there are 55,000 or 60,000?

MR. SAMPSON: In 1968, as I recall - and at that time I was salary secretary for the CSA - we had approximately 35,000 people.

MR. APRUZZESE: State employees?

MR. SAMPSON: State employees, yes.

MR. APRUZZESE: That was in 1967 or 68?

MR. SAMPSON: Approximately.

MR. APRUZZESE: Are you saying that today we have between 55,000 and 60,000?

MR. SAMPSON: That's right. I read an article a couple of weeks ago about how many people there are, and the figure was 55,000 to 60,000. There was some question as to how many of those people are in the unclassified service. Until 1954, there was no differentiation. In 1954 you started recruiting college graduates, in Governor Meyner's time. Since then, prices have gone up and people have become more plentiful.

Thank you very much for your time.

DR. LESTER: Thank you very much. Do you intend to submit something further to us?

MR. SAMPSON: Yes, I'll put it in writing and submit it to you.

DR. LESTER: Thank you.

That concludes today's hearing. Thank you all very much for attending.

(Hearing concluded.)

STATEMENT TO PUBLIC EMPLOYER - EMPLOYEE RELATIONS STUDY COMMISSION

William Druz
Chief Examiner and Secretary, N.J. Department of Civil Service
Member, Public Employment Relations Commission
April 30, 1975

Mr. Chairman and Members of the Study Commission:

I appreciate the opportunity afforded me as Chief Examiner and Secretary and Member of the Public Employment Relations Commission to present my comments before this Study Commission. In an area so sensitive as employment relations in the public service it is crucial that legislation such as the New Jersey Employer-Employee Relations Act be given the closest possible scrutiny by knowledgeable persons concerned with the welfare of the citizens of this State. There is no question in my mind that this Commission is well suited to that task.

It is my hope that before suggesting legislative change, your Study Commission will properly weigh the argument that the public employment experience is essentially different from that of the private sector. The continual maneuvering for advantage by management and labor in private industry is a direct function of the flow of revenue from profit. The harm imposed is, most often, the non-availability of a particular product. Both sides can adjust their tactics with an eye to the preservation of profit.

In contrast, the government provides services. These services cannot lightly, if at all, be interrupted. Revenues are not a function of government programs, and, in fact, are unrelated. It follows that employee groups should not be permitted to exert the pressure of partially or totally discontinued services as a bargaining device.

My experience with employer-employee relations activity since 1968 has enabled me to observe an exaggerated pre-occupation with the dealings between government and those it employs, without comparable concern for the public interest. I believe there should be a reemphasis in the public service on employment contracts which reflect those laws and rules embodying a responsibility to that public interest.

Further, in current discussions, there has been small mention of the fact that the stability inherent in a merit system with tenure has been a traditional advantage to government employment. We urge the Commission to avoid recommendations that would endanger that stability.

In my work with the Public Employment Relations Commission, I found one letter to the Commission, sent as comment on proposed rules, extremely significant. A law firm extensively involved in representing management in the public sector noted that the tendency in the Employer-Employee Relations Act was to recreate in New Jersey the National Labor Relations Board and its considerable bureaucracy. They observed somewhat wryly, that these rules would be a delight to the legal profession, but a great expense to the tax payer. They proposed that more time elapse to permit accumulation of experience before extensive regulatory elaboration begins.

I do not suggest that the staff of the Public Employment Relations Commission qualifies as a vast bureaucracy. I do feel that this Study Commission should refrain from recommending extensive change while Government Agencies and the Courts still struggle with the question of the extent to which the Employer-Employee Relations Act influences governmental operations

and affects employer-employee relations. If there was ever a statute which has wrought extraordinary governmental change, it is this Act. Sufficient opportunity must be afforded agencies to cope with their altered circumstances. The courts should also deliberate over an adequate number of instructive cases to arrive at the most just precedents for resolving disputes.

In addition to these comments, I wish to place on record my concurrence in large measure with the presentation of the New Jersey School Boards Association. I am in particular agreement: (1) that PERC should include only public members, (2) that the ambiguity of 34:13A-8.1 which states:

> "Nor shall any provision hereof annul or modify any pension statute or statutes of this state should be clarified"

should be eliminated, and (3) that management should not be required to negotiate new or modified rules governing working conditions in every instance. I oppose what seems to me a premature introduction of the arbitration process to resolve impasses.

(1) I propose that the composition of PERC be changed to a 3-member Commission representing only the public, supplemented by a separate advising council composed of representatives from public employers and employees. The following rationale supports our position:

a. Merely prohibiting a vote by a special interest Commission member while allowing for discussions and other participation does not offset substantially the undeniable conflict and unobjective pressures. This

conflict was recognized in opinions #1 and #3 of the Executive Commission on Ethical Standards. These opinions stated generally that under the Conflict of Interest Law, PERC members, while reviewing circumstances in which they had a direct interest, could neither be involved in discussions, hearing or voting, nor could they appear on behalf of agencies or employee groups they represented.

b. A PERC having three public members could concentrate entirely on representing with complete objectivity the public interest, which is the primary purpose of all legislation. An Advisory Council, through its members, would act as a vehicle to continue the flow of advice and information describing the special needs of those they represent. Nevertheless, operating as an adjunct body, they would be remote from discussion, hearing or voting, thus eliminating the charges of conflict of interest and even the appearance of impropriety to which the Executive Commission on Ethical Standards alluded.

Whether on the Advisory Council or as partisan members of PERC, I feel strongly such officials should not participate in adjudicating functions involving Unfair Labor Practices and issues subject to the negotiation process.

(2) As to the theory of absolute negotiation prior to modification or introduction of rules, we find this incompatible with even minimally

effective administration of government, not to mention common sense. The basic interests in a negotiating process are money and related perquisites not rules. As an illustration, I can attest that rule making in the Department of Civil Service concerns itself primarily with the essential aspects of merit and fitness, such as testing, classification, and training. Nevertheless, we have experienced frequent attacks on the broad rule making powers of the merit system under the guise of a legislative right to negotiate "terms and conditions of employment". The end result of this approach, if it succeeds, will be a different system for administering our statute in every contract. We do not believe any legislative intent evidenced thus far encompasses such a goal of disjointed governmental operations.

(3) I moreover do not believe that the ambiguity present in N.J.S.A. 34:13A-8.1, now provoking disputes over what statutes are, or are not, annulled should be continued. Currently, the extreme position of management is that nothing has changed their statutory prerogatives. Conversely, employee groups argue that all statutes conflicting with their image of negotiations are repealed. Such friction does not serve to promote the ends of government.

In addition, I would like to stress that for Fiscal Year 1973-74, approximately 75% of public employee impasses in New Jersey which were referred to mediation under the current statutory system, ended there. This seems to me a reasonable rate of success. Moreover, the system has

been accorded insufficient time to demonstrate its worth. Parties should be encouraged to negotiate. Introduction of the elaborate procedural refuge that arbitration would provide the contending parties is not desirable. Consequently, until the present system demonstrates inadequacy, I think it should be retained. If arbitration is to be considered however, I note in passing that the "total package" firm and final offer method suggested by the New Jersey School Boards Association is an interesting alternative, and certainly warrants study.

I conclude with an opinion arrived at only with reluctance: neither management nor the unions in negotiating terms and conditions of employment can in reality place the public interest first. Each has its own inherent and, all too often, selfish concerns. Up to now this legislation has permitted organization and successful negotiation by thousands of public employees. I believe it is time for the Commission to look beyond the immediate parties of employer and employee before drawing a conclusion and determine instead what is most fitting for the real party-in-interest: the public.

STATEMENT OF LABOR LAW SECTION

NEW JERSEY STATE BAR ASSOCIATION

The Labor Law Section of the New Jersey State Bar Association consists of approximately 250 lawyers representing management, unions and the federal and state governments. Pursuant to the Notice of February 19, 1975 issued by Dr. Richard Lester, Chairman of the Public Employer-Employee Relations Study Commission, the Section submits this statement to the Commission to assist the Commission in effectuating the mandate stated in Chapter 124 of Laws of 1974.

Before proceeding to the substance of the Statement, it should be noted that because of its composition, there exists within the Section a wide divergence of views concerning many of the issues under consideration by the Study Commission. We herewith attempt to present the varying views expressed by the Officers, Executive Committee and Membership upon the five questions posed by the February 19, 1975 Notice of the Commission. Wherever, in the opinion of the officers and Executive Committee, a broad consensus exists among the membership, that fact will be noted. Finally, I must also indicate that time did not permit submission of this Statement to the Trustees of the New Jersey State Bar Association for their approval. Accordingly, it does not represent the position of the Bar Association.

With those preliminary remarks, I would like now to proceed to the Section's Statement. Fortunately, I can begin by expressing the Section's unqualified endorsement of the Study Commission's work. As the Legislature itself recognized in the establishment of this Commission, the Act and its recent amendments do not purport to be the final solution to the complex and vital problems inherent in the balancing of management-employee and public rights arising from the process of collective negotiations in the public sector. The Section, therefore, offers its assistance to the Commission in the performance of its function and urges that it draw upon the expertise of its members in assisting the Commission in achieving its purposes.

The Section has structured this report by stating the five questions posed by the February 19, 1975 Notice, followed by the Section's responses.

Question No. 1. Whether changes are necessary to insure that the statute is a more effective tool for encouraging the impartial, timely and effective resolution of negotiating impasses in the public sector.

The present voluntary procedures of impartial mediation and fact finding while a useful and effective implement in the resolution of impasses, do not provide the most efficacious method of resolving all disputes. Existing procedures do not provide for a "timely and effective resolution" of all impasses.

A balance in bargaining between the parties is necessary and desirable to arrive at a meaningful resolution of disputes. Labor lawyers who practice in either the private or the public sector, representing either labor or management recognize that a procedure for finally resolving impasses, in a binding manner, is highly desirable and necessary. The existence of procedures for the binding resolution of impasses would avoid claims of imbalance in relationships and would tend to encourage the more timely resolution of outstanding issues within the collective negotiations process. The spirit of compromise would be engendered by the knowledge that in an appropriate case, or in managements view in all cases, a failure of the negotiating process would leave the ultimate decision to a third party. In short, therefore, there is a concensus among the Section's membership that a procedure for the binding resolution of impasses should be recommended. Those members representing labor would provide for free collective negotiations, inclusive of all the rights attendant thereto and would limit such binding procedures only to those disputes involving essential services whereas those members representing management view such procedures as a desirable culmination of all impasse cases. We shall discuss these various alternatives in the third question presented by the Commission.

Question No. 2. Whether the statute should provide different methods for resolving disputes in public employment, based on an examination of the laws and experience of other states.

Insofar as this question asks whether the statute should provide different methods for resolving disputes as opposed to present methods or in conjunction with present methods, the answer is in the affirmative for the reasons noted above. Insofar as the question asks whether the Commission should make recommendations "based on an examination of the laws and experience of other states", our response is also in the affirmative.

Obviously, the problems encountered in providing a means for the resolution of disputes in the public sector are not peculiar to New Jersey. Therefore, a thorough examination of the manner in which other states have attempted to resolve this problem would appear essential to the fulfillment of the Commission's legislative mandate. All available empirical data from other states should be thoroughly explored. It is equally important, however, that the work of the Commission proceed expeditiously and be completed timely.

In addition to an examination of the laws and procedures of other states, the Commission obviously must evaluate the experience of public sector bargaining over the past few years

in New Jersey. Similarly, the views of numerous individuals with expertise in the field, may be fully explored.

Question No. 3. Whether various functional groups of public employees should be differentiated in dispute settlement procedures based on the "essentiality" of their services.

Based on experiences to date, it is unlikely that management and labor viewpoints can be harmonized on this point if the question presented is acknowledged to be a lead-in to the issue of whether in some instances employees should have the right to strike if collective negotiation fails to produce a mutual accord, and whether some services are so essential that employees performing them must be denied the right to strike. If the position taken is that no public employee should be permitted to strike, then there is really no need to classify the essentiality of his service.

The management view is that no public employee should be permitted to strike and further, that impasses at the bargaining table should be resolved by the same mechanism regardless of the type of employee service involved.

Management representatives generally favor binding interest arbitration as the end point to collective negotiations. One view among representatives of management is the use of "final offer" arbitration, a variation which compels collective nego-

tiations, relies on the negotiating process for its success, and incorporates finality. In their view, it should be applied without regard to the nature of employee services involved.

The labor view is that there should be different mechanisms for dispute resolution depending upon essentiality of service. The essential uniformed services, such as police officers and fire officers, should not be given the right to strike. However, as an alternative method of resolution, police and fire officer associations and the public employer involved should be able, at the instance of either party, to submit unresolved disputes to some form of binding arbitration.

It is also the position of the labor representatives that those public employees involved in public health services of an essential nature should not have the right to strike except under the guidelines established by the Congress in its amendments to the National Labor Relations Act, which became effective on August 25, 1974, concerning employees employed by non-governmental health institutions. Management representatives distinguish governmental health employees from the non-governmental employees now covered by the National Labor Relations Act. Alternatively, if the Commission recommends that such employees should have the

right to strike then, as with the uniform services, such employees and the public employers must be governed by binding arbitration procedures.

Finally, it is the position of the representatives of labor that employees employed in non-essential services, should have the right to strike.

Question No. 4. Whether the existing structure and composition of the New Jersey Public Employment Relations Commission should be changed in any respect.

Based upon a wide spread concensus of the labor and management representatives, the Section strongly recommends that the Commission consist of three full time members knowledgable in the labor-management field. The responsibilities imposed upon the agency require a competent, professional board whose members are chosen without political consideration and function without political influence or allegiance to a particular entity or organization. The goal in these respects is to create a body in the image of the National Labor Relations Board which truly functions as an independent agency and is accepted as such by the labor-management community and the public at large. The three members should be "public" members, i.e., appointed to represent a public interest point of view rather than a partisan viewpoint. The Section recog-

nizes that from time to time a labor or management orientation will be demonstrated by a particular nominee but in his service he must be impartial and must effectively work for the implementation of the purposes and policies of the statute. Obviously, any nominee's prior relationship with labor or management interests would have to be completely severed.

Question No. 5. Whether particular provisions of the statute should be changed or new provisions should be added.

The National Labor Relations Board has the right to seek injunctive relief against either a union or an employer where the National Labor Relations Board has reasonable cause to believe that an unfair labor practice is being committed. This right is discretionary in most cases. There appears to be a consensus among the Section members that PERC should have the right to seek injunctive relief in the Superior Court, Chancery Division, against a party committing an alleged unfair labor practice. If PERC is granted such a right then, as with the National Labor Relations Board, it should be discretionary with PERC to seek such relief. Under this proposal, the following standard would apply in obtaining relief: If PERC can demonstrate to the satisfaction of the court there is reasonable cause to conclude that an unfair labor practice has

been committed and that absent relief, irreparable harm will follow, the court should temporarily enjoin such conduct pending an agency determination that it is or is not an unlawful practice. All too often the length of the administrative proceedings before PERC makes any ultimate determination a Pyrrhic victory.

In connection with the foregoing, it may be noted that there is a substantial body of opinion that administrative agencies such as PERC may seek such injunctive relief against the offending party, notwithstanding the absence of statutory permission so to do, and that an equity court has inherent power in the exercise of its equity jurisdiction to grant relief pending the determination of the administrative agency and in order to effectively preserve the jurisdiction of that agency so that any remedy is meaningful. See 49 Columbia Law Review 1124. However, in order to avoid any unnecessary controversy over the question, the insertion of such a provision in the amended statute is advised.

As a further necessary parallel to the private sector experience, management representatives believe that an additional unfair practice should be included. Those unfair practices enumerated in the recent amendments track the private sector quite closely but not completely. A fairer balance would exist

and the rights of employees would be more fully protected if there were a prohibition upon an employee organization from causing or attempting to cause a public employer to discriminate against a public employee for exercising his statutory rights, such as is found in the National Labor Relations Act, 29 U.S.C. 158(b)(2).

Within the same subject of unfair practices, the Section recommends that the prohibitions against violating Commission rules and regulations be deleted. Its purpose is totally unclear. Existing rules are already enforceable by the agency.

The Section has a final series of recommendations for clarifying certain matters now found in the statute. First, the enforcement provisions of the Act (N.J.S.A. 34:13A-5.4(f) should expressly state that any party aggrieved by a Commission order may seek review in the Appellate Division. There should be no room permitted for the possible inference that by mentioning only Commission application for review, the intent was to exclude all other applicants. Second, the definition of "employee" (N.J.S.A. 34:13A-3(d) should be clarified. It now begins with what appears to be a definition of employee in the private sector and later includes public employee; by

terms the two are not mutually exclusive and it is not clear if they were intended to be. Also the definition of managerial executive in sub-section (f) is, in part, inconsistent with the later provision extending organizational rights to public employees (N.J.S.A. 34:13A-5.3). The former regards a school district "superintendent or other chief administrator and the assistant superintendent" as managerial executives; the latter excepts from coverage of the Act managerial executives, "except in a school district the term managerial executive shall mean the superintendent of schools or his equivalent". Finally, in dealing with supervisors, the statute describes certain supervisory attributes but does so in the context of limiting a supervisor's representation rights (N.J.S.A. 34:13A-5.3). There is no attempt to set forth a definition of the term. The Section recommends that in view of the importance of supervisory status, a clear definition of the terms be set forth in the section entitled "Definitions" (N.J.S.A. 34:13A-3).

The Section recognizes the many challenges and burdens confronting the Commission, and that there is perhaps all too little time in which much must be accomplished. There is a legitimate urgency surrounding the multi-facited questions presented to this Commission and it is this need for relief and remedies in the near future which eclipses many other

considerations. This is not at all to suggest that care and caution must be sacrificed in the process. The necessity to do something this year, combined with the necessity to do it well, are not irreconcilable concepts. Neither is that reconciliation an impossible task. Towards this end, the Labor Law Section of the New Jersey Bar Association, together with its various committees and sub-committees which have been established to study problems and promote progress concerning both substantive and procedural questions in the public and private sector, is prepared to assist this Commission in any way possible in the coming weeks and months.

TESTIMONY

of the

NEW JERSEY MANUFACTURERS ASSOCIATION

COMMITTEE ON INDUSTRIAL RELATIONS

to the

PUBLIC EMPLOYER-EMPLOYEE RELATIONS STUDY COMMISSION

dated: April 30, 1975

The New Jersey Manufacturers Association Committee on Industrial Relations welcomes this opportunity to submit its views on the subject of The New Jersey Employer-Employee Relations Act, as amended (P.L.1968 c.303).

New Jersey Manufacturers Association is a voluntary business organization whose membership includes employers of all sizes, in every county of the state, and represents a major portion of all manufacturing business in the State of New Jersey. In its role as an employer, citizen and major taxpayer, private industry has a vital and legitimate interest in the labor problems of government and its employees at the state, county and municipal levels. Our membership believes that the public interest can be furthered by the involvement of private employers in the development of appropriate legislation and the promotion of sound personnel policies and practices and harmonious employee relations at all fields of government.

One of the most controversial aspects of legislation governing public sector labor relations, is the assumption that private sector employment is no different from public sector employment and therefore public sector employees should have the same statutory "rights".

The fact is that there are differences - very significant differences. First, in the public sector, there are three parties of interest and on whom issues and decisions impact. In addition to the employee and the employer, there is the general public, which is usually immediately and significantly affected. Thus, at the outset, the scope of involvement is multi-lateral and therefore dissimilar to the private sector bi-lateral collective negotiation relationship.

Second, the revenue sources are different with taxes being the ultimate source of revenue in the public sector. The revenue base issue, in turn relates to a third difference, the political context within which the public sector labor relations relationship exists.

Third, the public sector is more involved with legislative approaches which attempt to erode the scope of collective negotiation.

The last difference that we wish to point out at this time, although there are others, is the fragmented approval authority that exists in the public sector, a totally different situation than exists in private sector labor relations.

At this point in time, we believe that the state should address itself to those issues that are presently viewed as potential threats to employment stability in the public sector of New Jersey. The standard against which recommendations and subsequent decisions on the issues should be made, the goal that should be sought should be labor relations stability in our governmental operations.

Towards this end, we hereby recommend the following:

1) The explicit prohibition of strikes, slow-downs and job actions by government employees, the affirmance of the existing power of the courts to enjoin such action, and the requirement that the employing agencies, where "clean hands" exist, have the affirmative duty to seek judicial relief to prevent or terminate strikes and other activities involving interference with work.

2) That there be a flexible dispute resolution procedure enabling utilization of voluntary, non-binding mediations, fact-finding with recommendations, show cause hearings and finally binding arbitration. For settlements of collective bargaining agreements, the arbitration would consider the final best offer of each party.

3) In order to insure that negotiations are concluded prior to statutorily mandated budget submission dates, a deadline should be required for the commencement of negotiations and time intervals prescribed before the commencement of each sequential impasse procedure. The above would assist in insuring that an agreement is concluded prior to the budget submission date. Additionally, from the time point at which the parties face the prospect of fact-finding with recommendations there would be increasing pressures to achieve voluntary, bi-lateral agreement.

4) A provision for meaningful collective bargaining limited to wages, terms and conditions of employment and expressly prohibiting the mission of an agency as a negotiable item.

5) The exercise of managerial responsibilities should be retained by the public sector employer. It should not be a legitimate subject for collective bargaining or the grievance procedure. Towards this end, we recommend that there be introduced the concepts of mandatory, permissive and prohibited subjects of collective bargaining. We have confidence that such a framework, with refinements occurring from subsequent administrative case law would be a significant contributing factor towards the goals of peaceful impasse resolution and labor relations stability. New Jersey

would not be a pioneer in the utilization of mandatory, permissive and prohibited subjects of collective bargaining.

6) The Commission must also address itself to the problems caused by the fragmentation of authority in the various levels of government and the multitude of autonomous bodies that exist in our state. What must be avoided is the development of an intolerable fragmentation of collective bargaining units.

The concern of our members over the current law, as amended, stems from the impact it will have on the business and industrial community of New Jersey. We stand in the position of a concerned taxpayer who contributes approximately 40% of the tax burden in the state. There is little doubt in our minds that, because of the broadened scope of collective bargaining in the present law, there will result an increased cost of contract settlements. This will be followed by a corresponding increase in taxes, both residential and corporate to meet the increased cost of municipal, county, state and school budgets.

We recognize the complexity of the problems faced by this Commission in its attempts to comply with the legislative mandate to study and analyze the defects that exist in the current law and recommend corrective legislation. We strongly urge your reconsideration of the present law including the impact it will have on the individual and business taxpayer.

Thank you for this opportunity to express our views.

* * * * * *

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May 1, 1975

TO: Public Employer Employee Relations Study Commission
State House
Trenton, New Jersey 08625

Re: Chapter 124 of the Laws of 1974

My name is Gerald L. Dorf.

Thank you very much for affording me the opportunity to present this position paper to you. For your information, I have had eighteen (18) years of labor relations experience representing management interests in both the private and public sectors including municipalities and school boards.

I am Labor Relations Counsel to the New Jersey State League of Municipalities and counsel to the League's PERC Committee. I represent the League and its Committee, which is chaired by the Honorable Herbert H. Bennett, Jr., Mayor of the Village of Ridgewood.* In the interest of time and your full work load, I will comment briefly upon the questions raised in Dr. Weinberg's February 19, 1975 letter.

*See Schedule of PERC Committee attached.

A. Introduction

The League represents 562 municipalities in the State of New Jersey. All of these municipalities, as public employers, are subject to the provisions of the recently enacted Senate Bill No. 1087 (Chapter 123 of the Public Laws of 1974) and their taxpayers must bear the cost of agreements which are negotiated thereunder.

Since the enactment of the Public Employer-Employee Relations Act in 1968, many municipalities have experienced serious problems arising out of various insufficiencies of the Act. These problem areas were identified by the League in detail in previous statements presented at various hearings.[1] The League has been on record for several years requesting a comprehensive revision of the Perc law and suggested a number of specific amendments felt to be necessary to provide a fair and workable mechanism for collective bargaining and for the reconciliation of labor disputes. Many of these recommendations of the League were ultimately incorporated in S-1087. Although S-1087 made substantial improvements in the Law others were and are needed. To that end the League introduced comprehensive legislation in the form of Assembly

1. Attached is my May 7, 1974 statement on behalf of the League concerning S-1087.

Bill No. 1705[2] which had the support of a wide cross section of employer interests including the New Jersey School Boards Association.

B. The Issues

1. "Whether changes are necessary to insure that the Statute is a more effective tool for encouraging the impartial, timely, and effective resolution of negotiating impasses in the public sector."

It would appear that the very phrasing of the issue itself infers or implies that there is at present no impartial, timely or effective resolutions of impasses.

In his statement of March 5, 1975, PERC Executive Director Jeffrey B. Tener noted that during fiscal years 1973 and 1974 PERC had received in excess of seven hundred (700) requests for mediators and that approximately seventy-five percent (75%) of these impasses were resolved through mediation. The aforementioned statistic represents a high success factor and should not be lightly dismissed by those who would urge upon this Commission and the Legislature wide ranging changes in the present impasse procedures.

Mediation is inherently a private process although, the

2. Attached for your information is a copy of A-1705. Please note that the May 7, 1974 statement compares and contrast A-1705 with S-1087 and points out the inadequacies and deficiencies of S-1087.

the results of mediation efforts are, of course, public. When successfully employed mediation remains hidden from the public view. Probably the principal reason that relatively little has been written about mediation may be attributed to its success and to the "privateness" of the process. However, the statistics remain irrefutable - namely, mediation of public sector disputes in New Jersey for the past two (2) years has been immensely successful.

Furthermore, a statistical review of the labor agreements in the State indicate that hundreds upon hundreds of contracts are negotiated annually without even the necessity of mediation. Since public sector collective negotiations is a relatively new process to the State, it is hoped that the maturation of the process in the coming years will result in more astute bargaining by both the public employers and public employee organizations with less attendant conflict than has heretofore occurred.

Finally, those impasse disputes which are not resolved at the mediation level proceed to fact finding and are most often resolved at this level. Much of the success of fact finding comes as a result of the input of sophisticated negotiators on both sides as well as skillful neutrals who are often able to "mediate" a fact finding dispute. Thus, many fact finders seek to reduce the number of open issues by mediating them while others at the request of the parties or upon their own initiative present their fact finding report

both in writing and orally to the parties in an effort to persuade them as to the intrinsic fairness of the reports and recommendations. Finally, some fact finders write their reports and recommendations and bring such reports and recommendations to a conference with the parties but do not distribute same. Thereafter, they seek to further narrow the differences and indeed often gain agreement through mediation efforts prior to presenting the fact finding report which has already been drafted.

The utilization of fact finding efforts is limited only by the skill and imagination of the parties, not to mention, of course, the goodwill of both sides. While it is true, that quite often fact finding reports are not accepted in whole, they also most often become the basis of further negotiations which ultimately leads to a resolution of the differences between the parties. The "name of the game" is still settlement, that is, the pragmatic approach to labor relations. I do not consider it a "failure" of the fact finding process by virtue of the fact that significant numbers of fact finding reports are not accepted in whole by the parties. These reports at a minimum leave the parties to re-evaluate their positions in light of an analysis made by an independent third party and, thereafter, ultimately lead to resolution of the disputes.

S-1087 provides that PERC will pay for the entire cost

of fact finding whereas formerly the parties split the costs of fact finding. In my judgment this was a serious error in amending the Statute. The sharing among the parties of the costs of fact finding raises the appeal of mediation and thereby increases its potential for success. The current year has witnessed a dramatic rise in the number of cases going to fact finding which I would attribute in great part, if not in whole, to the "free" nature of the fact finding process. It would be advisable to return to the former status of providing that the parties jointly share the cost of fact finding.

The recent amendments to the PERC Law provide, as we know, for several changes which add new ingredients and factors to the collective bargaining process and should, in our judgment, be helpful to make that process work. First, the Commission is for the first time given authority to process enumerated unfair labor practices including a "refusal to negotiate in good faith." Secondly, the Commission via either the unfair practice route or what appears to be a "declaratory judgment" route has the authority and obligation to determine the scope of negotiations and,therefore, negotiability. Finally, the Commission is directed to establish a timetable for negotiations so

that the negotiations process through the impasse procedure can reasonably be expected to have been concluded prior to "budget submission date."

The aforementioned three (3) factors are, in my judgment, three (3) additional reasons for making no changes in impasse procedure until we have had a reasonable opportunity to determine whether or not these factors will improve upon what appears to already be a reasonably satisfactory method for resolving impasses. With unfair practice authority, PERC now has the "teeth" to insure via its own authority and that of the Courts that the parties will, indeed, bargain in good faith and further to determine on a case by case basis what in fact are those subjects which are mandatory subjects for bargaining.

Finally, the timetable for negotiations is available to insure that the process does not "drag on" for an interminable period of time. However, the mandated timetable approach for negotiations, in our judgment, is unwarranted due to its "mandatory nature" and unwise due to its totally unrealistic structure. Presumably under this mandated timetable the parties have a mere thirty (30) days in which to resolve the differences prior to the automatic mediation and fact finding processes which follow thereafter. From my own personal experience of negotiating hundreds of labor agreements over an eighteen (18) year period, I know of no negotiations in which I have personally participated which have concluded in a mere thirty (30) days. Most often, the issues are barely

clarified at that juncture. If our sister States to the north and south can be used by way of "bad examples", we will find that in both New York and Pennsylvania where mandated timetables exist, these timetables are honored "only in the breach." They are simply totally unrealistic and should be both expanded and also made permissive so that either party may invoke the impasse procedures of PERC when in the judgment of that party or the parties jointly it is desirable to do so. The "knee jerk" response that the parties are automatically at impasse at date X simply serves no useful purpose to the parties and, of course, to the public.

2. "Whether the Statute should provide different methods for resolving disputes in public employment, based on an examination of the laws and experience of other states."

I fail to understand the desirability or necessity of looking to other States concerning impass resolutions since the efforts in this area under our Statute have been so successful for the past seven (7) years.

The very statement of the question indicates a state of mind that reflects a belief that the existing dispute resolution mechanism is not working - and this is simply not true. The impasses reported in the paper are reported for the very reasons that they are unusual and, therefore, news. The hundreds of peaceful settlements of labor

negotiations in the public sector are usually not reported in the press. Since, like the proverbial story of the dog biting a man - they are not news.

I do not wish to sound unduly provincial, however, I do not believe that we in New Jersey need necessarily look to other States concerning impasse resolutions, due to our success in impasse resolutions and the general lack of labor strife in the public sector (with, of course, some outstanding exceptions) over the past seven (7) years.

3. "Whether various functional groups of public employees should be differentiated in dispute settlement procedures based on the 'essentiality' of their services."

The premise built into the issue seems to be that although perhaps some employees may or should be granted the right to strike, it would not be proper to allow other employees in essential services such as police and fire to strike and that these employees, therefore, should have another method of impasse resolution. Here too, I do not accept the premise that our present impasse procedures have not worked and that we should either set up one or two different methods for settling of impasses.

4. "Whether the existing structure and composition of the New Jersey Public Employment Relations Commission should be changed in any respect."

In Mr. Tener's statement of March 5, 1975, he points out that: "While the Commission is not unanimous, it did vote in July, 1973 by a 5-1 margin to adopt a position calling for a nine-member commission with five public voting members and four non-voting advisory members, of whom two would represent the interests of public employers and two would represent the interests of public employee organizations."

I would strongly concur with this position of the Commission and note that with the addition of unfair practice jurisdiction in the Commission, the potential for conflict of interest among partisan commissioners is increased. Participation by partisan commissioners in caucuses and discussions which may thereby influence the judgment of public members represents in our view a gross conflict of interest and should be eliminated. A commission composed of five (5) public members with or without non-voting of partisan advisors would seem to represent a workable solution.

5. "Whether particular provisions of the Statute should be changed or new provisions should be added.

a. Rules Governing Working Conditions

S-1087 continued in the Law the following language which was contained in Chapter 303 of the Laws of 1968:

"Propcsed new rules or modifications of existing rules governing working conditions shall be negotiated with the majority representative before they are established."

The unanticipated effect of this clause has been to unreasonably restrict the ability of public employers to institute rule changes without getting prior approval from any existing majority representative.

The League strongly supports the compromise approach taken on page 6 of A-1705. That provision would permit the public employer to institute rule changes without prior negotiations. However, it would protect the rights of employees by permitting their majority representative, within thirty (30) days, to grieve the propriety of such rule changes pursuant to the contractual grievance procedure. Under this scheme public employers would be given the latitude to operate without undue restriction while retaining in the majority representative the right to grieve and ultimately overturn any action of the employer if it is improper.

b. Grievance Procedures

Unchanged in S-1087 is the language of Chapter 303 spelling out the obligation of the parties to negotiate a grievance procedure. Unfortunately, and erroneously a significant number of public sector labor organizations, most particularly the New Jersey Education Association have sought to convince public employers and others that the language of the Statute was a "mandatory definition" of a grievance. It is about time that this hobgoblin was laid to rest once and for all with a clear statement from either the Commission or through statutory enactment that the parties are free to negotiate whatever grievance

procedure best suits their interests and which may include binding arbitration. The League is strongly opposed to suggestions being made that amendments to the Statute be made to provide for mandatory binding arbitration as the final step in a grievance procedure. Too often we have seen in New Jersey that labor organizations (particularly those in the education field) engage in the "end run" to the Legislature to seek changes in the Law obliging employers to grant certain benefits or concessions beyond those that are achieved at the bargaining table. Thus, the public employer is forced to "negotiate" on two (2) levels. That is, the one at the bargaining table and the other in the Legislature. To its credit and unfortunately for the public and public employers, these labor organizations have been all too successful in persuading the Legislature to enact certain obligatory benefits which the public employer then does not even have the right to bargain over. It is therefore urged that the parties be left to their devices at the negotiations table to fashion the grievance procedure which best suits their mutual interest without interference from Legislature via any mandated definition or procedure.

c. Mandatory Timetable for Negotiations

This subject has already been reviewed in above. The unrealistic timetable set forth in the emergency rules promulgated by the Commission on January 20, 1975 should be amended since they bear no resemblance to the human dynamics

of the bargaining table. Furthermore, rather than the timetable being a mandated one, it should be permissive and should be left to the parties to determine whether or not the timetable should be invoked. I am satisfied that prudent and experienced negotiators on both sides would be well capable of defending the interests of their constituents without the unwarranted intervention and interference by the Commission at a premature date. The timing of the introduction of impasse activities is a most sensitive matter. Practioners generally caution against any precipitate use of mediation until it is clear that good faith bargaining has broken down.

Finally, on this point consideration should be given to utilizing contract expiration dates as the "trigger mechanism" for whatever timetable may be established rather than "budget submission date" since, among other reasons, there seems to be a lack of uniform thinking among practioners and representatives of the Commission as to what generally constitutes the budget submission date.

6. Management Decisions

In our judgment, public employers should not be required to negotiate in any form over the decisions which it makes pursuant to statutory authority. The recent cases in the New Jersey Supreme Court known as the "Dunellen trilogy" have clearly indicated that certain matters are not to be negotiated, and that if they have been so negotiated, the terms of the agreement with respect thereto shall

be null and void. Although these cases were decided prior to the passage of S-1087 we believe that the State Supreme Court has accurately described the obligations of public employers and that the "Dunellen trilogy" is still good law. Therefore, the League supports the language contained page 6 of A-1705 which provides as follows:

> "Public employers shall not be required to negotiate matters of inherent managerial policy, which shall include but shall not be limited to such areas of discretion or policy as the functions and programs of the public employer, standards of services, its overall budget, utilization of technology, the organizational structure or selection and direction of personnel. The parties to the collective negotiations process shall not effect or implement a provision in collective negotiations agreement if the implementation of that provision would be in violation of, or inconsistent with, or in conflict with any statute."

C. Conclusion

On behalf of the League, I sincerely appreciate the opportunity of presenting this statement to the Commission and regret that personal illness prevented my being with you on April 30 to answer any questions which members of the Commission may have. I would,

nevertheless, be pleased to respond in writing to any questions which members of the Commission may wish to raise based upon the foregoing statement.

In conclusion, I concur with the closing thoughts of Mr. Tener who stated on March 5, 1975 that:

> "On balance, I believe that the law has worked very well in the more than six years that it has been in effect."

Therefore, let us not be too hasty to make wholesale surgical changes where mere cosmetic changes would suffice. Let us give the amended Law a reasonable opportunity to work.

-30-

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LEAGUE OPPOSES SENATE PERC REFORM BILL AND SUPPORTS ALTERNATIVE ASSEMBLY MEASURE

Senate 1087 Attacked in League Statement at Public Hearings

ON May 7, the Senate Conference and Coordinating Committee held public hearings on Senate 1087, the Administration's proposed bill to revise Chapter 303 of the Public Laws of 1968, the PERC Law. A comprehensive statement on the bill was presented at the hearing by Gerald L. Dorf, the League's Labor Counsel. The full text of that statement follows:

Thank you very much for affording me the opportunity to appear at this hearing today. For your information, I have had 17 years of labor relations experience representing management interests in both the private and public sectors including municipalities and school boards.

I am Labor Relations Counsel to the New Jersey State League of Municipalities and counsel to the League's PERC Committee. I am representing today the League and its Committee, which is chaired by the Honorable Herbert H. Bennett, Jr., Mayor of the Village of Ridgewood. In the interest of time and your full agenda, I will comment briefly upon only the major sections of the proposed Bill.

A. **Introduction**

The League represents 562 municipalities in the State of New Jersey. All of these municipalities, as public employers, would be subject to the provisions of Senate Bill No. 1087 and their taxpayers must bear the cost of agreements which are negotiated thereunder.

Since the enactment of the Public Employer-Employee Relations Act in 1968, many municipalities have experienced serious problems arising out of various insufficiencies in the Act. These problem areas have been identified by the League in detail in previous statements presented at various hearings. The League has been on record for several years asking for a comprehensive revision of the PERC law and has suggested a number of specific amendments felt to be necessary to provide a fair and workable mechanism for collective bargaining and for the reconciliation of labor disputes.

The League wishes to reiterate at the outset that it favors providing necessary additional rights to public employees. The League in fact joins in the support of many of the new provisions of S. 1087. However, it is clear to us that this Bill is weighted too far in favor of the public employee. Other parties, namely public employers and the citizens which they represent, also have a great deal at stake in the collective negotiations process. We believe that Assembly Bill No. 1705 represents a much more moderate approach and provides even-handed treatment for all parties who have a stake in the negotiations process. Therefore, the League supports the provisions of A. 1705.

Gerald L. Dorf, the League's Labor Counsel (center, polka dot tie) testifies against Senate 1087 at May public hearing. Seated to Dorf's left is Joseph Lamb, then President of the New Jersey School Boards Association. The Association joined with the League in opposition to the bill.

In order for the members of this Committee to fully comprehend those provisions of S. 1087 which are unsatisfactory to the League, I shall in seriatim fashion indicate those deficiencies which form the basis for our dissatisfaction, and propose reasonable alternatives frequently based upon the provisions of A. 1705.

B. **Unfair Labor Practices**

1. **General**

The most significant provision of S. 1087 grants for the first time unfair labor practice jurisdiction to the Public Employment Relations Commission. The League believes that this is a wise and long overdue step in the right direction. However, we cannot support the unfair labor practice jurisdiction for the Commission as presently drafted in S. 1087.

2. **Statute of Limitations**

The first deficiency of S. 1087 is that it provides for a 6 month statute of limitations on all unfair labor practice claims. We believe this to be an unnecessarily long period for any party to file a claim. Problems almost always become greater when they are permitted to fester over a period of time. It is generally advisable to have problems raised as soon as possible and remedied with the greatest dispatch. Moreover, the law always tries to avoid the difficulty of stale claims being raised, particularly when such claims may continue to increase in cost over an extended period of time. Therefore, we suggest a more reasonable period for a statute of limitations on filing of unfair labor practices. The League supports the 60 day period provided for in A. 1705.

3. **Rules and Regulations**

S. 1087 specifically provides on **page 1, line 20,** that it shall be an unfair labor practice for any party to violate the rules or regulations of the Commission. In light of the oft-cited difficulties caused by giving too much authority to governmental regulatory agencies, we believe that this provision is unnecessary and potentially dangerous. The National Labor Relations Board, engaged in similar functions as PERC for almost 40 years in the private sector, has acted most effectively without any such broad grant of authority. Is it the intention of this clause that an employer or employee group be found guilty of an unfair labor practice for failing to submit a brief on time in a matter before the Commission? Although this is clearly a rhetorical question, we believe that it makes a substantial point. Without clearer guidelines as to what is intended by this provision, we believe that the parties appearing before the Commission would be potentially subject to administrative abuses.

4. **Processing a Grievance**

Another problem with the unfair labor practice jurisdiction granted under S. 1087 is the section on **page 1, line 16,** which makes

it a violation if an employer refuses to process a grievance. Although this provision seems reasonable and has surface appeal, its ramifications under existing law are substantial. There have been numerous occasions during the past 6 years when public employers have successfully obtained injunctions against employee groups which have attempted to arbitrate issues which specifically fall under the jurisdiction of other administrative agencies. A simple example would be the attempt by a high school athletic coach who seeks to obtain tenure in his coaching position by filing for arbitration through a collective negotiations agreement rather than by filing with the State Commissioner of Education who has exclusive jurisdiction under present law. Under this section of S. 1087, the public employer could be guilty of an unfair labor practice simply by enforcing his rights under current law.

5. **Statutory Duties**

In addition to these unsatisfactory inclusions in the unfair labor practice section of S. 1087, there are also a number of significant items which have been excluded from that Bill. For example, it would be unreasonable if public employers could be found guilty of unfair labor practices by simply complying with the duties imposed upon them by law. Thus, **A. 1705** appropriately provides on **page 11:**

> "... that the performance by an employer of any duty imposed upon it by law shall not be construed as a refusal to negotiate in good faith, and whenever a public employer is obligated by law to submit a budget, it shall not be considered an unfair labor practice or a refusal to negotiate in good faith on the part of the public employer, who, pursuant to that obligation to submit a budget, includes a specific amount for increased salary and changes in fringe benefits."

6. **Strikes and Job Actions**

Another glaring omission from the unfair labor practice jurisdiction provisions of S. 1087 is that employee strikes or job actions are not the basis for an unfair labor practice charge. We support the position taken in A. 1705 which codifies the existing state of the law by specifically outlawing strikes or other concerted interference with the normal operations of public employers, and which further makes them subject to the unfair labor practice jurisdiction of the Commission. We believe that until the Governor has appointed a Study Commission to look into the problem of resolving impasses in the public sector, it is necessary, in order to insure stability and the orderly maintenance of public services, that job actions by public employees be outlawed and that adequate remedy, up to and including loss of dues deduction rights, be included in any present amendment of the PERC statute.

7. **Agency Shop**

The League hopes and believes that strikes and other job actions by public employees will become a less frequent occurrence with the passage of some amendment to the PERC statute. The League supports the concept, embodied on **page 10** of **A. 1705**, of permitting majority representatives and public employers the right to voluntarily negotiate agency shop provisions in their collective negotiations agreements. We appreciate the reluctance of some public employers in negotiating such clauses, because they deem it essential to protect the rights of their employees either to join or to refrain from joining a labor organization. However, we support the right of parties to voluntarily enter into such agreements. We believe that this right is important to employee groups because it provides them with a greater sense of financial security and concurrently important to employers because it would simultaneously create an enhanced sense of responsibility toward the public.

8. **Appealing Commission Decisions**

The final area of concern with respect to the granting of unfair labor practice jurisdiction to the Commission has to do with the parties right to appeal Commission decisions. On **page 3, line 76,** of **S. 1087** the Commission is given the authority to seek enforcement of its decisions in the State's Appellate Division. We believe that the PERC statute should specifically provide for the parties right to appeal Commission decisions. Moreover, in light of the Appellate Division's increasingly heavy case load, we support the position taken in A. 1705 that all parties to a Commission hearing first go to the Superior Court for enforcement or appeal, respectively.

The League's Public Employment Relations Committee and Mr. Dorf have drafted and had introduced in the Assembly a comprehensive revision of the PERC law. The bill, A-1705, has the support of the New Jersey School Boards Association and other public management groups.

C. **Definitions**

The next section of the PERC statute which deserves careful analysis includes those provisions which define the terms used in the Act. Although seemingly of a minor nature, the first change we would suggest in this area concerns the definition of a public employer. As provided in A. 1705, we believe that multi-state agencies should be covered under the PERC statute. It is conceivable under present circumstances that employees of such agencies in other states are provided with bargaining rights while they are denied same if they work in New Jersey.

We believe this to be unfortunate and, therefore, suggest that such employees be granted bargaining rights in this fashion.

2. **Public Employee**

A matter of much greater concern to the League is the definition of a public employee. Presently, all public employees are permitted to organize under the PERC statute no matter how few hours they work on a regular basis. The result of this language has been to create "nuisance units" of a small group of part-time employees or to include part-timers in with regular employees where there is no clear community of interest. Therefore, we support the language included on **page 2** of **A.1705** which requires that public employees, in order to be covered under the provisions of the statute, must work a minimum of 20 hours per week. This proposal follows along the guidelines used in the private sector where, in order to be covered, employees must be regular part-timers.

3. **Managerial Executive and Confidential Employees**

The League supports the concept embodied in S. 1087 in providing for the first time under the PERC statute definitions for managerial executives and confidential employees. The definition of managerial executive in S. 1087 closely parallels the same definition as in A. 1705, and we, therefore, support it. However, we do have some questions as to the definition of confidential employee. **S. 1087** on **page 4, line 54,** describes confidential employees as those whose functional responsibilities or knowledge in connection with the issues involved in a collective negotiations process would make their membership in any appropriate negotiating unit incompatible with their official duties. While we agree with the concept embodied therein, it is our position that such definition is not quite broad enough. As indicated on the bottom of page 2 in **A. 1705,** we believe that an employee should be excluded if he or she has access to confidential personnel files or information concerning the administrative operations of the public employer. The difference embodied between these two definitions lies in the fact that it may be extremely difficult for the employer to prove the confidential employee's knowledge in connection with certain issues, but he certainly could prove the employee's regular access to such information. An example of a situation where the difference between these two definitions might be important is the office of the personnel director of a large City where said director, intimately involved in negotiations process, has three of four clerical employees working in his office. While one or two of these employees may have a working knowledge of the confidential information, all of these clericals would have access to them on a regular basis and it would be inappropriate to include them in an otherwise appropriate unit.

4. **Supervisory Employees**

The final and most important shortcoming of S. 1087 in the area of definitions has to do with the continued right of supervisory employees to organize and negotiate under the PERC statute. The League strongly urges the members of this Committee to carefully consider the provision embodied in A. 1705 which excludes supervisors from coverage under this statute. This was the position taken by the Byrne administration in its March 28, 1974, draft, and we believe that it makes good sense. During the past 6 years of operation under the PERC statute, the organization of supervisory employees has created great difficulty for municipalities and other public employers. It has so eroded the management concept in the public sector, that most organized supervisory employees see themselves as "union men" rather than as part of the employer's management team. As a result, the public employer has been left extremely "thin" in its management ranks. I can think of an example of one of the largest cities in this

State where the only member of the Police Department in that City who is not part of a collective negotiations unit is the Director of Public Safety. Thus, on many issues which affect the supervisors collective bargaining unit, the Director cannot even discuss his thoughts with his most intimate advisors, namely, the Chief and the numerous Deputy Chiefs.

The League believes that the continuation of negotiation rights for supervisors would be a grave error. Long ago, the Congress of the United States realized that it was incompatible for any supervisor to be given collective negotiations rights. This position was reaffirmed by the United States Supreme Court as recently as two weeks ago. Therefore, in the private sector, there are no supervisory units. This concept has been followed as well in the public sector by many of the major states with public sector statutes. For example, Pennsylvania and Wisconsin exclude any supervisors from bargaining and in Connecticut and Massachusetts only those supervisors with the least supervisory capacity are permitted to organize under their respective statutes.

It should be noted that on **page 12 of A. 1705,** which the League supports, the bill permits the continuation of any existing agreements covering units of supervisors until their expiration. We believe this to be the proper approach because to do otherwise would be to interfere with the expectations of supervisory employees under existing collective bargaining agreements.

D. **Structure of Commission**

1. **Tripartite vs. Non-Partisan Public**

S. 1087 leaves unchanged on **page 5, line 20** the existing tripartite composition of the Public Employment Relations Commission. We believe this to be a mistake. Again, we support the proposal on **page 3 of A. 1705,** and that previously supported in the March 28 draft of the Byrne administration, that the Commission be revised to consist only of public members. There never was a necessity for having partisan amateurs on the Commission. However, we were able to live with that situation during the past 6 years because the Commission's responsibility was limited to the determination of representation units.

With the addition of unfair labor practice jurisdiction vested in the Commission, the degree of conflicts of interest among partisan members can only increase.

2. **Other States.**

It is instructive to look at what the private sector and the other states are doing with regard to the makeup of their administrative agencies in order to be guided on how the legislature should act in the instant case. Most state statutes are modeled after the federal National Labor Relations Act. Under that Act, the National Labor Relations Board is composed of 5 all public members. Based upon information provided by the U.S. Department of Labors Division of Public Employment Relations, most states have chosen to follow that model. Presently, there are 13 states which provide for all public commissions and 9 states, including New Jersey, which provide for tripartite bodies. We can obtain further guidance from the fact that almost all of the major states have accepted the all public form. Thus, Connecticut, Massachusetts, Michigan, Pennsylvania, and New York State all have Commissions which are composed solely of public members. Therfore, the League strongly urges the members of this Committee to consider altering the composition of the Commission to 5 public members as provided in A. 1705.

3. **Chairman.**

With regard to the Chairman of the Commission, the League supports the proposals in both S. 1087 and A. 1705 which would create the position of a full time chairman who would be the agency's chief executive officer and administrator.

E. **Rules Governing Working Conditions.**

One of the more troublesome provisions of the existing PERC statute from the League's point of view has been the requirement, on **page 7, line 53** of **S. 1087,** that proposed new rules or modifications of rules governing working conditions shall be negotiated with the majority representative before they are established. The unanticipated effect of this clause has been to unreasonably restrict the ability of public employers to institute rule changes without getting prior approval from any existing majority representative.

The League strongly supports the compromise approach taken on **page 6** of **A. 1705.** That provision would permit the public employer to institute rule changes without prior negotiations. However, it would protect the rights of employees by permitting their majority representative, within 30 days, to grieve the propriety of such rule changes pursuant to the contractual grievance procedure. Under this scheme public employers would be given the latitude to operate without undue restriction while retaining in the majority representative the right to grieve and ultimately overturn any action of the employer if it is improper.

F. **Good Faith Negotiations.**

Another major omission in S. 1087 is the absence of any clear definition for good faith negotiations. Since the question of what is good faith negotiations has been a recurrent one under the existing statute, and with the additional authority of PERC to determine when a party is not negotiating in good faith, we believe it is imperative that such a definition be included in any amendment to the PERC statute. Therefore, we support the definition provided on **page 6 of A. 1705,** which reads as follows:

> "For the purposes of this act, to negotiate collectively is the performance of the mutual obligation of the employer and the majority representative of the employees to meet at reasonable times and negotiate in good faith with respect to the terms and conditions of employment, and the excution of a written agreement signed by the authorized representatives of the public employer and the majority representative incorporating any agreement reached; provided that such obligation does not compel either party to agree to a proposal or require the making of a concession."

G. **Existing Statutes.**

1. **Titles 11 and 18A.**

Apparently one of the major aims of S. 1087 is to substantially weaken the existing statutory structure in Title 11 (Civil Service) and Title 18A (Education). We believe this to be a highly unfortunate approach.

S. 1087 would weaken these other statutory schemes generally by excluding the language on **page 9, line 8** which provides that the PERC statute shall not annul or modify any statute or statutes of this state. Further, this Bill attacks the hearing provisions of Civil Service and the Commissioner of Education on **page 7, line 72** (S. 1087) where it provides that:

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League PERC Committee –

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Ridgewood, New Jersey

Christian Bollermann, Esq.
Board of Adjustment
Cresskill, New Jersey

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Wellington Davis, Personnel Director
Jersey City, New Jersey

Frederick Jahn,
Township Administrator
Freehold, New Jersey

Albert Pannullo, Labor Relations
Specialist
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Following the public hearings at which Mr. Dorf's statement was delivered S-1087 was reported out of Committee with two amendments. These amendments deal with procedures for appealing PERC decisions and rephrase the language regarding management rights. The revised management rights clause is still not satisfactory and the League is continuing its opposition to S-1087 in its amended version.

As this issue goes to press, there is the possibility of a compromise emerging during the June session of the Legislature. If it materializes, S-1087 will be stripped by additional amendment of all of its provisions with the exception of that portion which grants PERC the authority to hear and act on allegations of unfair labor practices. Both management and labor support that clause. The many other remaining issues would be resolved by the creation of a study commission which would report during the 1975 legislative session.

LEAGUE OPPOSES PERC BILL

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". . . notwithstanding any procedures for the resolution of disputes, controversies or grievances established by any other statute, grievance procedures established by agreement between the public employer and the representative organization shall be utilized for any dispute covered by the terms of such agreement."

The League is strongly opposed to both of the aforementioned attempts to weaken existing statutory structure. We believe that the expertise provided by the Civil Service Commission and the Commissioner of Education should not be scrapped in every instance in favor of an arbitrator. Therefore, the League strongly supports the positions taken on page 7 of A. 1705.

Under existing law, particularly in the education field, other statutory structure of dispute resolution supersedes contractual grievance procedures where there is concurrent jurisdiction. We believe this to be the wisest approach and support its specific continuance as provided in A. 1705.

2. **Arbitration.**

This is not to say that the League does not support the arbitration process. The courts of this state and of the United States have long favored the arbitration of disputes rather than permitting their encumbrance upon the judicial process. However, that favored approach has been given to arbitration because of the arbitrator's expertise in the labor relations area.

A. 1705 has attempted to take advantage of the varying expertise of the arbitrator, Civil Service and the Commissioner of Education by better defining what is a potential matter for grievance under this statute. Thus, grievances are defined as alleged violations of the collective bargaining agreement or any dispute with respect to their meaning or application. By limiting the arbitrator to determinations of contractual matters only, the parties may best take advantage of an individual whose expertise arises only in the labor relations area. Where matters of policy are involved, the expertise of one who is better able to make such judgments, such as the Commissioner of Education, would be the appropriate procedure for resolution of the dispute.

In conclusion, we believe that grievance arbitration and other existing statutory schemes for the resolution of disputes can "live side by side" if their respective jurisdictions can be clearly defined. We believe this has been accomplished in A. 1705 and therefore strongly urge this committee to consider its provisions.

H. Fact Finding.

S.1087 provides on page 8, line 21 that the cost of fact finding, which is now borne equally by the parties, be picked up by PERC. We believe this to be an unwise approach in light of the very reason for this statute's existence.

All parties would agree that the major purpose of this act is to promote harmonious labor relations between public employers and their employees and to avoid impasses whenever possible. A negotiated

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settlement is always preferable to one more or less imposed upon the parties by a neutral fact finder. We believe that by forcing both parties to pay for fact finding, it becomes a consideration in the determination of whether or not to reach a bilateral agreement or whether to permit the matter to continue on to the fact finding process. Since it is the purpose of this statute to avoid impasses and to reach compromise agreements between the parties, we contend that nothing should be done in the amendments to the PERC statute to make fact finding an easier road to travel. Therefore, we urge that the present policy of having the parties equally share the cost of fact finding be continued.

I. Management Decisions.

The last area of S. 1087 that I would like to address myself to today is found on page 9, line 8 where the Bill requires public employers to negotiate over the impact on terms and conditions of employment of its decisions made pursuant to its statutory authority. This provision creates two great difficulties. First, it is almost impossible to define what is an impact on terms and conditions of employment. The phraseology is purposely so-broad that it could encompass negotiations over almost any matter. As a result, it would be an administrative nightmare for the Commission to make determinations on this so-called "impact clause".

Of even greater concern, however, is the concept that public employers should have to negotiate in any form over the decisions which it makes pursuant to statutory authority. The recent cases in the New Jersey Supreme Court known as the "Dunellen trilogy" have clearly indicated that certain matters are not to be negotiated, and that if they have been so negotiated, the terms of the agreement with respect thereto shall be null and void. We believe that the State Supreme Court has accurately described the obligations of public employers and that this provision of S. 1087 is clearly contrary to that requirement. Therefore, the League strongly supports the language contained on page 6, of A. 1705 which provides as follows:

"Public employers shall not be required to negotiate matters of inherent managerial policy, which shall include but shall not be limited to such areas of discretion or policy as the functions and programs of the public employer, standards of services, its overall budget, utilization of technology, the organizational structure or selection and direction of personnel. The parties to the collective negotiations process shall not effect or implement a provision in a collective negotiations agreement if the implementation of that provision would be in violation of, or inconsistent with, or in conflict with any statute."

In conclusion, I thank the Chairman and members of this Committee for permitting me this opportunity to be heard on behalf of the New Jersey State League of Municipalities. I respectfully urge you to give serious consideration to the many suggestions we have presented in an attempt to ultimately obtain an even handed labor management statute.

Assembly Bill-1705

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

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

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

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

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

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 including multi-state agencies.

(d) The term "employee" in the private sector shall include any employee, and shall not be limited to the employees of a particular employer unless this act explicitly states otherwise, 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 "public employee" shall include any public employee working a minimum of twenty (20) hours per week, and shall not be limited to the employees of a particular public employer unless this act explicitly states otherwise.

This term shall include any person holding a position, by appointment or employment in the service of a public employer, except elected officials, heads and deputy heads of departments and agencies, members of boards and commissions, other managerial executives, confidential employees, individuals employed as supervisors and members of the organized militia.

(f) 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.

(g) The term "confidential employee" means one whose access to confidential personnel files or information concerning the administrative operations of a public employer and functional responsibilities or knowledge in connection with the issues involved in the collective negotiations process would make membership in any appropriate negotiating unit incompatible with his official duties.

(h) The term "supervisor" means any individual having

authority, in the interest of the public employer, to hire, transfer, suspend, lay off, recall, evaluate, promote, discharge, assign, reward, or discipline other employees, or to effectively recommend same, or responsibly to direct them, or to adjust their grievances; provided that 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.

(i) The term "managerial executive" refers to persons who formulate management policies and practices, and to those who are charged with the responsibility of directing the effectuation of such management policies and practices.

2. Section 5 of P. L. 1968, c. 303 (C.34:13A-5. 1) is amended to read as follows:

5. There is hereby established a Division of Public Employment Relations and a Division of Private Employment Dispute Settlement.

(a) The Division of Public Employment Relations 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 and the determination of unfair labor practices. 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 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 orofficer thereof.

(b) The Division of Private Employment Dispute Settlement shall assist the New Jersey State Board of Mediation 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.

3. Section 6 of P. L. 1968, c. 303 (C. 34:13A-5.2) is amended to read as follows:

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.]

(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, the determination of unfair labor practices and related matters. The commission shall consist of [7] 5 public members to be appointed by the Governor, by and with the advice and consent of the Senate, one of whom shall be designated as Chairman by the Governor.

[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, [two] one shall be appointed for [2 years] 1 year, two for a term of [3] 2 years and [three] two, including the chairman, for a term of [4] 3 years. Their successors shall be appointed for terms of 3 years each, and until their successors are appointed and qualified, 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 terms of all members of the commission shall terminate on the effective date of this act.

The members of the commission, other than the chairman, shall serve in a part-time capacity and shall be compensated at the rate of [$50.00] $150.00 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.

The chairman of the commission shall be its chief executive officer and administrator, shall devote his full time to the performance of his duties as chairman of the Public Employment Relations Commission and shall receive such compensation as shall be provided by law.

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

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, 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 appropriate unit in collective negotiations; and provided further,that, except where established practice, prior agreement, or special circumstances dictate the contrary,] elected officials, heads and deputy heads of departments and agencies, members of boards and commissions, other managerial executives, confidential employees, individuals employed as supervisors and members of the organized militia; and further provided that no policeman shall have the right to join an employee organization that admits employees other than policeman to membership. The negotiating unit shall be defined with due regard for the community of interest among the employees concerned, 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 election conducted by the commission as authorized by this act shall be the exclusive 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.] Proposed new rules or modifications of existing rules governing working conditions, where not specifically covered by the collective negotiations agreement, may be instituted at any time by the employer. The majority representative, within

may grieve the propriety of these rules pursuant to the contractual grievance procedures.

For the purposes of this act, to negotiate collectively is the performance of the mutual obligation of the employer and the majority representative of the employees to meet at reasonable times and negotiate in good faith with respect to the terms and conditions of employment, and the execution of a written agreement signed by the authorized representatives of the public employer and the majority representative incorporating any agreement reached; provided that such obligation does not compel either party to agree to a proposal or require the making of a concession.

Public employers shall not be required to negotiate matters of inherent managerial policy, which shall include but shall not be limited to such areas of discretion or policy as the functions and programs of the public employer, standards of services, its overall budget, utilization of technology, the organizational structure or selection and direction of personnel.

The parties to the collective negotiations process shall not effect or implement a provision in a collective negotiations agreement if the implementation of that provision would be in violation of, or inconsistent with, or in conflict with any statute.

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.] Public employers and the majority representative of their employees shall negotiate within a collective negotiations agreement, grievance procedures by which employees, employers or their representatives may appeal an alleged violation of the collective negotiations agreement, or any dispute with respect to its meaning or application. Such grievance procedures may provide for binding arbitration as a means for resolving disputes.

Nothing in this act or the act to which this is a supplement shall conflict with, impair, supersede, or abrogate the provisions of existing laws, including but not limited to the following New Jersey Revised Statutes: Title 11, Civil Service; Title 18A, Education; Title 40, Municipalities and Counties; Title 40A, Municipalities and Counties, or the rules and regulations issued pursuant thereto, or to deny to any individual public employee his rights provided thereunder. Any right of appeal granted under Title 11 or Title 18A to any public employee shall be exclusive, any law or agreement to the contrary notwithstanding.

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

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, 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 is empowered to recommend or invoke fact-finding with recommendations for settlement, the cost of which shall be borne by the parties equally.

(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 conferences 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 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 non-supervisors,] [(2)] (1) both professional and nonprofessional employees unless a majority of such professional employees vote for inclusion in such unit, or [(3)] (2) both craft and noncraft employees unless a majority of such craft employees vote for inclusion in such unit. All of the powers and duties conferred or imposed upon the division that are necessary for the administration of this subdivision, and not inconsistent with it, are to that extent hereby made applicable. Should formal hearings be required, in the opinion of said division to determine the appropriate unit, it shall have the power to issue subpoenas as described below, and shall determine the rules and regulations for the conduct of such hearing or hearings.

(e) The Public Employment Relations Commission shall have the authority to investigate, determine and remedy unfair labor practices as follows:

a. Employers, their representatives or agents are prohibited from:

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

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

(3) Discriminating in regard to any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act, provided nothing in this act or in any other statute shall preclude a public employer from voluntarily entering into an agreement with the majority representative of public employees in an appropriate unit that the public employer shall, from the payroll salary of each employee not a member of the employee organization which is the majority representative, deduct and forward to the majority representative a fee equal to the individual dues uniformly required by the majority representative as a condition of acquiring or retaining membership therein; provided that no such deductions shall be made from the salaries of those employees furnishing proof to the public employer that they have paid such fee directly to the majority representative.

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

(5) Refusing to negotiate in good faith with a majority representative concerning terms and conditions of employment of employees in the appropriate unit or refusing to process appropriate grievances presented by the majority representative, provided, however, that the performance by an employer of any duty imposed upon it by law shall not be construed as a refusal

to negotiate in good faith, and whenever a public employer is obligated by law to submit a budget, it shall not be considered an unfair practice or a refusal to negotiate in good faith on the part of the public employer who, pursuant to that obligation to submit a budget, includes a specific amount for increased salaries and changes in fringes benefits.

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

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

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

(2) Interfering with, restraining or coercing a public employer in the selection of his representative for the purposes of negotiations or the adjustment of grievances.

(3) Refusing to negotiate in good faith with a public employer, or refusing to process grievances filed by the public employer, if they have been recognized or certified as the exclusive representative of employees in an appropriate unit.

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

(5) Interfering with, restraining, or coercing any employee because he has signed or filed an affidavit, petition or complaint, or given any information or testimony under this act.

(6) Engaging in a strike, work stoppage, slowdown, job action, or any other concerted interference with the operations of the public employer, and the reference thereto in this

act shall in no way be construed as abrogating, changing or modifying in any way the law of this State concerning the illegality of such actions.

c. The commission is empowered to prevent anyone from engaging in any unfair practice listed in subsection a. and b. above. Whenever it is charged that anyone has engaged or is engaging in any such unfair practice, the commission, or any designated agent thereof, shall have authority to investigate such charge and, where appropriate, to issue and cause to be served upon such party or person a complaint stating the charges in that respect and containing a notice of hearing containing the date and place of hearing before the commission, or any designated agent thereof, provided that no complaint shall issue based upon any unfair practice occurring more than 60 days prior to the filing of the charge unless the person aggrieved thereby was prevented from filing such charge by reason of service in the armed forces, in which event the 60 day period shall be computed from the day of his discharge. In any such proceeding, the provisions of the Administrative Procedure Act (C. 52:14B-1 et seq.) shall be applicable.

Evidence shall be taken at the hearing and filed with the commission. If, upon all the evidence taken, the commission shall determine that any party charged has engaged or is engaging in any such unfair practice, the commission shall state its findings of fact and conclusions of law, and issue and cause to be served on such party or person an order requiring such party or person to cease and desist from such unfair practice, and to take such reasonable action as will effectuate the policies of this act. Any such order shall be the final administrative determination of the Commission and shall be self-enforcing and subject only to the procedure set forth hereafter. Cases in which a notice of hearing

on a complaint is actually issued by the commission shall be prosecuted before the commission or its agent, or both, by the representative of the employee organization or party filing the charge. If the commission determines that an employee organization has engaged or is engaging in a strike, work stoppage, slowdown, job action or any other concerted interference with the operations of the public employer, it may order the discontinuation of membership dues deduction by the public employer for such specified period of time as the commission shall determine, or, in the discretion of the commission, for an indefinite period of time, subject to restoration upon good faith compliance by the employee organization with the requirements of this act or any order issued pursuant thereto.

d. Any party shall have the power to apply to the Superior Court for an order enforcing, modifying or vacating any order of the commission issued under subsection c. hereof, in accordance with the Rules of Court.

[(e)] (f) For the purposes of this section the Division of Public Employment Relations 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)] (g) 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.

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)] (h) 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)] (i) The personnel of the Division of Public Employemnt Relations 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.

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

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. Public employees shall be specifically precluded from the right to engage in any strike work stoppage, slowdown, job action, or any other concerted interference with the operations of the public employer.

7. Section 12 of P. L. 1968, c. 303 (C. 34:13A-8.3) is amended to read as follows:

12. The commission in conjunction with the Institute of Management and Labor of Rutgers, the State University, shall develop and maintain a program for the guidance of public employees and public employers in employee-management relations, to provide technical advice to public employees and

assist in the development of programs for training employee and management personnel in the principles and procedures of consultation, negotiation and the settlement of disputes in the public service, and for the training of employee and management officials in the discharge of their employee-management relations responsibilities in the public interest.

8. Section 10 of P. L. 1968, c. 303 (C. 34:13A-8.1) is amended to read as follows:

Nothing in this act shall be construed to annul or modify, or to preclude the [renewal or] continuation of any agreement during its current term 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.]

9. This act shall take effect 60 days after enactment.

STATEMENT

Section 1 of this bill alters the existing definition of a public employee and includes new definitions for confidential employees, supervisors and managerial executives.

Section 6 alters the existing tripartite make-up of the Public Employment Relations Commission and provides for a five-member all public commission with a full-time chairman. An all public make-up for the commission is favored because it limits the conflicts of interest of partisan members which can only increase if the commission is provided with unfair labor practice jurisdiction.

Section 4 terminates the existing practice of permitting supervisory employees to organize and collectively negotiate under the Act. This proposal follows a model of the National Labor Relations Act which realized the untenable position that an employer is put in if his "management employees" are permitted to organize.

This section further permits public employers the flexibility of instituting new rules or modifying existing rules governing working conditions, but concurrently protects the union's right to grieve over said changes within a 30 day period. This section also includes for the first time a comprehensive definition of good faith negotiations.

The final changes in this section recognizes the import of existing statutory enactments in the civil service and education areas and therefore proclaims the superiority of those statutes to the PERC law.

Section 5 includes the long sought after unfair labor practice jurisdiction for the commission. All interested parties have long felt that such jurisdiction was a necessary adjunct to PERC's responsibilities so that it may terminate and remedy improper practices by either public employers or public employee groups.

This section permits a public employer to enter into an "agency shop" agreement with its employee representative.

Section 6 codifies existing case law in the state by specifically precluding public employees from the right to strike or engage in other concerted interference with the operations of a public employer. The commission would be empowered to remedy such a violation by denying the union its check-off privileges.

Section 8 permits the continuation of any existing agreements covering units of supervisors during its current term.