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JOINT PUBLIC HEARING
before
ASSEMBLY LABOR COMMITTEE
AND
ASSEMBLY EDUCATION COMMITTEE

To discuss dispute resolution reforms for
labor disputes in the field of education

May 5, 1988
Room 403
State House Annex
Trenton, New Jersey

MEMBERS OF ASSEMBLY LABOR COMMITTEE PRESENT:
Assemblyman Robert E. Littell, Chairman
Assemblyman Peter J. Genova, Vice Chairman
Assemblyman Joseph D. Patero
Assemblyman Thomas P. Foy

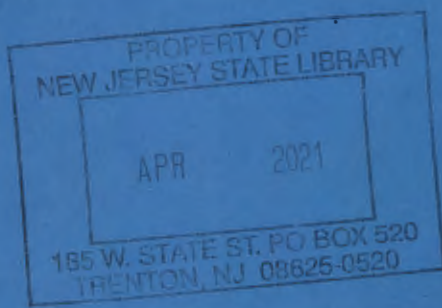
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MEMBERS OF ASSEMBLY EDUCATION COMMITTEE PRESENT:
Assemblyman Joseph A. Palaia, Chairman
Assemblywoman Elizabeth E. Randall, Vice Chairperson
Assemblyman Joseph M. Kyrillos, Jr.
Assemblyman Gerard S. Naples
Assemblyman William J. Pascrell, Jr.

ALSO PRESENT:

Joseph F. Devaney
Office of Legislative Services
Aide, Assembly Labor Committee

David J. Rosen
Office of Legislative Services
Aide, Assembly Education Committee



Hearing Recorded and Transcribed by
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State House Annex
CN 068
Trenton, New Jersey 08625



New Jersey State Legislature

ASSEMBLY LABOR COMMITTEE

STATE HOUSE ANNEX, CN-068
TRENTON, NEW JERSEY 08625
TELEPHONE: (609) 984-0445

F. E. LITTELL
man
J. GENOVA
Chairman
N. MILLER
S. P. FOY
D. PATERO

April 25, 1988

**NOTICE OF A PUBLIC HEARING
AND COMMITTEE MEETING**

**The
ASSEMBLY LABOR COMMITTEE
and
ASSEMBLY EDUCATION COMMITTEE**

will hold a joint public hearing on
Thursday, May 5, 1988 at 1:00 p.m. in Room 418
of the State House Annex in Trenton

The purpose of the public hearing is to receive testimony and to discuss dispute resolution reforms for labor disputes in the field of education. On this subject, the committees will consider Assembly Bill, No. 2215, sponsored by Assemblymen Littell and Haytaian.

Written testimony may be submitted for inclusion in the official transcript of this hearing. Persons who would like to testify or who need further information on the public hearing should contact Joseph Devaney, Aide to the Assembly Labor Committee at (609) 984-0445 or David Rosen, Aide to the Assembly Education Committee at (609) 984-6843.

After the public hearing, the Assembly Labor Committee will meet to consider the following bill:

A-2215	Requires courts to take certain factors into account
Littell/	before issuing orders in labor disputes involving
<u>Haytaian</u>	teachers.

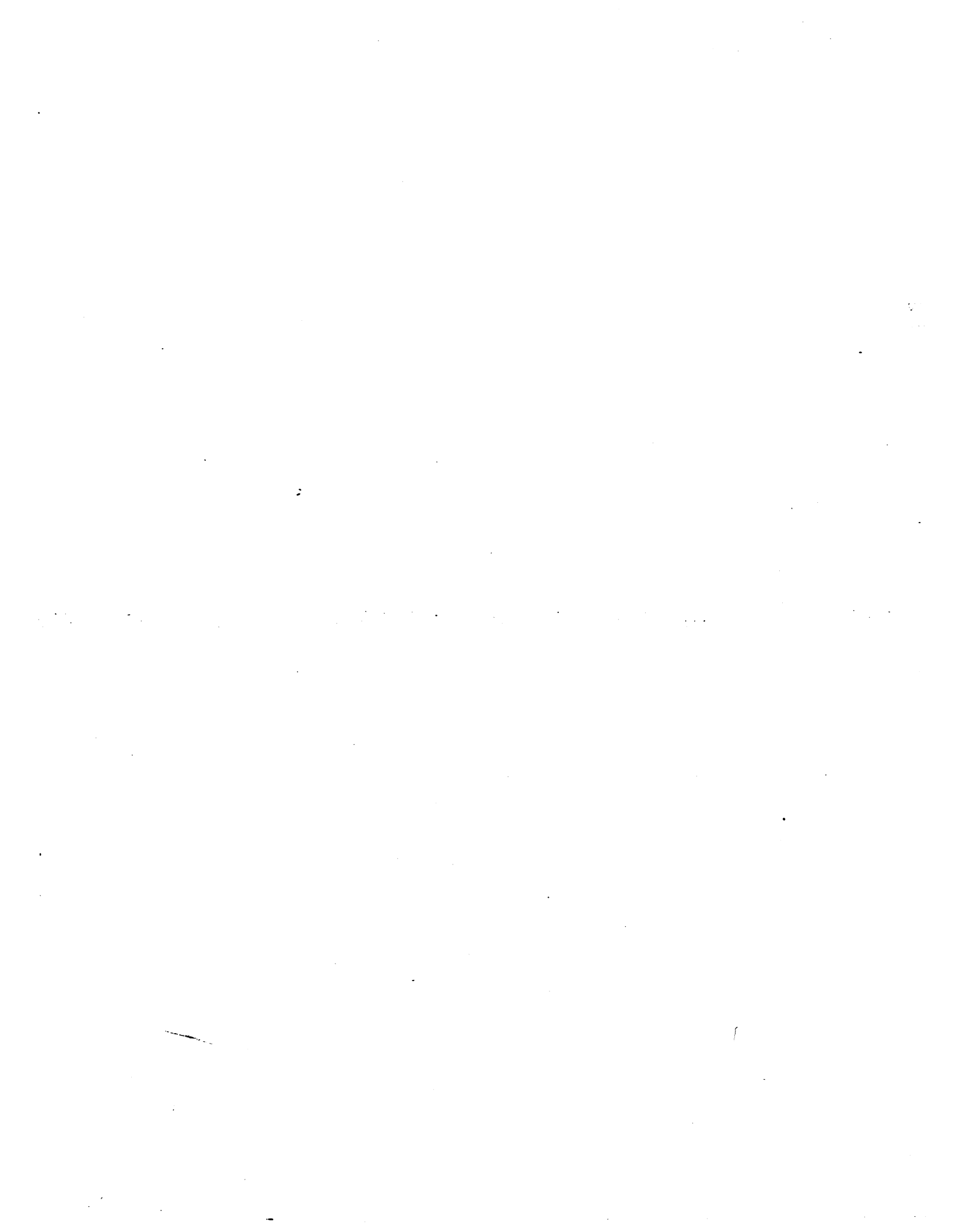


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ASSEMBLYMAN ROBERT E. LITTELL (Chairman, Assembly Labor Committee): Good afternoon. This is a joint hearing before the Assembly Labor Committee and the Assembly Education Committee. The two Committees have a deep and abiding interest in education and in labor matters that affect the State of New Jersey. The Chairman of the Education Committee, Assemblyman Joseph Palaia, and I have talked, and felt it was an issue that would be best served if both Committees could meet at the same time, even though the bill is only assigned to the Labor Committee, and only the members of the Labor Committee will be able to vote on this issue. Because it does have such an important impact on education in the State, we wanted to have the benefit of our colleagues on the Education Committee being here to speak, to ask questions, and to talk about the issues that are before us. I think we can draw the best out of the public input by approaching it in that method.

Before I get into my comments, I just want to go through the list I have here, to make sure I have everybody: The New Jersey Principals and Supervisors are represented by Martin Olech. Is that correct?

MR. DEVANEY (Labor Committee Aide): He's not here.

ASSEMBLYMAN LITTELL: He's not here, okay. The College Presidents Association is represented by Diane Quinton and Gary Reddig.

UNIDENTIFIED SPEAKER FROM AUDIENCE: It's the Council of County Colleges.

ASSEMBLYMAN LITTELL: The Council of County Colleges, okay. The School Boards are represented by Jeanne Reock, Peter Merluzzi and Dave Wallace. Is that correct?

D A V I D A. W A L L A C E, E S Q. (speaking from audience): Mr. Chairman, I am David Wallace. I don't have any association with that group. They might have given you some information about me. I am a single practitioner. I am not a member of that organization.

ASSEMBLYMAN LITTELL: Did you care to testify, sir?

MR. WALLACE: Yes, sir. I even put in my own individual slip.

ASSEMBLYMAN LITTELL: Okay. Sorry we--

J E A N N E R E O C K (speaking from audience): Assemblyman, I am the only one speaking for the Association.

ASSEMBLYMAN LITTELL: Okay.

MR. DEVANEY: Is Pete Merluzzi here? (affirmative response from audience) Pete, who are you testifying for?

P E T E R M E R L U Z Z I (speaking from audience): Just as a superintendent in the State.

ASSEMBLYMAN LITTELL: Okay. Tom Wirth, Council of State Colleges -- AAFT. Is he here? (no response) Ray Peterson is here, from the AFT; Jeanne Oswald, from the Department of Education; and the NJEA and five local leaders. Archer Cole? (affirmative response) Okay. Is there anyone I don't have down who would like to speak? (no response) Okay.

Next, I want to turn this over to Assemblyman Palaia, Chairman of the Assembly Education Committee, for his comments. Then we will come back to me and we will start on the bill.

ASSEMBLYMAN JOSEPH A. PALAIA (Chairman, Assembly Education Committee): Thank you, Assemblyman Littell. We, the members of the Assembly Education Committee, are privileged to be here. I think it bodes well when a Committee sees there is an overlapping with an issue, that you would have that other Committee here. Even though we will not be voting, I think we can lend some input into trying to get to the bottom of this very serious issue.

My Committee is represented, four out of five here today, and I'm sure they will be lending their comments. They know full well that they can lend any kind of comments they want. Of course, they usually do anyway. I look forward to hearing not only from my Committee, but from Chairman Littell's Committee.

Thank you, Bob, for inviting us here.

ASSEMBLYMAN LITTELL: Thank you. I might report to you that Assemblyman Foy has called to say that he will be here, and Assemblyman Miller and Assemblywoman Randall. They will all be here at some point in time.

The genesis of this bill came about because of the problems which exist in strikes called by teachers and the ensuing action that comes after that. I think all of us have been frustrated by the results of judges putting teachers in jail. I don't think any of us want to see teachers in jail. I think they belong in the classroom, so they can teach the children. I think the children are the pawns in the whole process.

In New Jersey, we adopted, in 1968, the present PERC law as Chapter 303. It was adopted by the Republican controlled Assembly and the Republican controlled Senate, and passed over Governor Hughes' veto. It has been a very good law. New Jersey has done very well by it. I remember that when it came up in the Assembly, there were a lot of people who were frightened that it would cause irreparable harm to the educational process and to the public employee process in the State of New Jersey. I don't think it has done that. I think it has done just the opposite. It has provided for an orderly system that allows employees and employers to sit down and discuss their mutual concerns and interests.

I think we all know what happens when there is a withholding of services. The school boards immediately go to court and ask for injunctive relief. The judges have almost always ordered that relief, but not always. In some instances, they have said there was reason not to grant it; there was bad-faith bargaining on the part of the board of education, or that there was some other compelling reason they felt it should not happen. In one instance, the judge offered to mediate.

The other facts are that the board of education is heard, but the teachers are never heard, so there is only a presentation of one side of the issue. That has bothered me for some time. I have been concerned that the process is really flawed. It does not provide for both sides to be heard. In every other instance where parties appear in court before a judge, they have an opportunity to be heard on each one of their issues and each one of their points, and then the judge makes his decision based on that information.

Basically, that is the concept and idea behind this bill. The original bill has been recast into a Committee substitute. The Committee substitute contains the following provisions: The substitute requires the court to take testimony from the plaintiff and the defendant before issuing any order in these disputes. It also requires the court, in its determination of whether to grant injunctive relief, to consider the history of the relationship between the employer and the union; the past efforts of the parties in resolving the impasse; and the probable impact of a continuation of the dispute upon the interests of the public.

The substitute authorizes the court to order binding arbitration to resolve the impasse. The arbitration procedure is to be completed through arbitrators appointed by PERC.

Now, let me summarize how this arbitration procedure will work: First, each party will be required to give the Commission its respective final offer on all unsettled issues as a single package within five days of the court order. Within seven days of the court order, the Commission is required to appoint an arbitrator to arbitrate the dispute.

The appointment of the arbitrator will start a 40-day arbitration process. Within 30 days of the appointment, the arbitrator must hold hearings and receive briefs. Within 40 days of the appointment, the arbitrator must issue a decision and an award, unless the Director of Arbitration grants an extension that may not exceed seven days.

The arbitrator's decision will be based on the same eight factors that are currently used in police and fire arbitration, a system that has worked well in this State.

To ensure the integrity of the arbitration process ordered by the court, the substitute also authorizes the arbitrator to issue oaths and subpoenas, and to act as a mediator in the dispute. The arbitrator may not be required to disclose information about the mediation, unless the information is related to the commission of a crime. The arbitrator's award is subject to appeal, and is enforceable through the Superior Court. PERC will decide which issues are mandatory subjects of collective negotiations if there is a question. Finally, the costs of arbitration are to be assumed by the parties.

Some of the people who have requested an opportunity to testify have told us about their concerns with the bill. I would like to invite all of you to briefly discuss during your presentation to the Committees, any or all of the following topics:

Establishing within the bill means to ensure that there is no disruption of the education process during any of the hearings or proceedings required by the bill.

Addressing the issue of penalties for parties that do not comply with court orders in these labor disputes.

Reviewing the deadlines set for the arbitration process to ensure that the process is workable.

Developing language to prevent the arbitration available at the end from having a negative impact upon the existing negotiation process.

Altering the arbitration process to make that process more sensitive to the need to keep labor issues and educational issues separate.

We have heard from you on some of those issues, and we would like to hear further. I will start off with the School Boards Association -- Jeanne Reock.

MS. REOCK: I have with me Curt Wary, who is the Director of Labor Relations for the School Boards Association. He will be here to help with any questions.

Thank you for the opportunity to appear. I am Jeanne Reock, Senior Associate Director for Governmental Relations for the School Boards Association. I am here to express our very strong opposition to this bill, and to any bill that would mandate binding interest arbitration for public schools. We oppose all forms of compulsory interest arbitration and any legislation that would involve public employers or permit a court to issue such a mandate.

The bill requires that if a board goes to court to seek injunctive relief when employees strike, there is a possibility that that will end in compulsory arbitration.

We are opposed to interest arbitration for several reasons: First, because we think it is inconsistent with the democratic form of government. This compulsory process intrudes upon the premise, central to representative democracy, that public policy should be determined by persons who are responsible, either directly or indirectly, to the electorate. In the collective negotiations forum in which we currently operate, the public employer, who is accountable to the public, has the ultimate power to make the decision. Under a system of mandatory interest arbitration, however, that ultimate power to decide a settlement is given to a person who is neither elected nor accountable to any public. Giving such a power to an unaccountable third party is particularly damaging because an arbitrator's award could affect school operations, and this might limit or preclude certain board decisions regarding educational and public policy matters.

Second, the compulsory arbitration weakens and distorts the collective negotiations process. The possibility of a final contract through other than the direct, voluntary negotiations of the employer and employees, might well

encourage both parties to avoid their responsibility to reach a settlement in good faith. Each side might hold back legitimate offers. In those states and municipalities where interest arbitration is mandated, studies indicate that fewer settlements have been reached voluntarily, and that impasse has been more common than before interest arbitration was required. Interest arbitration also changes the bargaining power of the parties by providing more bargaining leverage to unions.

Our third reason is that we believe it is an overreaction to relatively few illegal strikes. Most settlements are reached voluntarily and peacefully in schools, and the vast majority of negotiations that reach impasse are settled successfully through mediation and fact-finding. Over the past six years, New Jersey has averaged just over six strikes per year in its public schools. There are roughly 1200 negotiating units. Settlement was reached in about 1195 cases. That's better than a 99% rate of success. Why would we change a law with that kind of success? Do you really think this bill can provide 100% success?

Finally, the current mediation/fact-finding system has not been fully used by those parties who have engaged in illegal strikes. There were five strikes in the current school year. In none of them was fact-finding used. Both parties should be strongly encouraged to utilize the current procedures. These techniques have served well in the vast majority of cases. The current procedures have the advantage that while they are being used, employees continue to work and the employer continues to abide by the expired contract. School continues in session, and the business of educating our children is not disrupted.

Assembly Bill 2215, which addresses the resolution of public school employee strikes, manages to avoid the use of the word "strike." But we believe the bill actually makes strikes

legitimate through a back-door approach. Under current law, public strikes are unauthorized by statute, and are thus considered illegal. This bill will legalize strikes in certain circumstances.

The bill instructs the courts as to how they must react when a board of education files for injunctive relief in matters relating to "an impasse in negotiations." But when do boards file for injunctive relief? Only when teachers strike. This bill gives legitimacy to a public school employee union's decision to withhold its services. The mandate that the court consider factors which may have led to the school employee walk-out, specifically to the parties' negotiations history, their efforts to resolve the dispute, and the probable impact of a continuation of the impasse on the community, carries with it the assumption that the strike may be justified, and that school employees may, under certain circumstances, have the right to withhold their services. Why else would the court hear such arguments? Therefore, in the broadest sense, A-2215 can be seen as essentially providing statutory authority for strikes of public school employees.

That recognition is likely to encourage more strikes. Statistics demonstrate clearly that in states which have right-to-strike laws, there are more teacher strikes than states where such action is illegal. We have included a handout with our testimony that demonstrates that fact. The bill's suggestion that some school strikes may be legitimate will similarly encourage greater utilization of this as a bargaining tool. More teachers may feel justified in voting to strike, and more local public education programs will be disrupted by those decisions.

Assembly Bill 2215 would prolong school employee strikes. The requirement that the court hear testimony before issuing an injunctive order either to limit picketing or to return to work would, in and of itself, delay the conclusion of

a strike. Time would be necessary for the parties to prepare and to present their testimonies, and for the judge to assess the testimony, to consider the statutory criteria, and to issue an order. Since no judicial order could be issued during the proceedings, the strike would be officially permitted for an indefinite period of time.

I know you have spoken to amending that aspect of the bill. We certainly would support that, obviously. We are very much opposed to strikes by public school employees.

Currently, there are no uniform judicial guidelines for responding to boards' motions for injunctive relief. Individual judges have responded differently.

Assembly Bill 2215's specific authorization for the courts to order binding interest arbitration may well provide the courts with an easy "out," in dealing with intractable disputes. It is, therefore, expected that an interest arbitration order would become the normal judicial response to a board, when the board seeks injunctive relief.

The spectre of binding interest arbitration imposed by a court could only add to the many pressures -- and there are many already -- on a local board not to go to court, not to seek injunctive relief, when teachers strike. Boards, not wanting to surrender control of their school system and school budget to an outsider, would be deterred from seeking injunctive relief. Thus, strikes which could have been truncated by a court order -- as they would be under the current system -- would last longer.

Further, the absence of a court order emphasizing the illegality of the strike sends a message to the public that strikes are acceptable; that that is the way public school employees may behave. This perception may increase teachers' willingness to support the walk-out, and may also increase community support for the striking employees.

But the truth of the matter is, strikes for public employees in our school systems are not good public policy, particularly when it comes to the schooling of our young. Strikes hurt kids; strikes tear a community apart; strikes create bitterness and dissension among the adults, who are supposed to be role models for our children. Valuable days of schooling are lost. Children of working parents are uncared for. Learning is disrupted.

We must do all in our power to foster reasonable ways to help the negotiating parties resolve their disputes and reach a contract settlement. The present system of mediation and fact-finding works quite well. The damage that this bill would do to that system far outweighs any value it could add.

The bill poses a serious threat to the public welfare. Not only would it make strikes by public employees legitimate, but it would stay the hand of many school boards which would normally seek injunctive relief against striking employees. Boards might fear to go to the court because they do not want to be ordered into binding interest arbitration. Vital public decisions should not be turned over to a third party who is accountable to no one. That is what this bill is about. It is about strikes and the public's loss of power to control its school system and its school budget.

We urge you not to release A-2215. Thank you.

ASSEMBLYMAN LITTELL: Thank you, Jeanne. Let me first say that I don't think the intent of this bill is to encourage strikes or to legalize strikes. That has certainly been expressed to you in our willingness to correct what you pointed out was a failure of the bill to direct the court to send the teachers back to work while the interest arbitration was going on.

Secondly, I think you would have to admit that strikes do exist. You have them on your list here. You run five, six, seven here, except for one year where it hit ten. You compare

them to other states. But in reality, all of those other states are much larger, and probably have many more school districts than we do. I don't have that number available to me, but I certainly know that New York, Illinois, Michigan, Pennsylvania, and probably Ohio are larger than New Jersey. Just off the top of my head I know that. So, just to say that because they have a right to strike and we don't and, therefore, they have more strikes, is not a fair comparison in my mind. I would have to see all of the numbers to make that evaluation. I think you would agree that that is fair.

MS. REOCK: Yes, it is. Of course, we have a number of small school districts. I don't know the numbers. You're right, that would have to be looked at.

ASSEMBLYMAN LITTELL: Let me ask you this: Out of those seven strikes in 1987, do you have any idea how long they lasted, or what the average was on them?

MS. REOCK: Yes, I believe I have those figures. In '87-'88, there were five strikes. The number of days totaled 31. The average per strike was 6.2 days.

ASSEMBLYMAN LITTELL: The longest strike was 31 days?

MS. REOCK: No, that was the total number of days with all five strikes taken together.

ASSEMBLYMAN LITTELL: The longest one was 17, in Elizabeth. Okay. So strikes do exist in New Jersey. Can you tell me what the result of the strike in Bergen County was a couple of years ago, when the judge cited that Lyndhurst case? What were the results there?

MS. REOCK: I will turn to Curt for that.

C U R T W A R Y: The particular situation in Lyndhurst involved a situation where, indeed again-- Let's make no mistake about it, we are talking about an illegal strike in all of these instances. The action to go out on strike is not legal, so we will start with that as the premise. In Lyndhurst, they went out on an illegal strike. An order was

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sought. The order was ignored. At a certain point in time, they were ordered to appear back in court. At that point in time, they were --- the original order was to be incarcerated. Again, as you indicated at the beginning, that is not something which any of us here are arguing in favor of -- jailing teachers. As it turns out, in that particular situation that order was amended down to community service.

One thing we want to emphasize-- Indeed, you raised a good point about comparing statistics to much larger states, in some instances. New Jersey is, indeed, a State dedicated to local control. For instance, we have far more school districts in New Jersey than they do in Pennsylvania, which is a much larger state. So the statistics are comparable.

Another thing to remember is, we are talking, in education alone, about a number of bargaining units approximating 1200 or more. When you look at five strikes, we are really talking about a tiny percentage. What you are talking about with this piece of legislation is, okay, we have five situations here that we don't like. But, are we going, in trying to rectify those five -- and we're not saying this would even rectify those five-- What we are really saying here is, to try to get at those five, we are going to completely alter the process for the other 1200 school districts -- for the other 1200 bargaining units, and boards, and so forth, that are in negotiations.

Make no mistake. When you are talking about offering the option of interest arbitration, that will have a profound effect on negotiations, for some of the negative reasons that Jeanne cited. We are not saying that strikes are not bad. They are illegal, and they should not be tolerated. Perhaps one of the things that the Committee should look at is, are there any ways to ensure that they won't occur. But you don't alter the negotiations process, which, you know, has been tremendously successful in 99.9% of the cases, to try to get at these particular instances.

ASSEMBLYMAN LITTELL: Let me ask you something, Curt.

MR. WARY: Yeah?

ASSEMBLYMAN LITTELL: Don't you think that both sides ought to be able to tell their story before a judge renders a decision?

MR. WARY: In the context of what you're saying, they are in court because they violated the law. Under those circumstances, I have real problems with that. In direct answer to your question, yes.

ASSEMBLYMAN LITTELL: Even a person charged with the most dastardly crime gets his day in court, doesn't he?

MR. WARY: They have their day in court. They are ordered to appear. They certainly can make a case for-- Fine, bring them back, and put them in negotiations. They are not immediately going out and having their hands chopped off. What we are talking about is a situation here where they violated the law. Okay? They are in there because they decided to violate the law. Essentially, the only thing we are talking about is a back-to-work order, where we are saying, "Stop violating the law."

The other point which I would like to address, since it is along the same lines, is the point made-- Suppose you are in a situation where, indeed, there is an allegation, at least, that the employer has negotiated in bad faith; that they are not truly meeting their bargaining obligations under the Act. I again want to refer to what you said at the beginning about the passage of the bargaining law in 1968 and how well it has worked. That is something which the School Boards Association believes in profoundly. We have a way of dealing with those kinds of situations currently under the law. If an employer acts in bad faith or, indeed, if an employer organization acts in bad faith, you have the right to file unfair practice charges before the Public Employment Relations Commission, to address that type of behavior. There is an

avenue, so it is not essentially, "Gee, where else can we go?" There is an avenue created now under the law to address those kinds of situations.

ASSEMBLYMAN LITTELL: Well, there are problems. In Elizabeth last year, in that 17-day strike, 221,136 school days were lost. In Plainfield, 24,965 days were lost, and in Fairfield-- We don't have that number. In Morris Plains, it was 502 student days. So, there are problems. I don't want to take too much time, but I did want to at least ask those questions of you.

I would like to ask Assemblyman Palaia to comment on hostilities. He might be able, as Chairman of the Assembly Education Committee, to tell you, and me, what hostilities are like, whether there are any, and whether they are real or not.

ASSEMBLYMAN PALAIA: My point would be -- to Jeanne or to Curt -- the lasting effects of a strike-- I don't know. You know, it is very difficult to follow up a year or two later when the next negotiating session goes on, and just say, "Is it clean? Are they really meeting in good faith?"

I am just wondering, as the board of ed-- I'll tell you the truth. I haven't made up my mind, so I am not speaking for or against this bill at all. I am here to listen myself. Do you feel, as the board of ed, that everything should sort of stop with the board of ed? Now, Curt, I know you said they have other methods they can go through. I notice, Jeanne, in your presentation, you said they are not going through those steps; that they haven't taken them. I think that is what you said.

MS. REOCK: Those that were out on strike, by and large did not go through the fact-finding. There is mediation and there is fact-finding. They chose not to. Right now, it takes both side to agree to go--

ASSEMBLYMAN PALAIA: To go to fact-finding.

MS. REOCK: To go to fact-finding, yes.

ASSEMBLYMAN PALAIA: Would there be any reason for that, Jeanne? What would be the reason that they wouldn't go through that process? I should ask the NJEA, I'm sure. But, do you have any reasons that you feel, as board members -- as representatives of the boards -- why they wouldn't do that? Do they feel it is useless?

MR. WARY: It could be a number of reasons.

ASSEMBLYMAN PALAIA: What are some of the reasons?

MR. WARY: Well, some of the reasons tactically, I could speak to, in the sense that they feel the best way to make a dramatic statement, or the quickest way, or the surest way to try to get their demands met, would be to walk out, as opposed to going through the fact-finding process.

ASSEMBLYMAN PALAIA: Thereby bringing the public--

MR. WARY: Yes.

ASSEMBLYMAN PALAIA: --viewpoint into being.

MS. REOCK: More pressure.

MR. WARY: But one of the other things which we need to look at is, indeed, in those kinds of situations, what really does force the parties to compromise and move toward a settlement, and certainly one of the prime elements there, is, indeed, public pressure. In a situation, particularly in fact-finding, where essentially both parties go and present their sides and a fact-finder makes a determination, they try to settle it, but if no settlement is possible, or only one side accepts what the fact-finder is saying, he may make the report public, which again, you know, under those circumstances, becomes a very effective device for increasing public pressure. I am just saying that in a lot of these circumstances where, you know, you are having these strikes, that is a step which was not taken. The more expedient step was to simply go out on strike. That is something which the current process provides, which is a helpful step.

ASSEMBLYMAN PALAIA: I understand what you're saying. If they were to go to a fact-finder, would things such as class size be one of the things that would be determined, length of a school day, length of a school year? Is that what we are talking about with a fact-finder? Is he doing a whole package, or is he just doing, what, money?

MR. WARY: He is dealing with the issues in dispute.

ASSEMBLYMAN PALAIA: Well, that could be almost anything.

MR. WARY: Well, it would be the outstanding issues that were not resolved by the parties to that point in negotiations. It would not be class size, because that is not a negotiable issue. It could well be other issues that impact upon the educational program like the ones you mentioned, like the length of a school day or a school year and, yes, he would be asked to deal with those issues as well as money if, indeed, money was still in dispute.

ASSEMBLYMAN PALAIA: That could be part of the--

MR. WARY: Without question.

ASSEMBLYMAN PALAIA: It could be?

MR. WARY: Yes.

ASSEMBLYMAN PALAIA: Thank you, Mr. Chairman.

ASSEMBLYMAN LITTELL: I am going to poll my members, and then, Joe, you can poll yours. Assemblyman Patero, do you have any questions?

ASSEMBLYMAN PATERO: Yes. Mr. Chairman, the way to get a bill killed is by putting in a certain word. As you know, I had a plant closing bill. They called it a "hostage" bill, which scared a lot of people, and they weren't going to help. This is really going to scare the constituents in our areas, because they are considering it a strike bill, and I don't think this is a strike bill. I can see the papers tomorrow, "Strike Bill," and we will get all these letters saying not to strike.

I have here the list that was turned over to us, "Teacher Strikes," showing Illinois, Michigan, New York, Ohio, and Pennsylvania. Does that specifically say that public employees have a right to strike?

MR. WARY: In some instances, it does.

ASSEMBLYMAN PATERO: All right.

MR. WARY: For example-- Let me just give you one example. In Illinois, in 1984, there were 34 teacher strikes. That was the first year of their right-to-strike law. Okay? In New York, for instance, there is a Taylor Law in effect, which essentially statutorily provides for penalties for people going out on strike; where, indeed, there is no discretion left to judges to fashion such awards. There you see that strikes are virtually nonexistent. Now, there are different laws in place in different states. In Pennsylvania, where they have had a dramatic -- you know, in comparison to us -- a tremendous number of strikes, there is a right to strike.

ASSEMBLYMAN PATERO: Yes, but getting back to the question-- Giving the employees the right to go to court, to have their day in court, isn't like the other states where they say they do have a right to strike.

MR. WARY: I'm saying it is a mixed bag with the other states.

ASSEMBLYMAN PATERO: Right, but there is a big difference between giving them the right to strike, unless--

MR. WARY: Well--

MS. REOCK: It implies that there is something they can tell the judge that would justify their having gone out on strike. But, in fact, under the current law, there really isn't. The strikes are illegal. There are no conditions on that.

ASSEMBLYMAN PATERO: Yes, but what I am trying to drive at is, right now, the penalties are so strict. They pay a high penalty in fines, plus they could also go to jail. At

least I think if the educators had their day in court, the judge could make his decision better than guessing, you know, that they had just broken the law. I mean, if the teachers go in front of them and say, "Look, they are taking this away, they are taking that away, and they are not actually bargaining in good faith," rather than being fined \$2 million, they might only be fined about \$20,000.

MS. REOCK: If the union feels the employer is not bargaining in good faith, the union goes to PERC. There are already procedures set up to handle that.

ASSEMBLYMAN PATERO: Okay.

MS. REOCK: That should not be mixed up with a strike, which is illegal.

ASSEMBLYMAN PATERO: Just two more questions, and I will be finished. You said about mediation that both sides have to agree to a mediator. Right? Am I correct, or am I wrong?

MR. WARY: No, that's not true.

ASSEMBLYMAN PATERO: Okay. Is the school board binded by the mediator's decision?

MR. WARY: No, neither side is.

MS. REOCK: The mediator just tries to get them to work together.

ASSEMBLYMAN PATERO: Okay. I know there is a school district in Somerset County where they have negotiated, and from 10 sick days it is down to three. From the cumulative pay for sick days, instead of three, you get paid for one day out of three. It is now being raised to four. They asked, "Let's bring a mediator in," and they said, "Look--" That is why I wanted to know if a mediator would be binding -- if his decision would be binding. They said, "Well, we are just not going to accept the mediator." This is the kind of thing that is going on. If we have such a good rate of 99%, I really don't see why the school boards are afraid of this bill.

MS. REOCK: Because it would change what is happening in the 99%. I think that is the major point we are trying to make today.

ASSEMBLYMAN PATERO: My last point, Mr. Chairman: Personally, I think the reason why you have such a high rate is because the educators-- They are professional people; a lot of them are dedicated. They would rather teach than go on strike. But also, when you are faced with the fines that have been given out by the courts, and the possibility and the fear of going to jail, I think it prevents a lot of people from walking out.

ASSEMBLYMAN LITTELL: Thank you, Assemblyman Patero. I agree with you. It's dispute resolution legislation; it is not strike legislation. I think anyone who represents it as such is not being totally honest with the public. Strikes do exist. They are not resolved easily, and that is what we are trying to deal with. We are trying to resolve disputes.

Assemblyman Genova is next.

ASSEMBLYMAN GENOVA: Thank you, Mr. Chairman. Good afternoon, everyone. It is a pleasure to see so many people interested in this legislation, on both sides of it. I commend Chairman Littell and Chairman Palaia for combining these two Committees. This is one of the very few times this has happened during this session, and I think it is a fair approach to make sure that there is an open mind to a particular bill that is of such great interest to everyone.

I would just like to ask Curt or Jeanne a question about a statement which appeared on page 7 of your testimony. It has to do with, "Vital public decisions should not be turned over to a third party who is accountable to no one." Would you people be in support of a possible amendment to this bill, or a proposal, which would allow each designated interest group to be represented; for example, as in arbitration, an arbitrator from the school boards, an arbitrator from the union, and an

arbitrator from PERC -- we'll say a three-panel arbitration committee -- so that the PERC designee would sway himself to support either one of them? Would you feel that would be a fair approach to it?

MR. WARY: My problem ultimately with that, again, would be that what you are really talking about with all of these measures is some sort of a binding award. Okay? What you are really doing is-- The process no longer then is the parties. The keystone now of our collective bargaining law is voluntary settlements. The parties sit down and hammer out a settlement. Sometimes they do it easily; sometimes it is a long tough process. But the settlement they get is theirs. What you are not talking about-- Even if you modified it along the lines that you suggested, it would still be a settlement that is going to be imposed on the parties -- something which is going to be thrust on the parties -- and it is not going to be their own. As I say, that has a lot of negative implications.

I would send you back to some of the comments Jeanne made. Even in the circumstances I think you are outlining, you are still talking about a settlement which will then be imposed on the parties, and I think for that reason we would oppose it.

ASSEMBLYMAN GENOVA: It certainly would ensure input, though, by all concerned. Don't you agree?

MR. WARY: It would improve input beyond what you were talking about, I guess, originally, but I don't think that would get it over the hurdle I mentioned with respect to it being an imposed settlement.

ASSEMBLYMAN GENOVA: So, what would you recommend, or what would you suggest, that would be fair to everyone, not just your own special interest?

MS. REOCK: The current system. The current system was well-thought-out, and it does work. It should be permitted to continue.

ASSEMBLYMAN GENOVA: Okay. Another point: Would it be fair to say that the inability of teachers to strike and the lack of third-party input -- say a mediator, for example -- cause a hostile educational environment in some districts, thereby hurting the children? Would you agree with that, or would you disagree with that?

MR. WARY: I would agree that, generally speaking, there are some districts where there is a bargaining relationship, irrespective of what you did to change it, where there would be a lot of hostilities, probably most often because of the personalities involved. There are a number of those situations around the State. I would not deny that. But it is not because there is not a right to strike, and it is not because they don't have binding interest arbitration. It is because there is a confrontational approach to negotiations which will be there no matter what happens, because it is the product of personalities who have been in those districts over a long period of years and have soured the relationship.

ASSEMBLYMAN GENOVA: So, would you support the fact -- the statement -- that a third party is good?

MR. WARY: Under those circumstances, I don't think it would make any difference. I don't think it would get what you are trying to achieve, in terms of alleviating the bargaining rancor, because I think that is going to be there no matter what. I think bargaining rancor is a result, in many instances, of personalities, and a result of long-term animosity between the parties. I don't know-- In fact, I would tell you that changing the outcome, or making interest arbitration available, isn't going to change that one iota.

MS. REOCK: Let me just add to that, that even if this bill were passed, there is no assurance that there would be no more strikes. If the union were dissatisfied with the results of binding arbitration, they might well choose to go out. That would be as illegal as it is to go out now, but they go. So, this is not 100% foolproof.

ASSEMBLYMAN GENOVA: In developing your opposition to this bill, what measures did you and your staff think of to protect the children, who ultimately are the ones who are going to suffer? I am going to ask NJEA the same question.

MS. REOCK: Our main concern would be to prevent strikes. New York State has done that effectively, and you have the figures before you. The Committee might want to consider something like that. That is a law which clearly states what the penalties are for going on strike.

As it is now, the Board may or may not go into court and seek an injunction. The judge may or may not give the injunction immediately. He may order them to go back to the table and talk some more, while the strike goes on. The penalties he imposes are unknown. Some come down very heavily; others impose penalties and then forgive them. Others say, "Do some community service." So you have a situation where when teachers vote to go out on strike, they don't really know what they are getting into. It could be a heavy penalty, or it could be almost nothing. In New York, it is very clear. Under that law, I believe they are docked two days' pay for every day out. That is just an example of how things might be done. But I think it is the clarity and the seriousness of the state there in saying, "We will not tolerate strikes against our public school children," that has made the difference.

ASSEMBLYMAN GENOVA: Thank you.

ASSEMBLYMAN LITTELL: Joe, do you want to--

ASSEMBLYMAN PALAIA: Yes, I would like to go around my Committee, starting with Assemblyman Bill Pascrell, who represents the Paterson district -- Paterson area, Paterson (sic) County.

ASSEMBLYMAN PASCRELL: Thank you, Mr. Chairman. I think that all of us on the Assembly Education Committee join in commending Assemblyman Littell. I think this is a very courageous move on your part, if I say so myself, for a number

of reasons. Looking back at your history, you have not been afraid to take courageous positions.

What we are doing today -- and I join with Assemblyman Genova -- is a good government lesson, because what we are trying to do, as I understand it, is basically what my Chairman does everytime we meet, and that is, bring people together. Everyone has a different point of view on the subject. We are hearing one of them right now. I am particularly concerned about children at risk, but so are teachers concerned about children at risk. We better not get into debating who is more concerned, because that would be fruitless.

Before I get into my comments on this testimony, I would like to ask a question. Mr. Chairman, when you were reading out those people who will testify in groups, did you say the Department of Education?

ASSEMBLYMAN LITTELL: Yes, Jeanne Oswald.

ASSEMBLYMAN PASCRELL: The Department is going to be responding to this then, I assume. Thank you.

I would agree, Mr. Chairman, that this is not a bill that affirms or reaffirms the right to strike. If I may suggest, perhaps we should put together a preamble to the bill to clarify what the intent of the Labor Committee and its Chairman is, so that we settle the question once and for all that this is not an attempt to circumvent the law, and to allow teachers to strike through the back door. I think that may be important right up-front, because I don't believe there is anyone here who has that intent in mind. I know you didn't, and I don't think that any of us do. So, if I may make that suggestion, Mr. Chairman.

ASSEMBLYMAN LITTELL: Thank you.

ASSEMBLYMAN PASCRELL: Let me ask the question to the New Jersey School Boards. Do you think this bill, in its amended form, in any way increases the scope of negotiations?

MR. WARY: Not that I am aware of. I did not look at it from that aspect, to be honest with you. I looked at it in terms of whether it would increase the likelihood of strikes.

ASSEMBLYMAN PASCRELL: Do you think there is an essential, and not a quantitative relationship between the scope of negotiations and how we settle educational disputes within the State of New Jersey? Do you think there may be an essential relationship between those two things?

MR. WARY: Is there a relationship between the current scope of negotiations and the incidence of strike? No. If you look at the issues where people have gone out on strike, they tend to always be bread and butter issues, because indeed if you were going to make the ultimate decision to break the law and go out on strike, it is normally going to be for something like dollars in the pocket. The kinds of issues that come up time and time again are not even language issues, which are mandatory negotiable. They tend, for the most part, to be money and benefits -- bread and butter issues.

ASSEMBLYMAN PASCRELL: But, wouldn't you say that what you call bread and butter issues are usually those which are left on the table because of other circumstances? They are almost left on the table because of design, rather than negotiations to that point.

MR. WARY: The current scope of negotiations, where terms and conditions are defined, is a very large and almost exhaustive list of items. If you are talking about educational policy matters not being subject to negotiation, and that being a reason or a linkage for increased teachers' strikes, I don't see that, and I don't think you could see statistics that would support that. If, indeed, you went back to pre-Ridgefield Park, which was 1978, and you looked at incidences of strikes before and after, I don't think you would find that to be the case.

Most importantly, I think you would find even prior to Ridgefield Park, that teachers' strikes did not exist because of educational policy determinations or issues like that not being negotiated at the bargaining table. We have said consistently, as an organization, that those matters which are outside of the scope of negotiations are matters which, certainly, for the most part in most school districts, are determined through input to the teaching staff, and that is correctly so. But those are not issues that should be held hostage to the negotiations process. Can you imagine if class size were an issue and we were talking about a threatened teachers' strike over class size, or assignment criteria-- Talk about how that would harm a school district, I can't think of anything more terrible in terms of what you could do to a district.

ASSEMBLYMAN PASCARELL: I don't think you have really answered my question, although I happen maybe to agree with some of the things you said. It isn't within the scope of this bill to talk about the scope of negotiations. I am very aware of that. But it is good, during these hearings, that we put everything on the table. Plus, it is the intent of the sponsor, and we all support the sponsor, if not the bill right now. But that may be true, also. To avoid strikes-- That is why we're here, and that is the direction we are going in.

The New Jersey School Boards Association-- You presented, five or six years ago, and correct me if I am wrong, a fair and final offer bill, which you introduced. Is that correct?

MR. WARY: In 1975, I believe it was, we put out at least a position paper supporting fair and final. I could make humorous remarks about those people who were gone within two months, or something such as that. It was something where we, as an organization, quickly looked at our position and decided that it would not be in the best interest of education. Quite frankly, we reversed our position.

ASSEMBLYMAN PASCRELL: Why is a fair and final offer not consistent with quality education?

MR. WARY: Let's take an example, the bill that is before us, and putting together packages, let's say, of items. In doing so, if you were the school board, obviously you want to put together a package which is going to be the one that is going to be accepted. So, you have that in mind. You are going to look and see-- Let's put together a package which is going to be the one the arbitrator picks. Let's also take, for example, that you are a district which can't pay the going rate. You are one of the poorer districts, and you can't afford-- The current teachers' settlements right now are running around 9% in education. You can't afford 9%. You also have issues on the table which are not educational policy matters, but they are, indeed, issues which affect the educational program. I would go back to the examples that were cited earlier, such things as work day or work year. Now, you may have a real need to extend the work year in your particular district, let's say, to bring teachers back for curriculum work. Yet, you realize that if you keep those items in your package, and you know your package at best is going to be able to offer 7%, you know it is not going to get accepted.

So, under those circumstances, you pull out items which perhaps are in the best educational interest of that district, hoping that, "Well, if we pull out all these other language items and we just go with what is their reduced money offer, maybe we will prevail on that. We won't be put into a position where we have to implement the association's last best offer, which is, let's say, 9%." So I do see where this kind of a bill could have very profound negative implications for the quality of education in a school district.

ASSEMBLYMAN PASCRELL: What is the School Boards Association's response to a prolonged strike such as has existed in a few communities, such as Elizabeth? How do we stop those strikes? What is your suggestion?

MR. WARY: My suggestion, if that, indeed, is really what we are aiming for-- If we are looking at those five strikes and we are saying, "It's intolerable. We don't want to put up with those kinds of situations," let's look for a system where there is absolute certainty of punishment, where everybody knows the rules of the game, that it is not legal to strike. If we do strike, it says right in the law A, B, C, and D are going to happen. You would be shocked at how that may discourage parties from going out, and getting towards your zero base, if that, indeed, is what you are looking for.

ASSEMBLYMAN PASCRELL: So, your position is-- Your response to the Elizabeth situation, and other situations, is that the law is not clear enough, so that there is too much discretion on the part of the courts. Is that what you're saying?

MR. WARY: We're holding that out, I guess, as an option to you.

ASSEMBLYMAN PASCRELL: Okay. Even if that were true -- and I don't happen to agree with you on that point -- then what? Then what is your suggestion, that we tighten up the language of the law as it exists?

MR. WARY: Well, as I say, one approach could be to simply and clearly state in the law exactly what the penalties for striking are.

ASSEMBLYMAN PASCRELL: Have you proposed that?

MR. WARY: No.

ASSEMBLYMAN PASCRELL: Would you agree that people are driven to strike?

MR. WARY: I think there are all kinds of scenarios out there. I think under some certain circumstances, some people may feel they are driven to strike. I certainly don't think that is the case in the majority of strikes we are talking about.

ASSEMBLYMAN PASCRELL: Well, you used the example of an urban area, so I will use the example of an urban area. I think it is a good one. I am very familiar with it, since I served on a board of education -- was the president of the board -- when there was a strike. I had a great experience. It certainly didn't come out of a book.

My perception of the strike was one of poor communication on everyone's part, including ours. But, there was not only poor communication between the board and the teachers and the negotiating team, there was worse communication between the negotiating team and the teachers, the rank and file. The proof of the pudding is that there were two signed agreements that the negotiating team could never sell to the rank and file.

Don't you think that this bill, which is before us in its amended form-- I want to get to one of those amendments in a second, and I'm sorry I'm taking so much time, Mr. Chairman. Don't you think that this bill speaks to trying to bring the parties together, and goes a long way toward helping to improve communications so that we avoid teachers' strikes? I want to avoid teachers' strikes. You do, too. Correct?

MR. WARY: Yes, absolutely.

ASSEMBLYMAN PASCRELL: Don't you think that this bill, with regard to the example you brought up -- that you presented -- of an urban area, where there are so many ripple effects of how much money is going to come from the State, and how much the local taxpayers can afford, in terms of their own responsibilities-- I think it was a good example that you brought up. Don't you think that forcing people, almost, to come together to come to some agreement that not everybody is going to agree with, is the best way to go?

MS. REOCK: You know, that might be, but that is not what this bill does. That is not what compulsory binding arbitration is. It is not bringing people together. Mediation

brings people together. Fact-finding does it, in a sense, because they then have to agree, if they are going to have a settlement, to accept the fact-finder's recommendation. But, binding arbitration is of a different nature. That is the judge -- the arbitrator saying, "Thou shalt do this," and both sides may hate it. They may misunderstand it. I don't see where there is communication brought about by this imposition from outside. In fact, in terms of communication, I think good use of the present system is exactly what it is about. Good use of mediation; good use of fact-finding.

ASSEMBLYMAN PASCRELL: Mr. Chairman?

ASSEMBLYMAN PALAIA: Yes?

ASSEMBLYMAN PASCRELL: I wanted to come back to one point, but I will wait.

ASSEMBLYMAN PALAIA: I'm sure that with the NJEA and everybody else, we will have questions, and we will be going around again.

ASSEMBLYMAN PASCRELL: I'm sorry I took so long.

ASSEMBLYMAN PALAIA: That's okay.

ASSEMBLYMAN LITTELL: There are some folks who want to speak, and they have time problems.

ASSEMBLYMAN PALAIA: Yeah, they have time restraints.

ASSEMBLYMAN PASCRELL: Okay, I got the message.

ASSEMBLYMAN PALAIA: Assemblyman Gerard Naples?

ASSEMBLYMAN NAPLES: I will be very brief. I just want to echo the sentiments of my colleague, Bill Pascrell, on my left. I commend both Chairpersons. Inasmuch as I will freely admit that I have not read everything on this bill, I am here to listen and to learn. Contrary to what a lot of my critics say, I don't think I know it all. I am going to listen.

But I do want to ask you one question, to sort of piggyback upon what Bill, I think, was trying to touch upon. Let me phrase it this way: Is narrowing the scope of negotiations, in your opinion, directly proportional to the incidence of job actions?

MR. WARY: Absolutely not.

ASSEMBLYMAN NAPLES: Absolutely not?

MR. WARY: Absolutely not.

ASSEMBLYMAN NAPLES: That is an unqualified "not."

MR. WARY: That is an unqualified "not."

ASSEMBLYMAN NAPLES: I wasn't asking you an unqualified -- rhetorical question either.

MR. WARY: I wanted to be very emphatic in my response to you, I guess.

ASSEMBLYMAN NAPLES: Okay, I pass.

ASSEMBLYMAN PALAIA: Next is Joe Kyrillos, representing Old Bridge, Middletown Township, and the Thirteenth District. Joe?

ASSEMBLYMAN KYRILLOS: Thank you, Mr. Chairman. I might as well make it unanimous, and praise Chairman Littell, and Chairman Palaia as well, for working the two Committees on this assignment. While those of us on the Assembly Education Committee will not have a vote in Committee on this measure, people will assume that we know a little bit about it. Back home I am sure they will be asking me questions about it. We may, in fact, have to vote on it on the Assembly floor. So I appreciate the opportunity of being here to listen to testimony. I appreciate yours. I appreciated receiving it in advance. That was very helpful. I look forward to hearing the others who are here today.

Thank you, Joe.

ASSEMBLYMAN PALAIA: Lisa Randall, representing Bergen County.

ASSEMBLYWOMAN RANDALL: Good afternoon. I can't put a motion on the floor to allow us to vote on this?

ASSEMBLYMAN PALAIA: No, you better not.

ASSEMBLYWOMAN RANDALL: All right. Let me just ask one question for clarification. You made the statement that interest arbitration changes the bargaining power of the

parties by providing more bargaining leverage to unions. I'm sorry if I was late, and may have missed your elaboration on that point. Can you just tell me why you feel that is so?

MS. REOCK: I really didn't elaborate on it. It is because basically to the union side-- I think it throws some weight to their side, and that is why interest arbitration may appear attractive to them. Many of the settlements end favorably for the unions. Curt may want to add something to this in more depth. Have you anything, Curt?

MR. WARY: Experience with other states, and experience, I think, even with perhaps our own police and fire, indicates that the overwhelming majority of those kinds of awards tend to go in favor of labor. I think that certainly is a consideration. I think, also, that if you look at a situation where--

Let me throw another situation out to you. Again, with the concept we are talking about here, a fair and final offer of packages, where essentially you put together a package and the other side puts together a package, and you choose-- Let's say, for instance, and this is something which we currently now have in our negotiations process-- If you want to go for something which isn't the typical thing in the county-- Let's say your school board would like to really take a shot at something like merit pay, okay? That is something which you don't see often in education in New Jersey in labor contracts. Okay? But let's suppose you have a school board and you have a community that is very committed to that kind of an ideal, and you really want to go for it. You're willing to pay. You're willing to pay big bucks to try it. You're willing to make concessions on other items. Currently under negotiations, perhaps, if you were willing to make the effort and willing to pay the dollars and make concessions, you could get it in negotiations. The problem with the situation with fair and final offer-- The problem with situations with

interest arbitration is that the criteria is specified as to what arbitrators are going to look at. But more than anything else, the criteria they tend to look at -- not only in this State, but in other states -- is comparability. Indeed, if they don't see it in something which is the typical benefit, or the typical approach, it is unlikely that you are going to get something like that in interest arbitration. I see that again as a detriment, perhaps, and a limitation on the negotiations process. Perhaps again, it is an impediment to, you know, a district that wants to try to do something different. I don't know if that makes it necessarily something which is pro labor, but, again, I think it is anti good education.

ASSEMBLYWOMAN RANDALL: This is obviously an open-ended question, but do you have any reaction to what your position would be on this bill if it had something like a two for one penalty in it, a la New York -- what they have?

MS. REOCK: It would be better.

ASSEMBLYWOMAN RANDALL: Thank you.

ASSEMBLYMAN NAPLES: Mr. Chairman?

ASSEMBLYMAN PALAIA: Yes, Gerard.

ASSEMBLYMAN NAPLES: I just want to follow up on one question that just came to me, and I think you will be as quick to answer as I will be to pose it. I asked you a moment ago -- and I wrote this down -- is narrowing the scope of negotiations directly proportional to the incidence of job actions, in your opinion? You gave me an unqualified honest answer, and I appreciate that. Let me just rephrase it, then. Based upon your answer, let me qualify my question, as long as you did not qualify your answer. Is a narrower scope of negotiations, to some extent, directly proportional to the incidence of job actions in some cases, would that mean? Before you answered it in terms of all cases, but in some cases?

MR. WARY: I won't answer it in any absolute terms. I guess how I will answer it is to tell you that the kinds of

items we are talking about in expanding the scope of negotiations-- Obviously, we don't have the bill in front of us, but let's just say we are talking about a permissive category where we are talking about greatly expanding the scope of negotiations. The kinds of issues-- To put them subject to the negotiations process and take them out of the process of public decision-making, where they exist now -- education and policy determinations -- I think is so detrimental to the process of education. Weighing that against any possible impact it may or may not have-- You know, there is no--

ASSEMBLYMAN NAPLES: I thank you for your answer, which was longer than my question this time.

MR. WARY: --contest.

ASSEMBLYMAN PALAIA: Before you leave-- Assemblyman Pascrell, when he first spoke, talked about children at risk. I think as boards -- as representing the boards -- there are many features at risk also -- poor facilities, with no safety factors at all. I think some of these things have to be brought out also. It is not only children at risk. There are teachers at risk also throughout the State of New Jersey, and we must protect them, too. That is why you have to have hearings such as this, which I am sure you are trying to do. Don't get me wrong. But we keep talking about children at risk. There are also teachers at risk out there, too.

We thank you very much for your testimony. I will now ask Mr. Hank Miller, from the Principals and Supervisors Association, if he will come forward.

MS. REOCK: Assemblyman Palaia?

ASSEMBLYMAN PALAIA: Sure.

MS. REOCK: While Hank is walking up here, I would just like to say-- Even though the sponsor is out of the room, I was waiting for an opportunity to make this comment. We did not mean to imply that his intention was to legalize strikes. We just wanted to point out that we felt it was a by-product of

the bill as written. I mean, just looking at the words on paper, it seemed to be a by-product because the way to get to contract arbitration is through the door of a strike. If one wanted to get to that arbitration, one would have to strike.

ASSEMBLYMAN PALAIA: Thank you, Jeanne. I happen to agree with Assemblyman Patero, when he says, though, this bill isn't just strike. That isn't what this is all about. But it seems that that is the word we are constantly hearing today.

Thank you much, Curt and Jeanne.

MS. REOCK: Thank you very much.

MR. WARY: Thank you.

ASSEMBLYMAN PALAIA: Our next presenters will be Mr. Hank Miller and Mr. Martin Olech, from PSA -- Principals and Supervisors Association. I will turn the hearing back over to Chairman Littell.

ASSEMBLYMAN LITTELL: Thank you, Assemblyman Palaia. Mr. Miller has a time constraint, and we appreciate his waiting to speak. We also have David Wallace who has a time constraint. We will put him on next.

H E N R Y M I L L E R: I shall endeavor to very short, Mr. Chairman. I am Henry Miller, Executive Director of the New Jersey Principals and Supervisors Association, representing the 5000 principals and supervisors throughout the public schools in the State of New Jersey.

In spite of what you are saying, Assemblyman Palaia, about strikes, we do address this as being part of the issue. We represent those who are left in the building with the children when a strike occurs. We are the people who arrange and manage the schools for the boards of education. We are also the management people. But we are also the professionals who spend our working day with teachers, working cooperatively with them day by day, hour by hour, to see to it that our schools function properly and that kids learn.

Therefore, the principals and supervisors are the people in the middle. We face full square on, Mr. Chairman, the disastrous effects of a strike; before it happens, while it is happening and, most importantly -- the things that most people don't seem to know and understand -- the aftereffects -- the terrible aftereffects of a strike and the impact it has upon the learning process. As we see this, Mr. Chairman, this is a limited binding arbitration bill that addresses those individual unusual cases where the bargaining process has broken down. It directly avoids those potentially, as I said before, disastrous occasions that are very few in number, but are exceptional in kind. On this point alone, Mr. Chairman, we are in favor of the intent of this bill, with one great reservation.

By and large, the bargaining process in New Jersey works. It works well; it is most successful. However, when those complex emotional and personal confrontations come into existence in the bargaining process, there is no doubt among building administrators and the supervisors that the third party influence -- direction from a third party, is required. On behalf of the public welfare and, most of all, especially the need to prevent the disruption of the educational process, we stand in favor of this legislation.

We have a grave concern here. That is a concern with item f. on page 3. If it reads as we suspect it does-- I just heard what the testimony was from Jeanne Reock and the School Boards on this issue concerning a question I think came from the side.

ASSEMBLYMAN NAPLES: What item was that, Hank?

MR. MILLER: Item f. on page 3, Assemblyman Naples.

ASSEMBLYMAN NAPLES: Is this the pre-amended--

MR. MILLER: The Substitute: "In the event of a dispute during the terminal arbitration procedure, the

commission shall have the power to decide which issues are mandatory subjects of collective negotiations. Arbitration shall be limited to mandatory subjects of collective negotiations." My staff's interpretation of that is that this would change the scope of bargaining. We question the wisdom of allowing a third party not associated with education, which knows little about schools, to decide the scope of bargaining.

Now, if we are wrong on that, and this bill does not limit the scope or change the scope of bargaining, I would withdraw my concern.

ASSEMBLYMAN LITTELL: Let me just clear that up for you. We have a substitute which has changed that.

MR. MILLER: I didn't receive it.

ASSEMBLYMAN LITTELL: At the bottom of page 4, we have changed that to say: "Arbitration shall be limited to mandatory subjects of collective negotiations." PERC already has the--

MR. MILLER: So, the scope of bargaining, as it presently is under the law, would not change?

ASSEMBLYMAN LITTELL: That's right. PERC has that authority now.

ASSEMBLYMAN NAPLES: Bob, what page are you on now? Wait a minute.

ASSEMBLYMAN LITTELL: The bottom of page 4.

MR. MILLER: We feel that if it did change-- I won't belabor this now, but we feel that if this bill did change the scope of bargaining, that that issue should be addressed under another bill, at another time; that it should not be part of what we consider to be an essential bill to address those very limited occasions when a strike occurs in a school district.

Thank you, Mr. Chairman.

ASSEMBLYMAN LITTELL: Thank you, sir. We appreciate your comments. We have the correction made, and we think that is satisfactory.

MR. MILLER: Yes.

ASSEMBLYMAN LITTELL: We will give you a copy of this, if you would like.

MR. MILLER: I would like to have it, if I may.

ASSEMBLYMAN LITTELL: Here you go.

MR. MILLER: Thank you again.

ASSEMBLYMAN PASCRELL: Mr. Chairman, may I ask this gentleman a question before he leaves?

ASSEMBLYMAN LITTELL: Yes, okay, but he has a time constraint, Assemblyman Pascrell.

ASSEMBLYMAN PASCRELL: Thank you, just a quick question. Do you consider yourself to be part of management?

MR. MILLER: Yes, most definitely.

ASSEMBLYMAN PASCRELL: Thank you.

ASSEMBLYMAN LITTELL: Next we have Mr. David Wallace, Esq., from Hackettstown.

ASSEMBLYMAN PATERO: Bob, while he is coming up, may I make a comment?

ASSEMBLYMAN LITTELL: Sure, go ahead.

ASSEMBLYMAN PATERO: You know, what he said is true. They have the toughest job of all, because once the teachers come back from a strike, the morale is very low. You have people who cross the line, plus the people who stayed out. So, I don't envy their position. I am very happy that they are supporting this bill.

ASSEMBLYMAN PALAIA: Believe me, Assemblyman, I have been there for 27 years. It doesn't necessarily have to be a strike. It could be just tough negotiations sometimes, where the principal or an administrator can get caught--

ASSEMBLYMAN PATERO: Caught in the middle of the thing.

ASSEMBLYMAN PALAIA: --right in the middle, really. It's very difficult.

ASSEMBLYMAN LITTELL: Okay, Mr. Wallace, go ahead.

MR. WALLACE: Thank you for the opportunity to speak to you this afternoon. Very briefly, what my background is, I have been practicing labor law for 18 years. I am in the unique position of having been on both sides of the table, as well as in the middle. I represented unions at the beginning of my legal career; I was General Counsel for the Public Employment Relations Commission for four years in the '70s; and I represent management at the present time. I can look at the bargaining law from the perspective of three sides of the table, so to speak.

I am here to tell you that I strongly favor legislation that will minimize, or eliminate teacher strikes. I speak from the position of a citizen, a parent, and a taxpayer. Teachers' strikes should be minimized, or eliminated, and any bill that attempts to achieve that goal starts off as having two strikes in its favor, as far as I am concerned, no pun intended on the word "strike." The difficulty I have -- and again perhaps it is the drafting -- is that this bill, as drafted, would bring about the opposite result. It would neither minimize nor eliminate teacher strikes.

So if, as I heard this morning, the intention of the bill is otherwise, I would strongly urge changing the words. If I were a judge and I were shown this legislation, and a school board came to me to enjoin an illegal strike, I don't know what I would do, but I would read the law, and it says, among other things -- this is referring now to the judge, on page 1 -- page 1, section 1, around 10 lines down--

ASSEMBLYMAN NAPLES: Do you have the Committee Substitute or the bill there?

MR. WALLACE: It says "Assembly Committee Substitute" on the top.

ASSEMBLYMAN NAPLES: Okay.

MR. WALLACE: 4/26/88. It says: "In determining whether or not to grant injunctive relief to the plaintiff," and then it goes on to list various criteria the judge is supposed to look at. Now, if I am a judge, and I am reading that, I say: "The Legislature has given me the authority to either enjoin this strike or not." So therefore, the outcome of this legislation, if drafted in its present form, would work a vast change in the present system. The present system clearly is that the judge has absolutely no authority to do anything at all but enjoin the strike. As soon as it has been proved that a strike is taking place, the judge must automatically enjoin. The words that I just read obviously bring about a different result. If it is not intended to, and if the words can be refashioned in such a way as to make it clear that strikes are still automatically enjoined, then my concern would be eliminated.

ASSEMBLYMAN LITTELL: Excuse me.

MR. WALLACE: Yes, sir?

ASSEMBLYMAN LITTELL: May I ask you, where do you know that it says that in the statute, that strikes are enjoined? It doesn't say it in the statutes, does it? Isn't it a fact that it is in case law?

MR. WALLACE: Absolutely correct. I would hope to spend two minutes bringing you all up-to-date, in the event you haven't already been brought up-to-date, as to why strikes are illegal and what the courts and the other legislative commissions that have reviewed this matter -- how they have reached the results they have reached.

Strikes have been illegal in New Jersey in the public sector for decades because of the determinations of the courts. It is judge-made law, absolutely clear. The key case that is always cited is the Board of Education of the Borough of Union Beach v. the New Jersey Education Association, a decision written in 1968 by the State Supreme Court, by then

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Chief Justice Weintraub: Here is what-- I am quoting tremendously out of context, but here is some of what the judge said -- the Chief Justice said: "It is, of course, essential to the constitutional promise of an ordered society that government shall be able to govern, and we may therefore assume the Legislature could not legislate the branches of government into idleness. Strikes do tend to bring government to a halt, yet it need not follow that the Legislature could not find strikes to be tolerable within certain areas and limits. As to a public service the Constitution does not expressly require to be furnished, the Legislature, which may withdraw the service, may find some interruption should be permitted. And even where the Constitution requires a public service to be rendered, as in the case of free public schools" -- and that, of course, is what you are talking about today -- "there may be room for legislative judgment as to what interruptions are compatible with the fulfillment of that mandate. We should not be thought to recommend legislative departure from the common law rule. On the contrary, we remain satisfied that any concerted action which obstructs or disables government runs strongly against sound public policy. The question is whether this judge-made law is beyond legislative disagreement, and we hold only that it is not. The subject is so vital that we will not attribute to the Legislature an intent to depart from the common law, unless that intent is unmistakable."

That is the landmark case that establishes the parameters that you, as a Legislature, are operating under. If you are going to permit, under certain circumstances, strikes to continue, namely an injunctive order not to issue, you must do so very, very carefully, or it will be unconstitutional.

I also want to point out that the statement was made earlier, I believe by Assemblyman Littell, that judges have not always granted injunctive relief. I wish to say to you that in those cases where judges have not granted injunctive relief,

they have themselves acted illegally, because if a judge does not automatically grant injunctive relief, that can be appealed to the Appellate Division, and it will be reversed automatically. The example I have is a case that I was personally involved in, involving the Township of Teaneck and Local 42 of the Firemen's Mutual Benevolent Association. It is reported in 158 New Jersey Superior Court Reports at page 131. In that case, the Chancery Judge dealt with issues such as I hear you all talking about, where it was being alleged that the only reason the strike was taking place was because management was being unfair, and there were all sorts of disputes and allegations being thrown around. The judge enjoined the strike only if the parties would meet 24 hours a day. And if the parties would not meet 24 hours a day, the injunction would be lifted. Obviously, that would permit the strike to continue, if you lifted the injunction. The township took it up to the Appellate Division, and it was absolutely, automatically reversed.

A very brief quote from that decision: "The question before us is whether the Chancery Division, on proper application, in circumstances demonstrating a strike in the public sector, must enjoin the activity. Disruption of government is so serious a problem, a subject so vital, that its prohibition is more than a prerogative of the Chancery Division; it is an obligation. Any concerted action which obstructs or disables government runs strongly against sound public policy. It is incumbent upon the trial court to prohibit unqualifiably the strike. For a trial court to do less would be for it to condone illegality and to trade one right for two wrongs. This we cannot approve."

In essence, ladies and gentlemen, to permit a strike to continue under any circumstances, even if it is shown that a public employer is doing something unfair, is wrong. It is two wrongs. It is the children who suffer. It is the taxpayers who suffer. It is the parents who suffer.

Find a way to bring an end to those rare occasions where strikes take place, and I will be here and I will be on your side, depending upon the mechanism you use. But I'll be on your side, because strikes are inimical to the public interest. This legislation, as drafted, permits, under certain circumstances, strikes not to be enjoined, which simply means to continue.

I will conclude by pointing out to you that the New Jersey public sector labor statutes have been extensively studied by legislative commissions for more than two decades. More than 20 years ago, a report was issued in January, 1968, by an entity called the Public and School Employees Grievance Procedure Study Commission, commonly referred to as the Burstein Commission. This Burstein Commission is the commission that did the study that resulted in the PERC law. That commission extensively studied public sector labor experience throughout the country, and issued a report that is 45 pages long. Contained within that report was the question of concerted action by public employees, mainly strikes. The conclusion that was reached by that commission was that governmental employers and employees -- I am reading from page 14 of their report -- "have a mutual obligation to resolve disputes without interruption of service to the public." I believe that that continues to be a fair statement of the way things ought to work. If sometimes government service is interrupted, that means something has gone wrong along the way, but you don't cheer it in a way that encourages further interruption of government service.

Finally, back in 1976, a report was issued by the Public Employer/Employee Relations Study Commission. This was the commission that was established at the same time that the PERC law was amended to give PERC unfair practice jurisdiction and scope of negotiations jurisdiction. An extensive study -- a 150-page report issued, and the only mention in here of the

subject matter you are addressing is a minority statement by two members of the committee who disagreed. They were Senator Martin Greenberg and Assemblyman Jackman. I'm wrong, it's three members, Joel Sterns. They made one statement in here: "We would have included a recommendation that some provision be allowed for a public employee organization to have an opportunity to present arguments or evidence in court, prior to the issuance of an injunction against such organizations, based upon the application of a public employer. We do not believe injunctions should be automatically issued in the public employee area." Sound familiar? That recommendation basically fell on deaf ears.

I would ask you to consider what has happened since that time to make you want to reconsider it. Why should the system be so dramatically altered? What experience have the public employees in New Jersey faced? I would say to you, ladies and gentlemen, that the teacher unions in this State, by and large, achieve percentage salary increases higher than any other public sector group in the State, because I represent counties, municipalities, and school districts. The police and fire employees who were given interest arbitration would love to have the percentage increases that the teachers already get, without it. Well, I heard someone say that that may not be germane. Apparently one of the objects of this legislation is to produce settlements that are more acceptable to teachers, and therefore would reduce their negative feelings during negotiations. To bring about more acceptable results means to produce higher percentage salary increases. The teachers, as an average, already receive higher percentage salary increases than the police and fire employees, who already have interest arbitration.

ASSEMBLYMAN GENOVA: Where do you live?

MR. WALLACE: I beg your pardon?

ASSEMBLYMAN GENOVA: Where are you from?

MR. WALLACE: My office is in Hackettstown. I have a statewide practice.

ASSEMBLYMAN GENOVA: Where do you reside?

MR. WALLACE: Roxbury Township, Morris County.

ASSEMBLYMAN LITTELL: Mr. Wallace--

MR. WALLACE: Yes, sir?

ASSEMBLYMAN LITTELL: I appreciate all of your input. I know you have a time problem. Let me just say that in re: Teachers Union, 118 N.J. Super., the statement in here is, "The solution is legislative." We have been told that many times. I am sure you know, as a lawyer, that the Constitution provides three separate and coequal branches of government. And, if we wanted to ask a lawyer what he thought about this bill -- I mean, a judge what he thought of this bill, we wouldn't get an answer. The reason we wouldn't get an answer is, the Chief Justice has ordered all judges not to comment on any prospective legislation, because if it becomes law, someday they may have to rule on it. I guess--

MR. WALLACE: A wise rule.

ASSEMBLYMAN LITTELL: --that is a sound ruling. Therefore, we have to decide, based on what they say in their court cases, what might come out in the press, and what we hear, maybe what you may call happenstance. But we have heard for many years that this is a problem. Assemblyman Jackman was the one who brought the issue up at that time. I remember it very clearly. The issue is the same today as it was then.

As a lawyer, I know that you feel that everybody who is charged with any crime ought to have their day in court and ought to be heard. In this instance, they are not entitled to a day in court. They do not get heard. The only side that gets heard is the school board.

MR. WALLACE: I disagree. I have been involved in a number of those injunctive applications personally. The only issue that is properly before the court under our current

system, is whether or not an illegal strike is taking place. That is the only issue the court is allowed to address. On that issue, both sides have equal opportunities to speak their piece. The public employer has an obligation to prove that there is an illegal strike happening. The public employee organization has every opportunity to prove that there is not one happening. As to that only issue, both sides have equal access, have their day in court.

What I suspect is happening here, is that there are other ancillary issues that are presently irrelevant to a court case, but which are relevant to the impasse. They are: Are they bargaining in good faith or not? Are there fair offers on the table? Are they communicating properly? Are they meeting as often as they ought to? Are they submitting themselves to the recommendations of a mediator or a fact-finder? All of those issues have forums where they are permitted to be heard.

Something you might want to consider is, in a circumstance where public employees are getting very, very agitated, and it is starting to look like a "hot potato district," as it is referred to in the trade, providing a forum where all of the related issues can be heard on an expedited basis. At the moment, the court does not hear the unfair labor practice aspects to it, because under legislation, which you wisely promulgated back in 1973, the Public Employment Relations Commission is the forum for hearing unfair labor practice allegations.

I would be very much in favor of giving PERC jurisdiction on an expedited basis -- which is a neutral agency -- to hear these kinds of allegations of unfairness, or whatever, on the spot, such as you have in expedited arbitration cases, where if the parties agree to it, you are going to have an arbitration hearing on a 24-hour notice. The American Arbitration Association has rules just like that. Expedited procedures for allowing people to air their problems

in the face of a hot potato district, I think is very, very wise. If you give it to a judge, the problem is you have the judge with jurisdiction on one hand and PERC with jurisdiction on the other hand. Who is going to make the decision on whether there is bargaining in bad faith or not? The judge does not have expertise in labor; PERC does.

ASSEMBLYMAN LITTELL: Maybe you don't know one thing we have done; that is an amendment that would require the judge, or the teachers back to work while the arbitration process goes on. I think that provides for a much fairer hearing than to try to do it on an expedited basis. You know very well that in an instance like this, even with the time frame that we have spelled out in this bill, it is very difficult to guarantee a fair and impartial hearing of all of the issues, because people have to prepare documents, they have to be cross-examined, and they have to have an opportunity to be heard. Therefore, I think that once you send the teachers back to school, they have the opportunity to be heard; they have an opportunity to make each and every one of their arguments, and to make them in a fair atmosphere, so that they can know when their final decision comes down that they have had their day in court, that they have been heard. Win, lose, or draw, they have had their day.

I think, if you want to be fair about it, that is the bottom line. The only way to be fair about it is to send the teachers back to school, and make sure that they have every single opportunity afforded to them, and that the school boards have every single opportunity afforded to them. That, in effect, applies pressure equally on both sides to come up with every good argument that they can about every issue before them. Then and then only will we get a final package, and then and then only will we get a fair and final offer that will stick.

I think you, yourself, would have to admit that once the teachers go back to school, there is no issue.

MR. WALLACE: I think if you continue the mandate that illegal strikes be enjoined, it is a tremendous step in the right direction, and then you are addressing what the remedy is for them having struck in the first place. But, if they obey the court order and go back to work, you won't even be addressing the question of remedy, because there will be no contempt. The only time issues reach the press and hit the courts about what should be done with teachers who are striking, is when they are striking in opposition to a court order requiring them to go back. What in the bill is going to remove that problem? If there are still going to be automatic injunctions issued, then you will still have the problem of teachers who will thumb their noses at the injunctions. That has not been addressed in the bill. I urge you to address the remedy that courts may utilize in the face of disobedient public employees. If a disobedient public employee knows what remedies will be handed down for thumbing his or her nose at the judicial system, they might not perhaps engage in that kind of conduct.

ASSEMBLYMAN LITTELL: We have a provision in there for that.

MR. WALLACE: Well, I have not had the privilege of seeing that, Assemblyman.

ASSEMBLYMAN LITTELL: "Pending the completion of any court hearing or arbitration procedure under this Act, the court shall issue a temporary order requiring a majority of representatives, or the board, or both, to take whatever actions the court may deem necessary to prevent discontinuation or disruption of education at schools or colleges affected by the impasse. A public employee who fails to comply with a temporary order of the court pursuant to this subsection shall be subject to a fine in an amount equal to twice the employee's

daily rate of pay for each day or part thereof that the employee violates the court order. The employee's daily rate of pay shall be computed as of the time of the violation. A public employer who fails to comply with an order of the court shall be subject to a fine in an amount equal to \$5000 per day for each day or part thereof that the employer violates the court order."

(At this point, the Chairman instructed the Committee staff to distribute to the members of the audience, copies of a revised draft committee substitute. This revised draft was prepared for the Committees' internal use and discussion. Members of the public who testified at this public hearing on A-2215 presented testimony on the April 26 draft Committee Substitute that is included as Appendix 1x at the end of this transcript. Unless the transcript specifically indicates otherwise, the reader should assume that the term "Substitute" refers to the April 26 draft.)

MR. WALLACE: That is also a step in the right direction, Assemblyman. Now I would ask you to address one last problem. You are creating a system which provides for teacher organizations an impasse resolution mechanism that they do not presently have -- binding arbitration. The only way they can achieve it is if they first strike, and then an employer brings an injunctive action and the judge orders interest arbitration. So, the only way that the teachers can get this impasse resolution mechanism, in addition to what they presently have -- mediation and fact-finding -- is to go out on strike. I don't see how that is doing anything but encouraging teachers to strike. That does not--

ASSEMBLYMAN LITTELL: We dealt with that, too.

MR. WALLACE: Is this a new version that just came out today?

ASSEMBLYMAN LITTELL: Yes.

ASSEMBLYMAN PASCRELL: A Substitute, yeah.

ASSEMBLYMAN LITTELL: I'm sorry you don't have that, but on the last page, number 3 says: "If the court orders arbitration pursuant to section 2 of this Act, the commission shall conduct a hearing to determine if each party ordered to submit to arbitration under this Act has negotiated in good faith with the other party to the dispute during negotiations leading up to the impasse. If the commission determines that either party or both parties failed to negotiate in good faith, the commission may apply to the Appellate Division of the Superior Court for an appropriate order for remedial action, which the court may impose if the action is reasonably designed to effectuate the purpose of this Act."

MR. WALLACE: Very good. I think that goes a long way toward curing the problems that I came here to address.

Thank you very much.

ASSEMBLYMAN LITTELL: Thank you, sir.

ASSEMBLYMAN NAPLES: A question here.

ASSEMBLYMAN LITTELL: Assemblyman Naples?

ASSEMBLYMAN NAPLES: Very quickly, a city councilman in Trenton a few years ago -- best left unnamed -- once said that Joe Weintraub was a master at -- Chief Justice Weintraub -- writing obiter dicta, and rationalizing in his law. Do you think that even Joe Weintraub -- I don't want to say he was a reactionary -- who was as conservative as he was, would write that opinion today?

MR. WALLACE: Absolutely.

ASSEMBLYMAN NAPLES: You do?

MR. WALLACE: I don't believe there is anybody--

ASSEMBLYMAN NAPLES: Then he is more conservative than I thought he was.

MR. WALLACE: --in the State of New Jersey, with one glaring exception, which I think is obvious, who is in favor of strikes by teachers.

ASSEMBLYMAN NAPLES: Nobody favors strikes by anybody.

MR. WALLACE: Well, what Justice Weintraub was attempting to accomplish was certainty that strikes by teachers would not occur. I don't know why he would change his opinion today.

ASSEMBLYMAN PASCRELL: Mr. Chairman?

ASSEMBLYMAN LITTELL: Assemblyman Pascrell?

ASSEMBLYMAN PASCRELL: I think it is unfortunate that the people testifying did not have the amended versions before discussing, or presenting their testimony. On page 1 of the amended version, on the ninth line -- I would like to ask Mr. Wallace to look at that line -- "in determining whether or not to grant injunctive relief--" Your testimony can come right down to those five words, can't it?

MR. WALLACE: Assemblyman, you are referring to the precise words that I was referring to at the beginning of my testimony.

ASSEMBLYMAN PASCRELL: Right, okay. Are you suggesting--

MR. WALLACE: That hasn't changed.

ASSEMBLYMAN PASCRELL: --that given the amendments that you have just been presented through the Chair, which address many of the matters that you brought before us today-- Are you suggesting that what we should do in line 9 is simply say: "In determining injunctive relief to the plaintiff," and leave out whether or not to grant? Is that what you are suggesting?

MR. WALLACE: Assemblyman, rather than dealing with the precise words to accomplish a result, let me tell you the result I am suggesting. The result I am suggesting, is that there is no rational support that I can think of for a statute that will permit a strike to continue, under any circumstances.

ASSEMBLYMAN PASCRELL: But, you've heard response from the Chairman to that very criticism that you make.

MR. WALLACE: And I don't believe it has been fully dealt with. It has been partially dealt with, but not fully.

ASSEMBLYMAN PASCRELL: It has been partially dealt with.

MR. WALLACE: As I understand it, the judge's--

ASSEMBLYMAN PASCRELL: Where has it not been dealt with?

MR. WALLACE: There is still room, under this statute as amended -- this bill as amended-- There is still room for a judge, under certain circumstances, not to enjoin a strike.

ASSEMBLYMAN PASCRELL: But you have already said in your testimony, in citing the Teaneck case, 1978--

MR. WALLACE: Right, correct.

ASSEMBLYMAN PASCRELL: In the Teaneck--

ASSEMBLYMAN PATERO: Mr. Chairman, if I may, a point of order. You know, I still don't think this is a strike bill. We keep hearing the word "strike, strike, strike." What is going to happen is, when the reporters write this after this hearing, they are going to say this is a right to strike bill. I don't think it is fair for you, as a sponsor of this bill. I think all reference to strikes should be stricken.

ASSEMBLYMAN PASCRELL: Mr. Chairman, that is why I would like to come back to my suggestion about a preamble, through the sponsor, that would clarify that possibility. But I want to get back to your testimony -- what you are saying here. You really believe that every work stoppage is illegal.

MR. WALLACE: At the present time, it absolutely is illegal.

ASSEMBLYMAN PASCRELL: Okay. What if we removed those five words from the ninth line? That would therefore satisfy all of your criticisms, wouldn't it?

MR. WALLACE: I'm not sure--

ASSEMBLYMAN PASCRELL: I am not suggesting that we do that. I'm saying, would that basically answer all of your criticisms?

MR. WALLACE: Assemblyman, with all due respect, you're asking a lawyer to give an opinion about--

ASSEMBLYMAN PASCRELL: I am not a lawyer.

MR. WALLACE: But, I am. You're asking me to give an opinion about a document that I have just been handed. There are other words in this document which, reading for the very first time, appear to still leave room in a judicial proceeding to enjoin -- not to enjoin.

ASSEMBLYMAN PASCRELL: Right.

MR. WALLACE: As long as that room is left, you are encouraging strikes, and you are legalizing strikes. I don't want to disrupt the political process here, believe me. If the intention of this bill is not to legalize strikes under any circumstances at all, it just needs further refinement, and you can get to that result.

ASSEMBLYMAN PASCRELL: Well, I think the Chairman has made that clear several times during this testimony.

MR. WALLACE: I applaud that.

ASSEMBLYMAN PASCRELL: You're suggesting that he may be suggesting that, but that has not been answered. That is what you're saying.

MR. WALLACE: That is my understanding.

ASSEMBLYMAN PASCRELL: I'm saying to you that those five words in line 9 which give a judge discretion, should be removed. You're saying to me that you haven't had an opportunity to read the entire amended bill. We have already gone over those factors that were amended through the Chair.

ASSEMBLYMAN NAPLES: I think you're letting your--

MR. WALLACE: Assemblyman, the reason for my continued concern is page 2 of this bill that I have just been handed -- section c., as in cat, up near the top of the page. That first sentence reads: "Pending the completion of any court hearing or arbitration procedure under this Act, the court shall issue a temporary order requiring the majority representative, or the

board, or both to take whatever actions the court may deem necessary to prevent discontinuation or disruption of education at schools or colleges affected by the impasse."

ASSEMBLYMAN PASCRELL: Right.

MR. WALLACE: Now, if that means that the court is required to enjoin a strike, fine, but I am not sure that is what it means.

ASSEMBLYMAN PASCRELL: But it says, very specifically: "may be necessary to prevent discontinuation or disruption--" That is pretty clear to me.

MR. WALLACE: If it means he must enjoin a strike, I have no problem with it. If it leaves room for some other--

ASSEMBLYMAN PASCRELL: That isn't clear to you, Mr. Wallace?

MR. WALLACE: No, because it says, "whatever actions the court may deem necessary."

ASSEMBLYMAN PASCRELL: But it says "necessary to prevent discontinuation or disruption." It can't be any more clear than that, can it? What would you suggest?

MR. WALLACE: I believe it is ambiguous.

ASSEMBLYMAN PASCRELL: You believe those words are ambiguous?

MR. WALLACE: Yes, Assemblyman.

ASSEMBLYMAN PASCRELL: I don't agree with you at all.

MR. WALLACE: But if they mean what you say they mean, I have no problem with them. I am just not sure they mean that.

ASSEMBLYMAN PASCRELL: Thank you.

MR. WALLACE: Thank you.

ASSEMBLYMAN NAPLES: May I say something? I think you're reading your own bias into this bill, to the exclusion of substance. I don't mean to speak to you in a pejorative sense--

MR. WALLACE: I confess to a bias, Assemblyman.

ASSEMBLYMAN NAPLES: --but it is evident from your testimony. Mr. Pascrell has made -- has alluded to Mr. Littell's explanation, and you keep reiterating the same thing, explanations notwithstanding.

MR. WALLACE: I confess to a bias, Assemblyman.

ASSEMBLYMAN NAPLES: To me, that translates into the word "bias."

MR. WALLACE: I have a bias, Assemblyman. My parents were both schoolteachers. I grew up in a schoolteacher house. I respect the educational system.

ASSEMBLYMAN NAPLES: Please; skip the patronizing, please.

MR. WALLACE: No, I am trying to explain my bias. My father was subjected to an illegal strike in New York State, and it affected his ability to teach in that school. It affected his career. I think he retired early because of it. I do not want to see any other human being subjected to the negative interplay that occurs during a strike, within the school community, without the school community, and in-between management and labor. Everybody gets hurt. I just don't want to see that happen.

ASSEMBLYMAN NAPLES: We agree there.

MR. WALLACE: And, that is my bias.

ASSEMBLYMAN NAPLES: That is part of your bias.

MR. WALLACE: That is the totality of my bias, Assemblyman.

ASSEMBLYMAN LITTELL: Okay. Thank you very much, Mr. Wallace. We appreciate your input.

Next we will have the NJEA, Mr. Dennis Giordano.

D E N N I S G I O R D A N O: This is my ball team. (referring to the people accompanying him to the witness table)

ASSEMBLYMAN NAPLES: Holy man. Is that the Supreme Court up there?

MR. GIORDANO: Would that that were so.

ASSEMBLYMAN FOY: It looks like a strike committee to me. I don't know.

ASSEMBLYMAN NAPLES: Looks like a good front line there.

ASSEMBLYMAN LITTELL: Dennis, would you please introduce everyone there for the members?

MR. GIORDANO: Yes, sir, I will. Let me begin by thanking you for the opportunity to come before you today and introducing the ladies and gentlemen who are with me. To my left -- on the far left -- is Sara Davis, President of the Camden Education Association, Camden City; Sara Mitchell, President of the Fairfield Education Association; Kathy Stopherd, former President of the Lyndhurst Education Association. I am Dennis Giordano, President of the New Jersey Education Association. To my right, Jack Bertolino, Director of our Uniserve Division, and to his right, Jeff Jefferds, President of the Willingboro Education Association.

Just to place up-front my intentions with respect to our comments today, I would ask the indulgence of the group before me to allow me to go through my remarks. At one point in the remarks I will be pausing myself to allow comments by the people who have joined me, with the exception of Jack, who is here as a resource person. After that, I will make some summary remarks, and then I assure you we will be happy to field questions as you deem appropriate. Would that be acceptable?

ASSEMBLYMAN LITTELL: Sure. We will be as tolerant of you as we have been of everybody else.

MR. GIORDANO: Okay.

ASSEMBLYMAN LITTELL: I just want to say to you, and to everyone else here, I'm sorry we didn't have the revised copies here today. We may not get to a point where we take a vote on the release today, because there seem to be an awful lot of people who want to--

ASSEMBLYMAN NAPLES: Wait until Mike Adubato hears this.

ASSEMBLYMAN LITTELL: --testify. But at some point, we will try to give you as much opportunity to comment on the changes as we give to you on the original bill, if you have any concerns about them.

MR. GIORDANO: I was about to point out prior to my actual remarks, that our remarks today will be focused on a draft of the bill dated 4/26/88, so that this new amendment, or anything related to it-- We will need to examine it carefully prior to making comment on it. Okay?

ASSEMBLYMAN LITTELL: Yes.

MR. GIORDANO: Thank you.

I come before you today on behalf of the 125,000 members of the Association. We consider the crisis resolution bill to be one of the most critical education issues to appear before the Legislature in many years.

The NJEA supports A-2215 -- and again I want to reiterate we are supporting and talking about a draft of the bill dated 4/26/88, so there is no confusion -- sponsored by Assemblyman Littell and Assemblyman Haytaian, as a major step in returning fairness and balance to the negotiations process in public school bargaining. Thank you, Mr. Chairman -- and I mean that very sincerely -- thank you for introducing this bill.

A fair balance at the bargaining table is necessary in order to reach a fair agreement. Just as certainly as unequal power encourages the abuse of power, so equal power encourages reason and compromise. Yet in public school bargaining in New Jersey, there is no balance between parties.

In some districts in this State, school boards have resolutely and defiantly clung to outmoded, paternalistic, and dictatorial practices and refuse to negotiate with education associations in good faith.

In New Jersey, a few school board members have even boasted that, as a negotiating strategy, they have deliberately provoked school employees into a strike. They could then use the courts to force unjust settlements by outlandish personal and association fines, imprisonment, or community service.

The major problem in New Jersey is the absence of law granting public employees any semblance of fairness or due process in the courts. At the present time, if a school employee strike appears imminent, a school board merely appears in court and secures an immediate injunction.

New Jersey courts are forced to proceed according to ancient principles of common law because of the absence of statutory guidelines.

From the local leaders here today, you will be hearing examples of how this absence of guidelines is used to subvert the negotiations process.

Since he or she has no authority to do otherwise, a judge is forced to issue such an order -- regardless of the circumstances that forced the walkout or the issues at the root of the problem.

School employees may not always be right, but they can't always be wrong. And yet, in New Jersey they are automatically considered wrong. They deserve the right to present their case before a court -- to try to persuade a judge by the merits of their case. That is what due process is all about. That is the American way.

Assembly Bill 2215 would go a long way toward correcting the gross inequities that currently bind a court's hands in crisis bargaining situations.

Assembly Bill 2215 gives a judge the authority to hold a hearing before deciding whether to grant an injunction in a public school strike situation. Passage of this bill would provide school employees with the "day in court" they've never had. It would extend to school employees the right to due process that has been denied them for so long.

For the first time, school employees would enjoy the same elemental right to fairness that millions of their fellow Americans have enjoyed for years.

For the first time, judges would be able to weigh the bargaining history and efforts both parties made to resolve the impasse before issuing an automatic injunction.

For the first time, school employees would be able to present evidence that the employer had been unreasonable, intransigent, or had corrupted the negotiating process, before an automatic injunction was issued.

The bill also gives a judge the authority to order that the two parties submit their dispute to arbitration. This provision works to lessen the ability of vindictive employers to refuse to negotiate in good faith, or prolong crisis situations merely to destroy local associations.

Arbitration is not an end in itself. Arbitration often works best when the arbitrator serves as mediator to end the dispute.

And, let me dispel one ill-founded rumor that is being circulated by opponents of this bill. Indeed, I heard it here today. Local associations will not resort to a strike just to force arbitration. Anyone who has experienced the trauma of a strike knows how ludicrous an assertion like that is.

Finally, A-2215 accomplishes all these goals, while continuing to protect the public health and safety. It completes this task while providing the machinery necessary to conclude the bargaining process in a reasonable and honorable way.

Members of the Assembly Labor Committee, and I would add the Assembly Education Committee today, I have beside me five local association leaders who have experienced strikes up close and personally. Each has undergone the trauma that goes hand in hand with such job actions. None has escaped unscathed. By the way, I say five because we had originally

scheduled Michael Scarpato, President of the Elizabeth Education Association, to be with us, but as of a couple of hours ago he became suddenly ill. I regret that he is unable to be here to share his views personally, but we have provided his testimony in written form for you. Each bears psychological scars that will never heal. Each carries memories of callous, humiliating, and degrading treatment that will remain with them forever.

They wish to share their experiences with you -- to bring you inside, if you will -- to share the dynamics of how and why strikes occur. But most importantly, to demonstrate how such a bill could have saved thousands of children and school employees in their districts from the pain and anguish of strikes forced down their throats by uncaring employers.

The Lyndhurst strike was one of the ugliest and most devastating public school strikes probably in the history of New Jersey. Here to share her feelings with you about A-2215 is Kathy Stopherd, former President of the Lyndhurst Education Association. Kathy?

K A T H Y S T O P H E R D: Gentlemen, my name is Kathy Stopherd. I am pleased to be here on behalf of the teachers, secretaries, and custodians of Lyndhurst. Last year during my term as President of the Lyndhurst Education Association, we were forced into the position of a work stoppage after the Board of Education rejected a fact-finder's recommendations. Prior to the fact-finder issuing his report, our members agreed to accept his recommendations, sight unseen.

Having worked for seven months without a collective bargaining agreement, and with the prospect of no settlement in sight, we were left with no alternative but to withhold our services. Our job action began on March 26. Within 24 hours after the work stoppage began, the judge signed a decree ordering us back to work without the Association having any opportunity to plead its case. During that weekend, process

servers were all over the community serving legal documents on anyone who answered the door, including young children.

When we were ordered to return to court, the judge told us that the law restricted his ability to bring about a resolution of the labor dispute. His function from the moment the Board went to court was to order us back to work and punish us if we did not. He had no interest in making an assessment of whether we were justified in our actions. In effect, the judge lacked the vehicle which would bring about a peaceful resolution to a labor dispute.

Once a settlement was achieved, we were still obligated to appear in court in June, three months after the contract was achieved. At that time, we were found guilty of contempt and sentenced to jail. The judge chastized us, he berated us. He equated us with hardened criminals. I don't know if any of you have ever had to appear in court. The truth is, it was not a pleasant experience for a group of teachers who had no other alternative because our laws don't provide any.

Even Judge Huot was moved to say: "If the law is so unjust, let the Legislature change it." And I am here to tell you that, in this case, the Lyndhurst Education Association agrees with Judge Huot.

Even though the Appellate Court changed the incarceration to community service, it was a traumatic event for the men and women in the district, as well as their families. This, I am afraid, will leave a lasting impression on the members of the Association. It is not easy to forget such an ordeal.

If this bill had been law at that time, the judge would have been able to consider an alternative other than injunctions and incarcerations. Governor Kean had even hailed the revised sentence, saying strikers do not belong in jail. "It was an appropriate action. To me, jailing is not the appropriate remedy for labor disputes. Prisons are for

dangerous criminals, and not for people who are involved in a labor dispute. These people are not dangerous criminals."

The collective bargaining law for public employees in New Jersey was supposed to be in the "best interests" of all people. It was supposed to provide for the prevention or prompt settlement of labor disputes. It was supposed to prevent strife.

For the public school employees of Lyndhurst, legislation that will aid the collective bargaining process is absolutely necessary.

The Legislature can no longer ignore the fact that both parties -- school employees and boards of education -- are entitled to equality throughout the entire bargaining process.

Thank you.

MR. GIORDANO: And now, Mr. Chairperson, Sara Davis, from the Camden Education Association.

S A R A T. D A V I S: Good afternoon, Mr. Chairperson and members of the Joint Committee of Labor and Education. My name is Sara T. Davis, President of the Camden Education Association, which represents over 2000 school employees working in the Camden City School District. I thank this Committee for the opportunity to speak before you today.

I also, Mr. Chairman, want to thank you for the courage to initiate legislation for resolving labor disputes involving teachers and support staff.

Assembly Bill 2215 may not be the total answer for resolving disputes, but it certainly provides an opportunity for discussion before a judge is forced to issue an order. In 1978, this bill would have been of great value to a group of Camden school employees who experienced the effects of a judge who issued an injunction without hearing the facts from both sides.

Let me explain to you what I mean. The injunction papers were served during a job action, and we were ordered to

appear in court. We went to the court prepared to defend our position. In court, we were brought before a judge who already knew what he was going to do. The state of the law gave him no choice. Our day in court consisted of the judge stating to each of us, one at a time, "You have the key to the jailhouse in your hands. Are you going to return to work?" As we answered, "No," we were sentenced to jail, and we were to remain there until we decided we would go back to work.

We were taken to the county jail on the sixth floor of City Hall in Camden. We were fingerprinted, photographed for mug shots, and strip searched; and then, on top of that, placed in the same environment as other prisoners.

The seventeen days of being treated like a criminal were devastating. Mentally, I have been permanently scarred. The experience was so horrible that I've tried to push it to the back of my mind, but when you try to push negative things of this nature to the back of your mind, it also affects your thinking and your memory. This has been over 10 years ago, and I am just beginning to get myself back together. I hope that no one else ever has to experience the experience we had for those 17 days.

Assembly Bill 2215 offers a positive alternative to resolving contract disputes, an alternative that does not require treating honest, hard-working school employees like common criminals. We applaud you for your efforts and your consideration. Mr. Chairman, we applaud you for your efforts to bring fair treatment to the bargaining process.

MR. GIORDANO: And now, Mr. Chairman, Sara Mitchell, President of the Fairfield Education Association.

S A R A M I T C H E L L: Chairman Littell and members of the Committee, I am Sara Mitchell, President of the Fairfield Township Education Association. I represent 68 members, all teachers, who work in both the Fairfield Primary School and the Fairfield Intermediate School. Our district is located between the towns of Millville and Bridgeton in Cumberland County.

The important message that I bring today is one of how the courts were used as an instrument to destroy the bargaining process in Fairfield Township.

After many difficult months of bargaining -- and utilizing all of the options provided for under the law -- including mediation and fact-finding -- the board and the Association reached a signed tentative agreement in good faith. The Association moved immediately to ratification, and in good faith ratified the contract. The board, in turn, rejected the package that was hammered out through an exhausting process of mediation and fact-finding -- the very same package the board negotiations team had previously approved.

Confronted with the board's rejection of a package that took many months to resolve, the Association had no recourse but to withhold services on a Friday. The fact that services were withheld precipitated further talks that were to take place on the following Sunday, under the direction of a PERC-appointed fact-finder.

The board, however, went to court on Friday morning seeking a temporary restraining order, which was immediately granted, ordering union members to return to work. It should be noted that the Association argued that further talks were, in fact, scheduled for Sunday, and pleaded that the judge not issue such an order. However, the injunction was issued notwithstanding the scheduled talks for Sunday.

The net result was that bargaining on Sunday was nonexistent. The board had no motivation to bargain and, in fact, walked out of the Sunday session leaving the Association and the fact-finder in a quandary. The board indicated to the Association that they would allow the courts to do their bargaining for them.

The board was convinced, as a result of the injunction, that the Association would not return to work.

They were mistaken. Our compliance destroyed their plan, and resulted in a bitter struggle which culminated with the board finally accepting the original agreement. But the agreement came too late to prevent an incredible amount of resentment and the destruction of good will and cooperation within our school district.

They had lost, but now vengeance was theirs. I believe that had the judge been free to hear and heed the pleas of the Association -- the injunction would not have been issued on Friday -- and the bargaining process given a chance to work, the parties would have been successful in reaching an agreement and the district would not be riddled with unrest and ill feeling.

Thank you.

MR. GIORDANO: And finally, Mr. Chairman, Jeff Jefferds, President of the Willingboro Education Association.

J E F F J E F F E R D S: Mr. Chairman, members of the Assembly Committees: My name is Jeff Jefferds, and I am the President of the Willingboro Education Association. Our contract expired in June, 1987. On April 19, 1988, the membership of the Willingboro Education Association voted to authorize whatever action necessary at the call of its Executive Committee.

That same night, those present signed petitions asking the State Legislature to pass legislation such as this bill. That petition is attached to your copies of this testimony.

Members of the Committee, the average age of a teacher in Willingboro is 47 years old. We don't want to strike. We are too old to strike. We were on strike in 1977 for 32 days, and that settlement was finally reached by submitting outstanding issues to binding arbitration. So, why then would our staff vote to strike? That is explained in a brief synopsis of events which is attached to the petition, but if you will allow me, an oral explanation.

The Willingboro Board of Education, in December, 1986, and January, 1987, negotiated a tentative agreement with the teachers of Willingboro. But a five-member board majority refused to allow the full board to consider that tentative agreement. Then, without even seeing the agreement, they rejected it five to four because they claimed that the committee they had sent to negotiate had not been empowered to settle the contract. My question at that time, and it still is, why had we held four extended negotiations meetings?

After finding out that we would settle for 8%, the board then cut 3-1/2% out of its salary account for the school district budget presented in April. And then they pleaded that there was not enough money in the budget to fund an 8% salary increase.

They refused to meet from February until August. In May, they placed nine non-elected citizens on their negotiating team. None of the nine had a child in the public school system.

The board's new team limited negotiations to "available" Thursdays, but only between the hours of eight and eleven p.m.

In September, the Association unilaterally declared an impasse. The mediator, after three sessions, declared the board's team hopeless. The WEA then appealed for binding arbitration. The board refused, and insisted upon fact-finding. The fact-finder was Jeffrey Tener, the former Chair of PERC. The fact-finding sessions were televised on our local cable television channel. They took three nights and 14 hours.

The Association accepted the fact-finder's report, although we lost on several issues. Attached at the end of the petition and the synopsis of events is a page of comments by Mr. Tener that have been taken from that report.

The board accepted only those parts of the report it liked. After the school board election, the board was still

deadlocked five to four. The board president announced that because 8.7% of the electorate had voted against the school budget, and only 8.4% had voted for it, he had a mandate to repudiate the salary agreement which had been recommended by Mr. Tener and already accepted by both parties. His attorney agreed with that position.

The action vote -- which I referred to earlier -- and a militant demonstration by over 500 members of my Association prevented that renegeing. However, Willingboro still has no contract.

The Association membership believes that for political reasons, the majority of our board of education wants to dismantle our educational system or force a strike. The Association does not want either of those scenarios to occur. We have agreed to binding arbitration; the board says, "No."

Ladies and gentlemen, we need a law that prevents this abuse of power by a small, well-organized, self-serving group of individuals.

Thank you.

MR. GIORDANO: Members of the Assembly Labor Committee, and the Assembly Education Committee as well, you have now had an opportunity to hear the NJEA position and the very moving testimony of but a few of our members who have experienced public education strikes in our State.

What do school employees do in the face of this kind of frustration? The current alternatives before them are harsh and unreasonable. They can surrender to the dictates of recalcitrant school boards or, after much agonizing consideration, choose to strike. Throughout this scenario, unreasonable and vindictive boards of education can sit back and force employees to take drastic action, knowing full well that the board can depend upon our courts to reluctantly bring school employees to their knees.

New Jersey has reached a critical juncture in public school bargaining. Passage of A-2215 can move public school bargaining down a road marked by enhanced incentives for both sides to reach voluntary agreement. The bill's intent is to provide a reasonable way to resolve crisis situations and avoid many of the horror stories you heard today. The bill is designed to decrease -- not increase -- the number of strikes. The bill is designed to have a salutary effect upon crisis bargaining.

Failure to adopt this reasonable approach will only lead to continued one-sided bargaining, characterized by ever-increasing school employee frustration, tension, and more bitter strikes. The educational climate fostered by this continued lack of fairness can only impact negatively upon our children in the classroom.

To perpetuate this climate by failing to pass A-2215 would truly be a tragedy. Thank you very much.

ASSEMBLYMAN LITTELL: Thank you, Dennis, and all of your members -- Kathy, Sara, Sara, and Jeff. They were very emotional stories. Believe me, I know -- and I speak, I am sure, for all of the members here -- that we do not want those types of things to happen. We want you in the classrooms teaching the children of the State of New Jersey. We are in a race to educate the children of this country to compete with the children of the rest of the world, and it is a tough, tough competition we face. We can no longer tolerate the kinds of things you described here today. Anyone who participates in those kinds of actions to put you in such a position that the hostility is so great and your frustrations force you to withhold your services do no service to the students in your school districts or to the taxpayers. They are only short-changing our country, because education is what it is all about. Our Governor has said that; our teachers have said that; our principals have said it; our superintendents have

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said it; our Education Committee has said it; and the parents know it. If we do not deal with this problem and make sure that we have the best educational system possible, with the least amount of turmoil; then our system is not going to be the most successful system, and our country is not going to be the most successful country.

I won't ask you to comment on the provisions that were developed or other people's recommendations as to the return to work during arbitration, the penalty provision, the mediation and fact-finding, and so on. We will ask you and everyone else to review those proposals and get back to us on May 23 at our next regular meeting, so that we might have the benefit then, or hopefully before then, of your input on those ideas, so we can vote on the bill. We want to prevent this stuff from happening. We want you working, and we want a reasonable degree of employee/employer relationship in our public school system. We have a deep and abiding interest in that, because we are paying 48% of the cost out of the State Treasury. Therefore, I think we have a keen interest in what happens.

I can assure you that we are going to get a bill, and it is going to be fair and reasonable to all sides. It is not going to favor your side; it is not going to favor the other side. It is going to favor resolution.

ASSEMBLYMAN FOY: Mr. Chairman?

ASSEMBLYMAN LITTELL: Yes, Assemblyman Foy?

ASSEMBLYMAN FOY: Mr. Chairman of the Labor Committee, and Chairman Palaia of the Education Committee, members of the Committee, witnesses, ladies and gentlemen, and the press: I was a little late, and I will apologize for my tardiness. I was attending to another matter dealing with New Jersey Transit, so I missed some of the early testimony, which I understand was lengthy, so I didn't miss too many speakers.

I do want to comment about what the Committee is considering -- my own viewpoint toward that -- and then I have

some questions for the NJEA representatives, which I will also ask representatives of the other employee organizations, and whatever employer representatives are here, as well.

First, at the outset, so that there is no mistake about where I am coming from philosophically, you know, I am a labor attorney. I am General Counsel to the New Jersey AFL-CIO. There is a letter here today basically stating the ambiguity of the AFL-CIO's position to the extent that there are competing viewpoints within that labor organization from different public employee unions. So there is no specific stated AFL-CIO position, and the individual unions are free to advocate the particular position that is significant to them and their members.

I represent over a million workers in my law practice. I do labor relations work, and I have had experience with strikes in the private sector. The bulk of my representation of workers is in the private sector. The issue of strikes in the private sector works fundamentally very well. The courts in this State have determined that there has to be a change in the situation with respect to public workers because of the nature of their employment, not the nature of the services that they perform, because someone who teaches in a private school performs the same tasks and services as someone who teaches in a public school. The difference is not in what they do; the difference is rather for whom they work. That artificial distinction, in the minds of the courts of the State of New Jersey, has brought us to this particular point, where the perception is that strikes by public employees, and in particular in this instance public employees in the educational sector, are, in fact, illegal.

As a fundamental premise, I believe that what separates a free person from a slave, is the ability to withhold their services from someone who seeks to compel their services, whether contractually or otherwise. But, we have

determined that public education is of such great significance to our society, that that very fundamental principle of the right to withhold your services from someone who seeks to compel your services, or voluntarily contracted for your services, can be abrogated in public employment in New Jersey in general, but particularly we feel it is most sensitive in the area of public education.

So, with that as a given, with the fact that we need, in a sense, to acknowledge that the right to strike in the public sector, and particularly in public education, is viewed askance by our courts, which, in fact, it is, as a result of a long history of court decisions, we need to examine then, what is it that we offer the people who work in public employment to resolve disputes, since the very basic issue they have -- the right to strike, to withhold their services -- is, in a sense, deprived of them? They do not have that, and by not having that a severe imbalance is created in that sector between the employer and the employee. What then do we offer as a substitute?

Well, we made a policy decision, as the Legislature, a number of years ago, to view public safety as so important to the people of the State of New Jersey that we imposed the compulsory arbitration law for police and fire fighters. I will tell you, as someone who has practiced law for a decade, or more, and as someone who has been actively involved in representing police and fire fighter organizations, that that compulsory arbitration law has worked extremely well. The officials at PERC will tell you that it has worked well. The employer and the employee organizations will tell you that it has worked well; that we have been able to minimize the number of serious disputes, even the number that go to arbitration, because the law is fair. It recognizes the needs, the duties, the responsibilities, and the obligations of each side, and it provides an alternative to the issue of strikes.

Now, with respect to public sector employees in the educational field, it seems to me that the time has come for us to recognize that they are equally as important as our police and our fire fighters and, in extreme circumstances -- which is what this bill is talking about; not every circumstance, but in extreme circumstances -- we need to have an alternative method of dispute resolution, such as compulsory interest arbitration, in the most remote of circumstances.

Now, that leads me to two principal concerns I have, one articulated by the School Boards, and I think one articulated by, not the New Jersey Education Association, but perhaps by the AFT and other unions that represent people in higher education. First, with respect to the School Boards Association, they make a good point, and I agree with them to the extent that I think that all avenues of voluntary dispute resolution should be exhausted to their ultimate conclusion, much in the way that in Pennsylvania you have to go through all of the PERC-type processes before you even get to the point where a strike occurs or is threatened, where teachers walk out, or what have you. I think you have to go through everything, and up to that point what should remain intact is the ability to judge the issue and injunction. That may not make NJEA happy, and I am sorry for that. But as a matter of public policy, I believe that every possible remedy ought to be exhausted. You know what, in Willingboro, I watched it on TV every night. I saw it in the newspapers everyday. The union has walked the extra mile in that community to try to get this situation resolved. Okay? In that set of circumstances, they have done everything conceivable there is to do. I am not condoning a strike, nor am I advocating it, but it seems to me that if ever there was a situation that was right for a walkout, it is when they have walked the extra mile and still can't get any reasonableness in terms of resolving the situation. I think that has to occur, and I think that has to

be built into the bill, much in the way it exists in the State of Pennsylvania, where you have to go through the whole gambit of available opportunities to resolve a situation before you would even get to a situation where you are in front of a judge about an injunction with respect to a strike.

Secondly, education in New Jersey is compulsory to a certain age. Very basically, grammar school, middle school, and high school education is compulsory. Those are the fundamental aspects of education that we view, in a sense, as being akin to police and fire fighters in the public safety area, and where we need to focus our attention. I am not so sure that we ought to be interfering in the relationship of public employment at community colleges, at State institutions, at private institutions, and what have you. I don't necessarily know that when we talk about -- not private institutions, but I mean four-year institutions like Rutgers, and what have you, that we ought to be involving ourselves in situations where you have people who voluntarily choose to go to school. You can choose whether or not to go to college in New Jersey, but you really can't choose whether or not to go to grammar school or to high school, up to a certain age.

So, I am inclined to think that we ought to restrict the limitations of this bill to deal with high school as the upper limit, and not deal with colleges. I know that may not make the NJEA happy, but I think if we are going to deal with the very nub of the issue, and if we are going to concentrate on where it is most important with respect to those matters, we need to talk about exhausting all remedies first, before we reach this situation, and we need to talk about restricting it to the fundamentals of elementary and secondary education, as opposed to higher education.

Now, if the AFT still doesn't like the bill, even though I have suggested that amendments ought to go in to eliminate higher education, I think they are going to have to

be unhappy with me. NJEA is going to have to be unhappy with me. The people who will be most happy with me will be the people of the community. They are ultimately who I represent, irrespective of what union they belong to, what employer they work for, or whether or not they are an employer.

I would like to hear some commentary from the NJEA representatives regarding exhausting all remedies available under PERC first, before this would be triggered, and secondly, the issue of why higher education should be included in the bill, or not.

MR. GIORDANO: Assemblyman, let me begin by saying it would be difficult for me to conceive of a situation where we would be permanently unhappy with Assemblyman Foy. Having said that, let me comment on the issue of fact-finding. I do not believe fact-finding is something the NJEA could say we are unilaterally opposed to. Indeed, as you heard Jeff explain, we did go that extra mile. Our track record-- We could probably produce statistics -- stay in here with me, Jack (speaking to Mr. Bertolino), on this one and correct me if I go astray -- to illustrate that by and large our people do, in fact, go that extra mile. It is only as a result of that track record, though, in going that extra mile, that we found the absolute casual back-of-the-hand approach by school boards. When you finalize -- when you get all done and you get the report -- and they begin to either throw out the report completely or selectively screen out those portions that are not favorable to them, the local associations, in frustration and anxiety, simply say, "There is no point to this, so why go through what amounts to nothing more than a cosmetic activity so that the school board can attempt to engender further rancor among our troops in some fashion, or try to solicit, out among the citizens, any support that they might generate?" It is that feeling of frustration and futility that has led -- in some situations -- our locals to disregard that step called

"fact-finding." But, by and large, we have never walked away unilaterally from fact-finding. So, it would be my position that that would not be something that we would be uncomfortable with.

ASSEMBLYMAN LITTELL: Do you want to comment on the other idea, about colleges?

MR. GIORDANO: Obviously, we would like it to include that level. You were correct in your assumption.

ASSEMBLYMAN LITTELL: You think colleges should be included in the bill?

MR. GIORDANO: Yes.

ASSEMBLYMAN LITTELL: Okay. Assemblyman Foy does not.

MR. GIORDANO: I understand.

ASSEMBLYMAN LITTELL: Thank you, Assemblyman Foy. I would just point out one hazard with the college bit. Although it is a school of choice, if there is a denial of services, there is also a denial of education. And, although it is a school of choice, those students lose their tuition, and may forever lose that opportunity. They do not get their tuition back. That is the problem I have with it, but we will discuss that.

The other, fact-finding, is in the proposed amendments we prepared. They came out late, so we are not going to decide on any of those issues today. I said before May 23, but it is May 19 that we are going to have a special Labor Committee meeting. We were going to hold the drug testing bill, but I think this is more important. This is a bill that--

ASSEMBLYMAN FOY: Equally important.

ASSEMBLYMAN LITTELL: All right.

ASSEMBLYMAN PALAIA: It must be his bill.

ASSEMBLYMAN LITTELL: He is co-sponsor of that one. We will deal with this on May 19, rather than May 23

ASSEMBLYMAN PATERO: Mr. Chairman?

ASSEMBLYMAN LITTELL: Yes, Assemblyman Patero?

ASSEMBLYMAN PATERO: I think you are making the right decision, holding up on voting on this bill, because there have been some questions that have arisen right now. I think we are going in the right direction, especially when the School Boards mentioned that neither side likes binding arbitration. Maybe if neither side likes it, they will be able to sit down and mediate much better than what we have right now.

ASSEMBLYMAN LITTELL: Thank you.

ASSEMBLYMAN PALAIA: May I ask something?

ASSEMBLYMAN LITTELL: Yes, Assemblyman.

ASSEMBLYMAN PALAIA: Dennis, or any of the other individuals -- Jeff, Kathy, or either of the two Saras -- with the problems you are having dealing with the boards of education-- Now, Jeff made the point-- I guess the focal point was the money, Jeff? Was that the basic--

MR. JEFFERDS: In this situation, yes. Ten years ago, it was not.

ASSEMBLYMAN PALAIA: Yeah. How about the other three? Was it money, or were there other circumstances within the schools, as I say, with facilities? Kathy, how about you?

MS. STOPHERD: Along with money, there were other working conditions, terms and conditions of employment, that complicated the issue.

ASSEMBLYMAN PALAIA: What about you, Sara Mitchell?

MS. MITCHELL: We were primarily concerned with our health plan. We had a State health plan that covered nothing, and that was our main thrust. It was not money.

ASSEMBLYMAN PALAIA: That I can understand. Sara Davis?

MS. DAVIS: Ours was money and working conditions.

ASSEMBLYMAN PALAIA: But it was basically money? See, I am just trying to get a flavor of what brings on these things, you know.

MR. GIORDANO: Well, Assemblyman-- Sara, if you are finished, I would like to get in on this myself.

MS. DAVIS: I would just like to add that we did go through all of the steps. We went through fact-finding; we went through mediation. In fact, we were in mediation when injunction orders were issued for us to go to jail.

MR. GIORDANO: I would just point out that -- and I heard the question raised a couple of times earlier from some members of your Committee -- the relationship between scope and the precipitation of job actions. I think it is meritorious to comment at this time on that subject. While it may be money in many instances, it is clearly not singularly money, as you just heard. We are certainly limited in our scope, as of Ridgefield Park. We have maintained from the beginning that the more things you can put on the table for negotiations, the more opportunity you have for a resolution to a contract problem -- a settlement.

Our people, over the years, prior to Ridgefield Park, bought many of the items that we lost as a result of Ridgefield Park with money. You need to know that; you need to remember that, as you consider any of the thoughts you may have in relationship to money precipitating the problem. We bought a lot of benefits with dollars and cents. We are now relegated to just working conditions and salary, but all of those items we bought got flushed away with that Ridgefield Park decision, a serious financial setback for the organizations that we represent -- the local associations.

ASSEMBLYMAN PALAIA: Thank you, Dennis.

ASSEMBLYMAN FOY: One of the interesting things in the Willingboro situation is, the issue is not money. They had really come to the point where they said, all right, they could pay the salary increases the fact-finder recommended, which the union originally asked for in the beginning anyway, but the board's sole issue that hangs it up, as I understand it, is, they want to determine how to distribute the amount of money they are going to pay. They want to establish a new and

different salary guide from the one that has been in place for many, many years. They want to say, "We are going to give new teachers a 50% raise, and we are going to give teachers who have been in the system 25 years a 10%, 12%, or 14% raise. The union has resisted that, because the bulk of the teachers are not new teachers. They are people who have spent their lives -- their lifetimes -- in this school district, dedicated to educating those kids. That is the hang-up between the union and the employer. Am I right, Jeff?

MR. JEFFERDS: That's right. Those percentages are over three years. We had negotiated a considerably lower number than a 50% raise, which would have been very nice.

MR. GIORDANO: I think it is also helpful to point out that in the case of Willingboro, they made an effort to deal with the breakage money as a result of the recent minimum salary initiative, and the board flatly refused to discuss it, and flatly refused to report the amount. So, in the case of Willingboro, that money literally evaporated, without any trace, and without any regard for explanation when Tener, the mediator, asked that question.

ASSEMBLYMAN FOY: I might add that the single most popular TV show in my entire district is the Channel 8 airing of the Willingboro Board of Education meetings.

ASSEMBLYMAN PALAIA: Dennis, on that last issue with the \$18,500 and the moneys left over, I thought that money had to be earmarked for salaries, and no other--

MR. GIORDANO: We did, too.

ASSEMBLYMAN PALAIA: I am positive, because I was part of that bill.

MR. GIORDANO: Apparently that turned out not to be the case, I regret to inform you.

ASSEMBLYMAN PALAIA: That was one of the things we insisted upon, that it doesn't go into a general fund of any kind.

MR. GIORDANO: I regret to inform you that that did not occur in a lot of cases.

ASSEMBLYMAN LITTELL: Have you asked for an investigation?

MR. GIORDANO: The mediator directly put it to the board and they flat out refused.

ASSEMBLYMAN LITTELL: Have you asked for an investigation from the Department of Education or the Attorney General? I certainly would.

MR. GIORDANO: We have not.

ASSEMBLYMAN LITTELL: I would.

ASSEMBLYMAN PALAIA: I would.

ASSEMBLYMAN LITTELL: Thank you.

MR. GIORDANO: Thank you.

ASSEMBLYMAN LITTELL: I think you ought to do that. I think somebody may be in serious trouble.

MR. GIORDANO: Willingboro, by the way, is not standing alone. I would say it is far more universally true than singularly true.

ASSEMBLYMAN LITTELL: Well, here's the sponsor, and if he tells you it ought to be--

ASSEMBLYMAN PALAIA: That money was earmarked specifically.

MR. GIORDANO: Well, we'll have to get together on that. Thank you.

ASSEMBLYMAN PALAIA: Salary, and that is all it was earmarked for.

ASSEMBLYMAN LITTELL: Somebody may be, you know, in an indictable position.

MR. GIORDANO: Well, I regret that, but it is, indeed, the case, as I am explaining it to you.

ASSEMBLYMAN LITTELL: Okay. Assemblyman Pascrell?

ASSEMBLYMAN PASCRELL: Dennis, what was the fine in the Elizabeth case?

MR. GIORDANO: There was no fine. There was an out-of-court settlement, if that is what you are talking about.

ASSEMBLYMAN PASCRELL: What was the out-of-court settlement?

MR. GIORDANO: The out-of-court settlement ran \$200,000.

ASSEMBLYMAN PASCRELL: Who paid the fine?

MR. GIORDANO: The local association.

ASSEMBLYMAN PASCRELL: The local association paid the \$200,000 fine. I am looking at the chart which has been supplied to us. The six states that are compared from 1982, which states had strikes and which states did not, at first blush when one looks at this chart, New York State had the fewest amount of strikes. Looking at the footnote and an explanation, it says there is no right to strike in New York, and the state law imposes a two for one penalty wherein the public employees are docked two days' pay for each day of the strike.

When we look across from 1982 to 1987, it's not even close. New York has the fewest amount of strikes by far. But I suggest -- and I don't know whether you agree with me or not -- that these fines that are looming over the situation like a dark cloud, may be masking the real problems that exist in terms of negotiation. I can see a real process of intimidation here with these fines. When we are attempting to find a balance, and when we are attempting to find a fair way to deal with situations, numbers can be very misleading.

MR. GIORDANO: Go ahead, Jack.

JACK BERTOLINO: Assemblyman, it is not just the fines. It is also the threat of firing. The \$200,000 in Elizabeth was part of the final settlement, but, as you follow the newspapers, you know that the fines kept accumulating, and they were up over a half a billion dollars -- something like \$500 million. In addition to that, the judge had come down

with an order to fire the members of the Elizabeth Education Association.

So, it is not just the money. It is the issue of the courts -- or the boards using the courts to apply maximum pressure on the school employees. I am pleased to note that the Chairman's remarks initially go to that point. That is the issue here. The issue is a matter of fairness. The issue is a matter of balance. The issue is the fact that right now the school boards have all the bullets; they've got all the bullets. If a school board wishes to proceed and utilize the courts, as has been indicated here -- and we could bring in another dozen locals to show the same thing-- If a school board determines that that is what is going to happen, then they can literally bludgeon the school employees in trying to force an agreement.

ASSEMBLYMAN PASCRELL: But, you know-- I agree with what you have said, but the employer, and that is the school board in these instances, has to be able to raise the money to pay for the kinds of things you are talking about. It is not at all a one-sided situation. Particularly it is difficult when you are in an -- go back to the example -- urban district. How do you raise the money to pay your teachers a good pay, in a district where there is municipal overburden time and time again, and when the State of New Jersey is not complying with the law in fully funding education in the first place, Mr. Chairman? I mean, how do you do that? It is a juggling act. It is not easy to be a board member. It is a thankless position. And it is not easy to be a board member particularly in an urban area. When you put those things together, it is a difficult situation. How do you pay your teachers fairly?

MR. BERTOLINO: Well, if that were the only issue--

ASSEMBLYMAN PASCRELL: I have never met a board member who said teachers were, for instance, overpaid. I mean, that is not the issue.

MR. GIORDANO: I have.

MR. BERTOLINO: I have.

ASSEMBLYMAN PASCRELL: Okay, maybe you have, but I haven't.

ASSEMBLYMAN NAPLES: I have.

MR. GIORDANO: I regret to say that, also, but I have indeed met a few.

MR. BERTOLINO: But you know, Assemblyman, when it gets down to it, in many instances it is not the money. As someone mentioned before, it may be internal wrangling, it may be a matter of pride--

ASSEMBLYMAN NAPLES: Respect.

MR. BERTOLINO: --it may be respect, it may be all of those things. Nobody is ever going to convince me that that Elizabeth School Board did not have the money to settle. They were that close, Mr. Chairman and members of the Committees; they were that close. It just seems to me that people in high authority wanted to stick it to the Elizabeth Education Association. That was the issue in that one. The fact of the matter is, it has been indicated, if you read Mr. Scarpato's testimony-- The fact of the matter is that the Elizabeth Education Association wanted to go to binding arbitration, or interest arbitration, and pleaded with the judge to impose interest arbitration. The judge refused for the very reason that this Committee is together today; that is, because he did not have the authority to do so.

ASSEMBLYMAN PASCRELL: Mr. Chairman, this bill is attempting, as I see it, with its amendments, to reduce the possibility of prolonging strikes. Now it is a technical thing we are talking about here. In other words, there has to be an action which precipitates this law in the first place. I can understand, if I may, that that is a problem. How do we move to prevent the action from happening in the first place? In other words, if we had a magic wand, we would like to do away

with teacher strikes. Now, do you see this bill -- I can understand it if you do, particularly if you are a school board member -- saying that you have to strike in order to trigger this bill to go into effect? Upon immediately taking an action of a strike, there is action which follows.

MR. GIORDANO: Let me suggest to you that while that may be true and specific, I see the bill somewhat differently. From the view of precise language, that may well be the case, but I see it differently. I see, rather, two sides, as Assemblyman Foy explained before, both sides not really leaping to the opportunity for binding arbitration, if you will. To go on strike would mean that you would go before the judge, who might well order that very binding arbitration; therefore this bill serving as a very useful cudgel, if you will, moving both sides more directly and more quickly and aggressively toward resolution independent of that kind of an activity.

MR. BERTOLINO: I think that is a good point, Assemblyman, in that I believe that the fact that there will be, that there is the notion that, a) an injunction would not be issued, or could not be issued immediately; b) that we could get in there, at least our point of view be put across; and c) the fact that if something is not settled in the meantime, the imposition of binding arbitration would be on the horizon-- Considering all those three factors, I think you are going to have fewer strikes, rather than more. The School Boards' position on that is just so much nonsense, as far as I am concerned.

Please remember that the mind-set of the School Boards Association is the main thing -- they want to settle strikes -- when the Chairman or somebody raises the question that it was the certainty of punishment. That is where they are coming from. The way you settle things is by punishing employees for using what I consider to be their right as American citizens.

ASSEMBLYMAN FOY: One other point I would make: You know, I am not so sure that should this bill become law that a school board, in a sense, wouldn't have an earlier opportunity to seek an injunction before somebody actually went on the street. Here is my thought: If today the Willingboro Education Association took a strike vote, and there was a duly authorized vote of the membership to go on strike, and a strike was imminent, I, as a school board, would direct my attorney to go into court to seek an injunction at that point, before anyone actually hit the bricks, because the harm -- I would seek a prior restraint -- would be immediate. The argument would be that it would be irreparable, and they are fundamentally the standards for seeking the injunction at that point.

So, I don't necessarily know that you actually have to have the teachers out on the street. The strike authorization itself conceivably could be enough for a board to seek injunctive relief.

ASSEMBLYMAN PASCRELL: Through the Chair-- But, Tom, let me ask you this question: In perceiving the bill that way -- and I perceive it that way--

ASSEMBLYMAN FOY: Right.

ASSEMBLYMAN PASCRELL: The school boards perceive it as tacitly approving strikes. I don't see it that way.

ASSEMBLYMAN FOY: I agree with you. I don't see it that way.

ASSEMBLYMAN PASCRELL: On the other hand -- through the Chair -- one could almost perceive this, I can perceive this as tacitly doing away with strikes.

ASSEMBLYMAN FOY: Yes.

ASSEMBLYMAN PASCRELL: If we follow what you just said -- and in this bill--

ASSEMBLYMAN FOY: If we follow 210, exhausting all administrative remedies--

ASSEMBLYMAN PASCRELL: Right.

ASSEMBLYMAN FOY: --and then take a strike vote, the board should move to seek an injunction and force the issue to arbitration.

ASSEMBLYMAN PASCRELL: Well, let me ask you this question: Do you interpret this bill to mean that perhaps we need not have a job action in order to precipitate this bill?

ASSEMBLYMAN FOY: Yes, absolutely. I would seek an injunction before anybody ever hit the bricks, if I were a school board president, and--

ASSEMBLYMAN PASCRELL: According to this bill, Mr. Chairman, that interpretation is the interpretation that I have. Is that a correct interpretation?

ASSEMBLYMAN FOY: Well, that is going to be up to a judge. Honestly, they are going to be making the decision as to whether or not to issue an injunction. They may say--

ASSEMBLYMAN PASCRELL: You're talking about an immediate response to a situation, almost like a joint response -- one response, a strike vote, or a vote-- What about a vote to empower the union to strike if it seems necessary? Is that something to trigger this off?

ASSEMBLYMAN FOY: Well, again--

ASSEMBLYMAN LITTELL: Would it be injunctive relief, or would it be a restraining order?

ASSEMBLYMAN FOY: A restraining order.

ASSEMBLYMAN LITTELL: A restraining order is not the same as injunctive relief, is it?

ASSEMBLYMAN FOY: Well, it is, because it is a prior restraint of a potential future action. They are really one and the same. An injunction is a temporary restraining order for a period of time. Really, this offers an opportunity for a full and fair hearing of the facts regarding a proposed action -- an analysis of it, a determination by an independent third party, and a potential order for bargaining or compulsory arbitration with respect to it.

Now, I see, at that juncture, after everything has been exhausted, somebody really having a hammer in his or her hands to make a solution happen, since it couldn't happen voluntarily. I think all of that can happen without an actual picket line and a strike.

ASSEMBLYMAN PASCRELL: Through you, Mr. Chairman, do you see it that way, Dennis?

MR. GIORDANO: I am going to do this with respect to that comment. I am going to reserve a response to that based upon the fact that we really have not discussed it as an organization, and I would hope that you would respect that.

ASSEMBLYMAN NAPLES: Mr. Chairman, I think that that could well be accomplished relative to the sentiment evinced by Mr. Pascrell, with which I concur, and also Assemblyman Foy. We talked a moment ago about a preamble, the statement of your intent and Mr. Haytaian's intent. We could also incorporate something like that into the bill's statement to clarify it. I regard this as a bill to truncate, or shorten strikes, and take it a step further, as Bill said, to prevent them altogether, so that we don't even have to shorten that which has not occurred. I think that can be very, very easily accomplished, Joe, if you could draft some statement, some preamble. I know I like to write a lot of my own intents or statements in my own bills. Perhaps the Committee could take a look at that, and we could accomplish Mr. Pascrell's -- incorporate Mr. Pascrell's very, very worthwhile suggestion.

ASSEMBLYMAN LITTELL: My attorney tells me that we will have to review that prospect--

ASSEMBLYMAN PASCRELL: Yeah, I understand.

ASSEMBLYMAN LITTELL: --and see how it shakes out. He says it is possible that we may--

ASSEMBLYMAN NAPLES: It might solve the problem.

ASSEMBLYMAN LITTELL: --be able to find some language that would address that issue, but off the top of the head it is tough to give you an honest answer.

MR. GIORDANO: We have the same response, as you have heard.

ASSEMBLYMAN LITTELL: Okay. We have an awful lot of other people who want to testify. I appreciate the testimony of you folks. Is there anything else?

MR. GIORDANO: May we make one closing remark, and then we will be happy to step back?

ASSEMBLYMAN LITTELL: Yes, you may.

MR. BERTOLINO: Mr. Chairman, I would like to respond to just one-- There were a lot of things the School Boards said, but one thing -- and I think you have addressed it, or somebody addressed it-- The point was made that a judge may or may not issue an injunction; a judge, you know, has the discretion, may call the people in. I have been personally involved, Mr. Chairman, with many judges, in their chambers, out of their chambers, pleading with them, groveling, if you will, trying to persuade them not to sign an injunction, or to sign the temporary restraining order. It was right in this building, when there was a strike in Trenton several-- About 10 years ago, Judge Fritz, who was a Superior Court judge-- The Judge had the injunction on his table, right here, from nine o'clock in the morning until seven o'clock that night, and the board was jumping up and down to get him to sign it. I said to him, "Your Honor, is there any way I could persuade you not to sign it?" He said, "No." I said, "Is there any law I don't know about that you would quote for me, that I could use to persuade you?" He said, "No." He said, "Jack, I must sign it." And your bill, Mr. Chairman, will address that issue. I think it will not only bring fairness to the bargaining table, but I also believe, as does Assemblyman Pascrell and others, that it will diminish strikes, rather than promote them.

Thank you very much.

ASSEMBLYMAN LITTELL: Thank you, Jack. I appreciate that.

MR. GIORDANO: Thank you.

ASSEMBLYMAN LITTELL: Okay. It's four o'clock. We are going to move ahead. I hope that all the Committee members can stay with us here.

Diane Quinton and Gary Reddig, State of New Jersey Council of County Colleges?

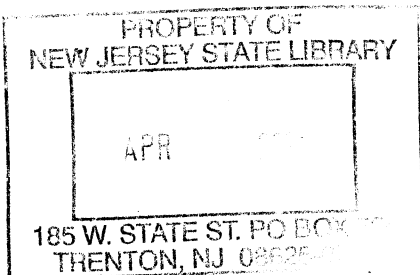
N A N C Y B E C K E R: Good afternoon, Assembly Committee members. I am Nancy Becker. My firm serves as legislative liaison for the Council of County Colleges. I am here to introduce Gary Reddig, Executive Director of the County College Presidents' Association, who, as such, will be speaking for that Association and for the Council of County Colleges.

Our testimony, however, was drafted based on the 4/26/88 Assembly Committee Substitute. So, a portion of the testimony will have to be amended with relation to that. We have just seen the draft this afternoon.

G A R Y R E D D I G: Mr. Chairman, members of the Committee: My name is Gary Reddig. I am Executive Director of the County College Presidents' Association and the Council of County Colleges. I am here today to ask you to consider the adverse impact that Assembly Bill 2215 would have on New Jersey's 19 county community colleges.

The first problem with this legislation is that it could damage the integrity of the county colleges as institutions. As a consequence of this legislation, for example, high academic standards and requirements for tenure and promotion could be reduced. The arbitrator whose skills rest in the area of labor relations, would be making educational decisions.

But, there are other serious problems with the bill, as well. Negotiations could be prolonged because the parties would not have to settle all issues at the bargaining table. Hoping for better results through binding arbitration, the unions could make a half-hearted effort in collective



bargaining. There would probably be a delay in the final outcome of the issues normally settled at the bargaining table. The union would be able to set forth proposals to the arbitrator that represented the views of minority factions. Thus, instead of resolving their own conflicts within the union, the entire basket of conflicting propositions would be submitted to the arbitrator.

Naturally, the arbitration process itself would be a costly one. The bill requires the parties, which means namely the employer, to bear the expense of the arbitration procedures. We find it abhorrent that an arbitrator could require an institution to open its books during the arbitration process. How can any arbitrator know whether a public employer can afford a particular wage or salary increase? Historically, in private industry, this step has only been taken voluntarily. This bill means that the collective bargaining process would be taken over by an arbitrator who could not be totally familiar with all the circumstances surrounding the county college issues, and who may not take the needs of the college into consideration.

The county colleges operate with charges, whether formal or informal, from the Governor's office, the Legislature, the counties, and the students themselves. How is the arbitrator supposed to take these pressures into account? Money an arbitrator may decide is available to finance a wage increase would need to come from other worthy projects.

The bill stipulates that any other documents that bear on the negotiations could be subpoenaed, including confidential working files. Obviously, keeping confidential records would become impossible. The entire arbitration procedure would be subject to appeal by the Superior Court, thereby setting up a conflict between the court and the arbitrator. Until the matter was settled, the county colleges would have to implement and finance the arbitrator's decisions, pending a final appeal in the courts.

It should be noted that in the process of deciding a reasonable wage or salary increase, the arbitrator could use salary increases at other county colleges and local industries as a standard of comparison. A county college could be forced to match the salaries of a local business, whether or not this was in the college's best interest. Because the county colleges have no taxing authority, salary increases in one academic area could easily mean the elimination of faculty positions in another.

The county community colleges should not be lumped together with the kindergarten through twelfth grade public school system. We are more different than we are similar. Since we have historically been part of the higher education sector, why have we been singled out in this legislation?

Finally, let me conclude by saying that the county colleges' collective bargaining process has been working. It is maturing and evolving in a very positive manner. Interference now can only harm a system that is satisfactorily serving the residents of New Jersey.

Thank you.

ASSEMBLYMAN LITTELL: Thank you, Mr. Reddig. What you are saying is basically what Assemblyman Foy said, that county colleges should not be in the system. What about a situation where you might have a strike, and the student loses out on his or her education? You don't refund their tuition, do you?

MR. REDDIG: I was interested when you raised that issue earlier. I assumed that someone had given you some information that I am not familiar with, or that we do not have. Before taking this position, I was president of a college here and in several other states. I don't know of any presidents who would try to develop some kind of a procedure, or policy which would preclude the students from continuing their education. I am not sure of how they could lose their tuition but, again, someone must have given you some information that I am not familiar with.

ASSEMBLYMAN LITTELL: Well, the way they would lose out would be if there were a prolonged strike and the teachers didn't work and, therefore, they would not be educated, although they would have paid their tuition to the college.

ASSEMBLYMAN PALAIA: How would they be reimbursed?

MR. REDDIG: The semester would be continued. It would be lengthened.

ASSEMBLYMAN LITTELL: The semester would be continued, but they wouldn't be educated.

MR. REDDIG: Not for that period of time.

ASSEMBLYMAN LITTELL: Not for that period of time. You wouldn't reimburse them for their tuition or any portion of it, would you?

MR. REDDIG: I don't believe the tuition would be reimbursed at that point in time when the strike began. However, I think we also ought to take into consideration-- As these debates were going on here today, I was trying to recollect the strike situation among the county colleges in New Jersey. There may have been one in the last couple of years. I am really not familiar with it. I think we have an excellent record now of establishing a mature way of handling collective bargaining. I know it has improved immensely since the late 1970s, when trustees and faculty members and administrators, I think, learned how to cope and became a little more intelligent in dealing with collective bargaining issues.

ASSEMBLYMAN LITTELL: Okay. We will take your thoughts into our final consideration and see if we can't work it out.

MR. REDDIG: Thank you.

ASSEMBLYMAN LITTELL: Yes, sir.

ASSEMBLYMAN PATERO: Mr. Chairman?

ASSEMBLYMAN LITTELL: Yes, Assemblyman Patero.

ASSEMBLYMAN PATERO: I think at the beginning you said you had the Department here. Can we hear from them?

ASSEMBLYMAN LITTELL: Sure. Jeanne Oswald, from the Department of Education, please. Peter Marluzzi will be after Jeanne.

J E A N N E M. O S W A L D: Thank you. I am Jeanne Oswald, from the Department of Education. I commend both of these Committees for bringing this very controversial issue to the floor. I am sure there is not anyone in this room who does not want to end strikes. I know it is the sponsor's intent to avoid further disruption of education, as it would be all of our intents.

Nevertheless, the Department of Education has a serious concern with the bill as it is written. I would like to speak to the provision which concerns injunctive relief. Even in the amended version, which we have just received, the bill would alter a well-established and longstanding State policy in New Jersey regarding strikes in the public sector. As the gentleman from NJEA pointed out just a moment ago, a judge must grant the injunction should there be a determination that a strike does exist, under current policy and under current law. This bill would change that, and that is the longstanding policy we are concerned about.

It sets up conditions that could conceivably condone a teachers' strike, or allow a teachers' strike to continue. The Department believes there are no conditions under which a teachers' strike should be permitted. This bill, as written, provides that the courts would have the decision as to whether or not the strike should be enjoined, as was discussed earlier by Assemblyman Pascrell.

Secondly, the bill sets up a system which would be disruptive to public education. Granted, strikes are already terribly disruptive to public education. Under current practice, with the exception of legal strikes, impasse techniques that are available allow education to continue during resolution through fact-finding mediation and so forth.

This proposal would allow the court to hear testimony before granting the injunctive relief, and that suggests that the strike may in some way be justified. Thus, the disruption of education may somehow be justified. We cannot agree with that. Whether one side or the other has negotiated in good faith is not the issue when injunctive relief is sought. The issue is simply whether the employees should be ordered back to work in the interest of the public.

As was stated previously, the court is to order them to stop breaking the law. We do not believe there should be testimony given as to why they should not be ordered to stop breaking the law.

Third, the bill may well serve to encourage strikes. I know we have talked a little bit about this with the amendments, and I haven't thoroughly read the entire bill in context, but presently the only way a school district negotiation process is going to end up in binding arbitration, is if both sides volunteer to go that way. If one side or the other wishes to have binding arbitration, there is one way to get it with this bill, and that is to get involved in a strike and then, in fact, the court may order binding arbitration. Perhaps the amendments address this concern. I am not certain.

Fourth, the bill sets a precedent for other classes of public employees. Governmental services are unique and essential, and in New Jersey public employees do not have the right to strike. Teachers are certainly essential public employees, and we do not believe they should be pulled out from the rest of the group -- public employees. The policy should remain consistent in the public sector.

Fifth, the entire first section -- and I was speaking to the first section of the old bill when I prepared my testimony-- Still, the beginning of the bill regarding injunctive relief appears to be a trigger for mandating binding arbitration. We believe it is a most inappropriate trigger,

and is not in the best interest of children. If binding arbitration as a method of solving impasse is to be considered, we think it should be considered separate of injunctive relief. It should not be triggered by injunctive relief.

Finally, I would just divert a moment from my prepared testimony to say that the very moving testimony of the NJEA representatives, I think, hit home with everybody. The horror stories are just as overwhelming to us as they are to you. I am sure there is not a single individual with any responsibility toward the public who would want such circumstances to exist. However, without analyzing this amended version much further, I am not at all certain how this will deal with those situations.

Assemblyman Foy pointed out the possibility that the moment the strike vote is taken, perhaps an injunction could be stopped, and it could all happen before the teachers hit the pavement. That is possible; it wouldn't necessarily be so. Nevertheless, a lot of the damage has already occurred. The kind of stories we heard about Willingboro, and so forth, would not be ameliorated by this bill -- wouldn't be taken care of. The binding arbitration, as Assemblyman Pascrell pointed out, is triggered in this bill after the disruption and damaging circumstances have occurred. We would like to end the disruption and damaging circumstances you would. We are just not at all certain that the beginning provisions of this bill that tie it to injunctive relief will do that.

ASSEMBLYMAN LITTELL: Thank you, Jeanne. I would appreciate it if you would take the amendments back with you. As I said before, they were amendments that were prepared internally because of responses that we had received. I had intended that we would discuss them today. They are obviously more far-reaching than most people are prepared to consider. Therefore, we won't act on them until the nineteenth. I would appreciate it if the Department would get back to our staff as

soon as possible to give us your thoughts and ideas, because we intend to put a bill out and we intend to deal with this problem. If you have some good thoughts and ideas about it, we would like to hear them.

MS. OSWALD: Thank you very much.

ASSEMBLYMAN PATERO: Mr. Chairman?

ASSEMBLYMAN LITTELL: Yes, Assemblyman Patero.

ASSEMBLYMAN PATERO: You know, I am very disturbed with that, because if I were a school board, I would go back and say, "I am going to give you no increase, and you do whatever you want." I think what this bill is trying to do is get both sides together. You're saying that we are taking the right of a judge to give out this injunction.

MS. OSWALD: If I may, through the Chair, what I meant to suggest was that the binding arbitration which we hope will solve the problems that the boards and the teachers' unions are facing is not triggered until a strike occurs and a lot of the damage is done.

ASSEMBLYMAN FOY: See, I see it a little differently from you. I see the ball being squarely placed in the court of the school board to this extent: If we pass a bill in which we say that all remedies that exist under the law must be exhausted, so that they have gone through mediation, conciliation, and fact-finding, they have gotten to that point and they have negotiated themselves to death, much as they have done in Willingboro, and you have a situation that is an absolute tinderbox which is about to explode -- I know it very personally, because it is in my district -- and those teachers are so frustrated that they feel they have been thwarted and not treated reasonably at all, and they are about to hit the pavement and shut those schools down, the minute they take that strike vote, a responsible school board would seek to invoke the provisions of this legislation, and seek an injunction to prevent them from walking out. If they walk out, let them

suffer the consequences -- if they do it once the judge issues that injunction. And that's the fact under this type of law, because the potential remediation, that last final step, is the ability to go before that judge, present some evidence, and for the judge to say, "All right, a third party is going to make this decision because you reached an untenable situation that is bad for kids, is bad for parents, is bad for teachers, and is bad for the administration and the school board. Then you go into arbitration.

I see it as an encouragement on the part of school boards and unions to resolve these issues before they ever get to a strike vote or go to a third party. If the possibility of a third party is out there to bind a school board, the Willingboro Board of Education would not be doing the things they are doing right now. If they knew that that fact-finder's report could be accepted by an impartial third party and they could have those raises and that salary guide imposed on them, they would be settled. There would be a contract. But there is nothing out there to compel them to do anything. They are free to act at their own whim and caprice and, frankly, in many instances, unfortunately, that is the way they have acted, to the detriment, in my opinion, of everyone involved.

ASSEMBLYMAN PATERO: But also, Mr. Chairman, I think they could get an injunction immediately. I don't--

ASSEMBLYMAN LITTELL: We will work on some language to deal with an early trigger, you know. One thing you might want to kick around is the idea of saying that whatever final determination is made, it is retroactive to the date of the action. That is another way to put some heat on to get the resolution of the problem done quickly, if it is retroactive.

Thank you very much, Jeanne.

ASSEMBLYMAN PASCRELL: Mr. Chairman?

ASSEMBLYMAN LITTELL: Oh, I'm sorry. Yes, Assemblyman Pascrell.

ASSEMBLYMAN PASCRELL: Mr. Chairman, in response to the Department's reaction to this bill and its amendments which will be ongoing, I should not interpret what the Department is saying, or should I interpret what the Department is saying, that you are accepting the status quo and what exists right now?

MS. OSWALD: No, I didn't mean to suggest that at all.

ASSEMBLYMAN PASCRELL: What is the Department suggesting?

MS. OSWALD: All I was trying to portray was the Department's objection to the beginning of this bill. I was not trying to speak to what is best in the whole world of negotiations and what the answer is to strikes. I was speaking specifically to the bill we had to address today.

ASSEMBLYMAN PASCRELL: Well, I would be very interested, speaking for myself, seeing what the Department will come up with in terms of proposals. I mean, it is not your job to settle labor disputes, but I think it is your function, because teachers are not the enemy, and children are the victims. I think the Department has a real responsibility here to offer its technical assistance to help us to come up with a bill that would be the most pleasing to all parties. But you're not accepting what exists right now, are you?

MS. OSWALD: Not the beginning of the bill, no. We would be glad to work with the Legislature to try to come up with an agreeable bill -- absolutely.

ASSEMBLYMAN PASCRELL: Thank you.

ASSEMBLYMAN LITTELL: Thank you very much, Jeanne. Peter Merluzzi, would you identify yourself, please?

MR. MERLUZZI: My name is Peter Merluzzi. I am the Superintendent of Schools at Hunterdon Central Regional High School, and I have been the Superintendent of Schools for the last 2 years in two counties in the State. I am here now representing a body-- I hope to be representing the students in the State of New Jersey -- the kids I have in my school

district, and maybe some of the other districts around the State.

I think the idea of eliminating teacher strikes in the State of New Jersey is a very noble mission. I think it is one that we must accomplish. The means you are going about to accomplish that, however, I have some concerns with. I have not had the opportunity to see an amended position on this bill. However, I would voice the same concerns expressed by the State Department with reference to the opening provision of the bill. The concept that even the threat or mention of a strike in a district as the triggering impact to go to the next step in the matter concerns me, because I think that is a point that we don't want to put our teachers in, and I don't think the students should have the opportunity to know that the teachers have to reach that stage in the process before it is triggered.

The second concern I would have, and one that was mentioned by the County Colleges is, you should take into consideration the budgetary impacts upon what will occur. As an example, budget processes start in school districts in October. Boards of education act on them in January and, in most cases, the public hearings are held in February, or at the latest early March. The negotiations process, however, often drags on longer than that, and the budget figures have been struck for the upcoming year when the process of negotiations has not been concluded. As a result what ends up happening is, the board of education has a certain pot of money that it has to work with. If, in fact, more moneys are allocated for salaries than have been allocated in the budget, the impact will be that other areas of the budget will be reduced to compensate for that.

I would hope that the areas reduced would not have a direct and substantial impact on the educational program offered our students, but in a district where budgets are

tight, and in a district where you will see 75% to 80% of the budget going into salaries and benefits, and perhaps 10% of that budget going into your operational costs, and your district has not succeeded in the monitoring -- and I am not allowed to cut my operational costs -- it leaves me a very small area that I can pick and choose from. Those areas then will get into the textbooks and the supplies and the things which also have a direct impact upon the educational program.

I don't know whether there is anything you can do in this bill to ameliorate that concern, but I think it is one that should be looked at, and it is one that I think will have an impact upon our students. I would hope that you would follow through with this and do something to eliminate the strike issue. But at the same time, I would respectfully request that you look at the financing issue to see whether there is anything you can do to compensate for that.

ASSEMBLYMAN PALAIA: Thank you, Peter.

ASSEMBLYMAN FOY: Mr. Chairman, I think there is an answer in the proposed bill. In terms of what factors an arbitrator may consider in rendering a decision to accept either side's final offer, among the most significant of all the items for consideration by that arbitrator, is item number 6 on page 4, which is the financial impact on the school district or county college and the taxpayers.

Currently, the way binding arbitration works for police and fire fighters-- That kind of clause is in there for the public employer. I can tell you that there are really two things that arbitrators look at when they are going to make a determination. They look in terms of the issue relating to the union on comparability. How do these employees relate to other employees, in really a series of concentric circles -- in the town, in neighboring towns similarly situated of the same size, and what have you, elsewhere in the county, elsewhere in the State, elsewhere in the nation? That is comparability, and

that issue, in a sense, is an issue that the union is very strong in advocating.

----- The issue that the employer always advocates is their ability to pay. There is an independent evaluation made by that arbitrator of the budget. If that school district does not have the money -- just like if the fire district, or that municipality does not have the money -- that is strong and powerful and persuasive evidence on the part of the employer as to why the decision should be rendered in its favor. In a sense, with arbitration, the unions roll the dice with respect to that particular issue. I think an arbitrator would give careful consideration and strong weight to the ability of a school board, given the fact that its budget was fixed and in place, in terms of picking some final offer by the union that was so outrageous that it would adversely burden the public employer.

You don't see that. What you see in the extant experience between police and fire, or among police and fire and the public employers, is that there is a tremendous winnowing of positions down to a very close situation in which the parties cannot agree, generally not because of a big difference in their economic packages, but rather because of those items mentioned before -- personality, ego, and things like that. In all of the experience I have had over the past dozen years, it is not the economic issues that force it to that final situation. It is, unfortunately, personal issues involved with the bad feelings that arise as a result of poor negotiations, and things like that.

So I think you have a built-in safeguard there, given the fact that the arbitrator has to give considerable weight to the ability to pay the financial stability and the financial situation of the public employer.

ASSEMBLYMAN PALAIA: Thank you, Peter. Is Ray Peterson here? (affirmative response) Ray, do you want to

tell me if any of these other gentlemen are going to be associated with you -- Tom Wirth or Archer Cole? (Mr. Peterson's response from audience is inaudible to transcriber.)

R A Y P E T E R S O N: Good afternoon, Mr. Chairman -- both of you -- and members of the Committee -- of the Joint Committee. I have with me Marcoantonio Lacatena, President of the State Federation of Teachers, which represents approximately 11,000 public employees in New Jersey, and Archer Cole, President of the Industrial Union Council, and who also represents the IUE, which has public employees in community colleges, as well as public schools.

We appreciate this opportunity to speak. We also want to go on record that, as indicated, we appreciate the Chairman's statement at the AFL-CIO convention that he had legislation that would prevent teachers from going to jail. We share that goal. However, we do not share his enthusiasm for this particular bill, which probably was triggered by the dramatic event that took place in Elizabeth last fall.

There was a time nearly 20 years ago when I believed that the last best offer, a variety of interest arbitration, was a viable solution to what seemed, at the time, to be a serious problem for the people I represented. But we didn't have this mechanism available to us. So we worked diligently with the PERC dispute mechanism that was available to us at the time, and we did achieve a reasonable settlement.

I would like to depart from my prepared remarks, and point out that we spent a lot of time that summer -- 17 days -- in fact-finding, and we avoided a strike because we put the time and effort in and gave the PERC procedures an opportunity to function. Two decades of experience and innumerable conversations with leaders of my own union have convinced me that compulsor' interest arbitration is not, in the long run, the best way to resolve impasses in the public sector. Serious and intensive usage of the PERC inpasse procedures is the best

way, since mediation and fact-finding as utilized in New Jersey usually reduces the differences between the parties to a few issues that can, and should be resolved by mutual agreement.

I would like to point out-- I note that the School Boards cited the five strikes last year where the procedures had not been followed to carry the PERC procedures to their ultimate conclusion -- fact-finding. Fact-finding is often, in the PERC arena, utilized in a way that may not be understood by everyone. There are some highly skilled and persuasive fact-finders who, after you finish with mediation, will say to the parties, "Look, I know that if I issue a report, either side can reject it. So, I will keep right on mediating, if you accept that idea, and my report will be whatever I can get you to agree to." We have used this a number of times, and it has worked.

You know, a wise man once said, "If it ain't broke, don't fix it." I would submit to you that the impasse procedures developed under the PERC law have worked remarkably well, when one considers the thousands of contracts that are negotiated by public bodies, including county colleges and local school boards. The number of strikes in public schools has been diminishing each year, and the average duration is only four or five days. The longest strike last fall might have been avoided entirely, had the participants completed the PERC impasse procedures before the strike, and not after it.

In our view, the Public Employment Relations Commission is doing an outstanding job in resolving the differences between the disputants, so that reasonable compromises are possible.

As to the question of sending teachers to jail, may I suggest that if fewer injunctions were issued, there would be fewer violations and less courtroom drama and less trauma in the schools. It seems to us that the quick and nearly certain issuance of injunctions against public employee work stoppages

serves to bolster intransigence on a few school boards which, for whatever reason, are unwilling to extend, or inconvenience themselves in negotiations with teachers and other school employees.

We believe that reliance on the courts and on the availability of this powerful legal weapon has contributed to miscalculations that have caused a small minority of school boards to throw down the gauntlet, saying, in effect: "Take it or leave it. What else can you do about it?" I have been in that situation.

A better solution to the issue under discussion, in our opinion, can be found in Senator Jackman's bill -- S-849 -- which provides an injunction may be issued only in cases in which the work stoppage would present a clear and present danger to the health and safety of the community, or in cases where the PERC impasse procedures had not been utilized to the fullest extent.

One might ask, "Why the disparity of opinion among employee organizations on this issue?" It is easy to understand why policemen and fire fighters have opted for interest arbitration, even though it has not worked well, not as well as they had anticipated. If they were here today, they would tell you about the experiences they have had, where when they get the arbitration award, frequently the town fathers will take it to court and appeal it, and generate more litigation. They also have to consider the public safety factor, such as fires, robberies, auto accidents, and murders.

Employees working in the schools and colleges that close for the summer months, for winter and spring vacations, for legal holidays, and for teacher conventions, do not visualize such a dramatic impact on the community. School employees know the make-up time can, and should be negotiated if the schools are closed. I would point out that the average strike, whenever, in that small instance-- The average strike is four or five days in New Jersey.

Our organization does not support compulsory interest arbitration for reasons that may be unique. We do not see ourselves as guardians of the status quo, but as agents for change. We seek to advance the economic well-being of our members, as well as to achieve innovative contract language that can improve their working conditions and their professional status. Arbitrators are not inclined to break new ground in contract language, nor are they inclined to make dramatic awards. They are only helpful to those unions that are below the median or the average, and would offer no significant improvements for average or above-average units.

In short, they contribute to mediocrity, but not to the overall advancement of the groups which may need the most dramatic improvements.

I would like to digress for a moment and talk about a situation in which an arbitrator -- a mediator -- tried to tell my committee that we were crazy that we did not want to accept the 7% that everyone in the county was accepting, because we knew that the county school boards had gotten together that year and they all agreed on 7%. No one was going to go higher than 7-1/2%. So, the facts were on their side. The arbitrator said, "Look around." Here is comparability, Mr. Foy. "They were all offering 7%. Why do you people want to keep up with the cost of living?"

I believe this position has been reenforced by a recent discussion with the President of the Connecticut Federation of Teachers. I had him on the phone just two days ago. Nine years of experience with compulsory interest arbitration has produced a climate of stagnation and greater disparity between the economic status of Connecticut's teachers and that of the general population of that state.

For these and other reasons, we believe that the adoption of this legislation would not, in the long run, serve the best interests of the teaching profession or of the community at large.

If I may, I would like to respond to some questions that have not been asked of me, but which have been asked of other people, because I think it is important. I have already addressed comparability. Assemblyman Pascrell asked someone, "Do you think the teachers were ever driven to strike?" I do, because I sat across the table from the same one -- from the same negotiator who drove one of those units out last year with that high-handed arrogance. We faced months of that kind of treatment, and the guy was being paid by the hour to insult the employees. It does sometimes drive people who are normally quiet, docile, well-mannered people-- It does sometimes make them want to stand up and demonstrate that they are not sheep.

There was an attorney here a few hours ago who gave us his opinion. I think as it developed his own prejudices were in there. But, you know, when you have two attorneys-- Understand, when you have two attorneys present, you can get three opinions. I am sure-- I hesitate to get into a debate with an attorney, because I don't want to argue the fine points of law. But I can recall being in strikes with two distinct kinds of injunctions issued. The first one was a back-to-work order. It was drafted by the board's attorney and signed by the judge. The other was drafted by a different board attorney, signed by a judge, and it limited picketing. It limited picketing. So, it depends on who drafts the back-to-work order. The judge doesn't draft it. He signs it.

The one thing I think could be most effective, and should be in this law, would be to maximize the utilization of the PERC impasse procedures by moving a trigger date -- perhaps June 30, or something like that -- where you would automatically go to impasse, and spend some time over the summer with mediators and fact-finders, so that you don't have people going back to work, or facing September with no contract and the prospect of a strike. You could resolve a lot during

the summer if you put your mind to it. I think the fine-tuning of the PERC impasse procedure is the most important thing you could accomplish this year.

Thank you.

ASSEMBLYMAN LITTELL: Thank you, Ray. Are the other folks with you going to speak, or are you just speaking for all of them?

MR. PETERSON: I believe they have more to add.

ASSEMBLYMAN LITTELL: Okay. Let me just go around and see if anyone wants to ask you a question. Do you have a question, Assemblyman Patero?

ASSEMBLYMAN PALAIA: One brief question. You know, I really can't see how you can have negotiations of a contract with just finances. It is my feeling that we need the scope of negotiations so you give and take.

But, before the Ridgefield Park decision, what-- Do you know the amount of strikes they had? We have figures from, like, 1980, but I am just curious to see when--

MR. PETERSON: It's up and down like the stock market, frankly. The School Boards Association has another-- I don't think they gave you the whole thing. But back a long time ago, there was one year where there were a great number of strikes. That was an aberration, though. If you look at the trend, the trend is toward fewer strikes. But I'm glad you mentioned the scope. Assemblyman Pascrell asked a question about that, too. It just seems to me that if there are more things on the table, there would be more possibilities of negotiating a settlement.

I have been in situations where the school board's negotiator has said, "Well, we would love to give you this, but we are not allowed to talk about that." You know, there might be some things that could be put into the package, where a board was hard put for money, but there might be something else they could give you. So often, they are just not allowed to talk about certain subjects. Class size is one of them.

ASSEMBLYMAN FOY: Let me offer a couple of observations. One, I think your point about comparability is well taken, to the extent that comparability does not necessarily always cut in favor of the employees, just like the ability to pay doesn't always cut in favor of the municipality. The peculiar instance you talk about, where you believe there was some collusion on the part of the various public employers in that geographical area, it seems to me is the kind of thing where you need to get in front of the arbitrator with respect to having a kind of evidence about, you know, the collusion. That should have been brought to their attention. I'm sure you did so, or your lawyer did so, if you had a lawyer in that particular instance.

Yeah, they are not hard and fixed things. They are fluid, and you have to weigh where they are going to be in the equation, as far as it goes.

With respect to having the PERC processes utilized to their maximum, I think you are 100% right. The issue then becomes, what is the alternative once they are exhausted, if the only alternative is for public employees to strike? Frankly, I do not share your view that education isn't as significant as public safety because there is a lot of time off involved, because I am a parent, and to a parent, with his or her kids' education, in this country-- That is virtually sacrosanct. It is viewed as important as getting the ambulance or the fire truck to the burning house. People want their kids to be in school, getting the best possible education they can get.

So, I think you are off base, as far as where the public's perception about how important education is. It is every bit as important as police, fire, public works, or anything else.

MR. PETERSON: Mr. Foy, if you interpret my remarks to mean that education is not important, I'm sorry I did not

project myself properly. It is important, but the circumstances are quite different. If we can shut a school for a day because we get two inches of snow, we can shut it for a day -- as we did in Monroe Township for one day last year -- to get the board's attention. The kids didn't lose a day. The board finally got its attention on what they should have had it on, and there was a settlement.

ASSEMBLYMAN FOY: Well, then maybe I don't share your public policy view to this extent: I don't think there should be a necessity for having to shut a school down to get the board's attention. I think there ought to be other legitimized ways to do so -- to bring a board to its senses. I think this bill is a step in that direction. Granted, it needs to be refined with respect to that, but it is a step in that direction.

Lastly, I need to know from all of you whether you think my idea about exempting higher education in the bill makes sense or not. You represent State colleges. You don't represent that many county colleges. But I just think they ought to be out. I don't know.

M A R C O A N T O N I O L A C A T E N A: I think everybody should be out to begin with. But, to answer your specific question, it is my understanding that the State colleges, Rutgers, you know, the four-year institutions, are not in the bill.

ASSEMBLYMAN FOY: They are not in the bill, right.

MR. LACATENA: Okay, so we are talking about the county colleges.

ASSEMBLYMAN FOY: Right.

MR. LACATENA: We do not believe that anyone should be in the bill. We are opposed to the bill. We are opposed to the first version; we are opposed to the version of 4/26/88; and we are certainly especially opposed to the very offensive version that was passed around earlier today. It seems, you

know, that it carries within it more penalties, than it does solutions. It seems to be a very punitive approach.

I do not mean to be facetious. I just did a little computation here. It was pointed out earlier that there were 31 days lost in New Jersey due to strikes. There are a little over 600 districts -- okay? -- and if we multiply 600 districts by 180 days, we get something like 108,000 school days, and we lost 31 due to strikes, most of those in one district, you know, where it became horrendous. I share Assemblyman Pascrell's concern. The children must be educated. Mine were educated. I want my grandchildren to be educated. I teach. I continue in the classroom as a teacher. I daresay that I don't think there is an industry in the country that has that kind of a record.

I think it is a record that speaks for itself. What I have heard here today is a great deal of confusion. People who are on both sides of the table -- on each side of the table -- are on three sides of the issue. No one today has agreed, with the exception of one or two who, in my opinion, appear to come from a vindictive point of view. For whatever reason, no one here today can agree with anything -- you know, can agree that this-- They would like to avoid strikes, but they cannot agree that this bill is really the correct thing.

Toward that end, I would suggest, as Ray has pointed out, that what is really needed is to look at the scope of negotiations, number one. I'll tell you why you have to look at the scope of negotiations. It is not because of the strikes; it is not to try to end them. You know, in this State our Governor has taken the leadership role in the reform movement. And one of the major components of the reform movement is the empowerment of teachers. I don't particularly like that term. By the empowerment of teachers within the American Federation of Teachers -- and it has been successful in numerous places -- has meant the integration of the teaching force into the decision-making process of the school system.

We are proud of that. We have made some remarkable achievements in various districts. Now, you have heard of some of those achievements, one right in New York City recently -- the Rochester School District -- Toledo, and various other places around the country. Current law prevents our participation. I mean, it actually prevents our participation. What does this do at the bargaining table? What it does at the bargaining table is-- As Ray pointed out, in many cases they send professionals. Even where they don't send professionals, we face, in many cases, laypersons who are on the boards, and they don't have to listen. I mean, the attitude is one of shutting you off. So, neither side is listening, and that is what is exacerbating the problem. I think that we are really spending a great deal of time trying to solve the wrong problem. I think that if we were to put that energy into solving the right problem, we could truly do some magnificent things here in the State of New Jersey.

I can assure you that our union -- I can speak for no others, other than the AFT -- that we stand ready to participate in some truly innovative and reform ideas, if we have the vehicle for putting those ideas forward and working with management to effect them.

ASSEMBLYMAN LITTELL: Thank you, sir. Mr. Archer Cole, of the IUC.

A R C H E R C O L E: I have been listening all day, and it has been almost four hours. I detect a distinct confusion of what our goals are as people in democracy; what our goals are in preventing teachers from going to jail during strikes; what our goal is in preventing strikes. I think if you go to solutions that are worse than the problem, we might be exacerbating something that you want to relieve.

I agree with Ray Peterson that we should beef up the present law, mediation, fact-finding, and you might look to what the Railway Labor Act does in relation to the airline

industry and the railroad industry. There they have-- After they go through all these things and they have an impasse, they have a cooling off period, during which time extensive efforts of government and the public are put to bear on prevention of the strike and the solution of the issues that led up to the strike.

A cooling off period could also dovetail with what Ray Peterson said about bringing you to the point of the summertime, where there is more time, and where the children's education would not be impaired.

It is an interesting thing -- and Tom Foy is a labor lawyer -- that the solution that is being proposed today has been shunned in the private sector like a plague. Companies and unions in the private sector allow arbitration -- voluntary arbitration -- only -- practically only in disputes on grievances -- unresolved grievances. But the collective bargaining issue of what determines wages, conditions, the cost of living, grievance procedures, seniority, and pensions rarely, if ever-- I know in my union we have 600 contracts. In no instance does the resolution of a dispute go to compulsory and binding arbitration. Management does not like it, because it means that a third party is called upon to issue a judgment over and above what the people at the site of the bargaining would do.

Now, I have an interesting question: What happens after the arbitrator rules? Do we disband the right to ratify an agreement, which is absolutely the touchstone of democracy in the labor movement? People have a right to vote to see if that settlement is good, bad, or indifferent. They have the right to accept; they have the right to reject.

I must say that under this solution here, they would not have that right. I maintain that could very well lead to strike if the arbitrator would rule arbitrarily, by definition, and impose a settlement that was unpopular with the rank and

file, and they didn't have any rights to even hear what it is all about. "This is it. Tomorrow, this is what happens to you." I am afraid this very machinery could lead to strikes. There is nothing in here that says that after the arbitrator's decision people can't strike, except they will be penalized if they do. People have been penalized under the Taylor law, and have gone out, and people have been penalized under our laws and have gone out and stayed out.

So, what we are trying to prevent is a situation where you impose a settlement, which could lead very well to a walkout, in my judgment. I have negotiated, over the last 40 years-- It must be several hundred contracts. I know the mood of the people. They want a say in it. They want to dress us down if they feel that we didn't do a good job. Tom will tell you that in recent years-- In the old days, we were never rejected -- practically never. In recent years, there has been a lot of Populism. People want to have the right to question. People want to have the right to vote against the leadership, and that is great because it means that we have to do a better job.

But, this machinery does not allow for that. There is no escape valve. Therefore, I feel that we should beef up the mediation, the PERC procedures, and work toward a cooling off period. When injunctions are sought, use the Jackman approach that there would have to be a clear and present danger; that the health and safety of the community would, indeed, be jeopardized. My grandson just lost an awful lot of time in Chicago. You read about the long strike there. I talk to him on the phone regularly. They are making up the time. Their Easter vacation was done away with. Some of the holidays were done away with. He grumbled, but he is getting that education. But, they did not impose a drastic solution like what we are doing here.

So, I am very much concerned that the remedy not be worse than the problem. I think Ray's proposals and Marco's and some of the things I have said here should definitely be taken into consideration.

ASSEMBLYMAN LITTELL: Thank you, Archer. We will take your thoughts into consideration. I think you know that we on this Committee try to be fair and even-handed. You know, your comparison of your six entered contracts is a little bit different than this, because your folks have the right to strike and withhold their services. They also have the right to reject a contract because they have that right to strike.

MR. COLE: That is what I am worried about.

ASSEMBLYMAN LITTELL: We are talking here about imposing interest arbitration in the event of preventing strikes. This is a dispute resolution process, to try to keep the teachers in the classrooms where they belong, where they are getting paid, and where they are doing the best job they are trained for -- teaching children. We don't want them walking the streets and pounding the pavements in order to get what they rightfully deserve in their contracts. If they reach a point where they can no longer sit across the table from their employers and talk about the terms and conditions of employment, then there has to be a resolution to that process. That is what I am talking about.

MR. COLE: You know, another thing I am concerned about: You arbitrate mainly on the wage issue -- as we hear most of these cases are. I believe at the time of budget deficits, the move to reduce labor costs is all over the country. I have seen it in every negotiation -- give-backs, and all that. I am afraid if unions accept this procedure, arbitrators, thinking that they are acting in the public interest, will be constrained to look for economies, rather than to look for the equities in the situation.

I am truly concerned about the enforced arbitration here. I don't know that we are not buying more trouble than we are solving.

Another thing, Tom. You spoke about the right to withhold labor. There is a real confusion here. You are grappling with it, and I appreciate that -- the right to withhold labor. Because you are a school teacher, or a public employee, does not mean that the American basic right -- and that makes us different from Poland-- By God, those people are fighting the whole system. They are public employees, okay? They can't strike, okay? We're saying that we want to toughen this law so greatly that we are resolving once and for all that people don't have the right to withhold labor. I worry about that, as well. It could stretch out way beyond where it is now.

ASSEMBLYMAN LITTELL: Thank you very much, Archer, Marco, and Ray.

I have one more person on my list, and I hope that is all -- Tom Wirth, Council of State College Locals.

T H O M A S W I R T H: They were speaking for me.

ASSEMBLYMAN LITTELL: Oh, okay. Well, then, that concludes the speakers, as far as I know.

ASSEMBLYMAN PALAIA: May I clarify just one thing before we leave, Mr. Chairman, please?

ASSEMBLYMAN LITTELL: Yes.

ASSEMBLYMAN PALAIA: Just to clarify something, when we spoke with the NJEA regarding the \$18,500, the specific language about where the money goes when it goes back to the board was never put in the bill -- the specific language. The intent was always in there that that money would go into the salary account. Rest assured if the \$22,000 starting salary ever comes to be, that language will be very explicit -- where it is to go. School boards know it, but I don't think you will see that wording in there, per se. But the intent of the sponsors, including myself-- I don't know what else you would do with money that was given initially to salaries.

There is some discrepancy. Some people say it is; some people say it isn't part of that bill.

MR. ROSEN (Committee Aide): That just means for salaries.

ASSEMBLYMAN PALAIA: Pardon?

MR. ROSEN: They keep on building. It has to be used for salaries.

ASSEMBLYMAN PALAIA: I have another interpretation that said-- (Indiscernible comments from unidentified members of Committee, or aide; several people speaking at once.)

ASSEMBLYMAN PALAIA: I always thought it said in section-- Do you think so, too, Bob?

ASSEMBLYMAN LITTELL: Yeah, it's in there. The words are there.

ASSEMBLYMAN PALAIA: Thank you. That clarifies it.

ASSEMBLYMAN LITTELL: It doesn't say a separate account.

ASSEMBLYMAN PALAIA: It doesn't say a separate account.

ASSEMBLYMAN LITTELL: It just says it will be used for salaries.

ASSEMBLYMAN PALAIA: Okay, but it doesn't say when.

ASSEMBLYMAN LITTELL: That's right.

ASSEMBLYMAN PALAIA: That's my point. Some are using it for the next year's salary -- that's the point -- and not for the present year's salary.

Thank you, Mr. Chairman, and thank you for allowing my Committee to be here. We enjoyed it. I hope we contributed something.

ASSEMBLYMAN LITTELL: You contributed a lot. I hope that together we can work out a good bill. I think we are on the right track toward solving a problem which faces some of our very important employees in the State -- the teachers. I tend to feel that we can resolve the differences in the language between now and May 19. I ask each and every one of you who has an interest in that language to provide input.

The members of this Committee have been great sticking with us here today through this long testimony, and I appreciate it. I thank everyone in the audience for staying, because it is a very important issue. We want to do the right thing. We think we are doing the right thing. In the final analysis, only time will tell if we did the right thing. Joe?

ASSEMBLYMAN PALAIA: Mr. Chairman, I would like to commend you, too, because right now there is negotiating on the school boards. I think we in the Assembly -- I am not talking about the Senate, whatever they want to do -- should have something in place before September, when these strikes do go into effect. It could happen in your district, in my district. I just don't want that to happen.

But I think one of the biggest things here is the cost of the salaries, and so forth. Maybe we should take a look -- a close look -- both Committees -- into the scope of negotiations, because being in negotiations, if they are to give up some money, you could get something else which might be much cheaper. In the long run, that could help the taxpayer.

ASSEMBLYMAN LITTELL: Thank you, Joe. Tom?

ASSEMBLYMAN FOY: I want to applaud the Chairmen of both Committees for conducting the hearing. We have had a lot of great testimony today, and a divergent group of points of view. I am be confused about a lot of things, but I am not so confused about what needs to be done here. What needs to be done here is to fashion a remedy for a crisis situation, so that we avoid the confrontational situations that have existed in the past.

Now, there may have to be a lot of crossing of the "t's" and dotting of the "i's," but I am certainly convinced about where we need to end up. There is a little divergence about how to get there, but I think we are going to get there.

ASSEMBLYMAN LITTELL: Thank you. Assemblyman Genova?

ASSEMBLYMAN GENOVA: I pass.

ASSEMBLYMAN LITTELL: How about on your side, Joe?
Everybody set?

ASSEMBLYMAN PALAIA: Yes.

ASSEMBLYMAN LITTELL: Thank you very much.

(HEARING CONCLUDED)

APPENDIX

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 2215

STATE OF NEW JERSEY

By Assemblymen Littell and Haytaian

AN ACT authorizing compulsory arbitration in certain labor disputes involving certain school personnel and supplementing P.L. 1941, c. 100 (C. 34:13A-1 et seq.).

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

1. When an action is filed for injunctive relief in matters related to an impasse in negotiations between a school board and the majority representative of a bargaining unit composed of, but not limited to, teachers or support staff or between the board of trustees of a county college and a bargaining unit composed of employees of the county college, the court shall provide an opportunity for the plaintiff and the defendant to offer testimony before issuing any order. In determining whether or not to grant injunctive relief to the plaintiff, the court shall give due weight to the history of the relationship between the school board and the majority representative or between the board of trustees of a county college and a bargaining unit composed of employees of the county college; the efforts of the parties in resolving the impasse; and the probable impact of a continuation of the impasse upon the interests of the public. In its discretion, the court may also order the parties to submit all unsettled items to arbitration under the provisions of section 2 of this act and any regulations the New Jersey Public Employment Relations Commission may promulgate to implement this act. If the court orders the parties to submit all unsettled items to arbitration, the court shall immediately notify the Director of Arbitration of the New Jersey Public Employment Relations Commission.

2. Arbitration imposed by the court shall be under the direction of the New Jersey Public Employment Relations Commission in compliance with the provisions of this act, and shall utilize the following procedure:

a. No later than five calendar days after the date of the court order, the parties shall separately provide a written statement to the commission identifying their respective final offer on all issues in dispute as a single package. The written statement shall be provided in accordance with rules adopted by the commission. The substance of a written statement shall not provide the basis for any delay in effectuating the provisions of this section.

b. Upon the issuance of an order pursuant to section 1 of this supplementary act, the commission shall take measures to assure the selection and appointment of an arbitrator or panel of arbitrators from its special panel of arbitrators. No later than seven calendar days after the issuance of the court order, an arbitrator or panel of arbitrators shall be assigned by the commission to complete the arbitration procedure ordered by the court pursuant to section 1 of this act.

c. Upon the appointment of the arbitrator or panel of arbitrators pursuant to subsection b. of this section, the commission shall commence a terminal arbitration procedure. The arbitrator or panel of arbitrators shall make an award on or before the 40th day after the date of the appointment of the arbitrator or panel of arbitrators, unless both parties agree by mutual consent to a settlement of the issues in dispute or the Director of Arbitration of the New Jersey Public Employment Relations Commission grants, at the request of the arbitrator and for good cause, an extension not to exceed seven calendar days. The arbitrator's award on all issues in dispute shall be confined to a choice between the last offer of the employer on all issues as a single package and the employee representative's last offer on all issues as a single package.

d. After the appointment of the arbitrator or panel of arbitrators, the arbitrator or panel of arbitrators shall communicate with the parties to arrange for the submission of briefs, if necessary, and for a mutually satisfactory date, time and place for a hearing and the submission of briefs, if necessary. The hearing shall be held no later than the 30th day after the appointment of the arbitrator or the panel of arbitrators. In the absence of agreement, the arbitrator shall have the authority to set the date, time and place for a hearing. The arbitrator shall submit a notice containing arrangements for a hearing within a reasonable time period prior to the date of

the hearing. The arbitrator after duly scheduling a hearing shall have the authority to proceed in the absence of any party who does not appear at the hearing.

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

(1) The interests and welfare of the public.

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

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

(B) In comparable private employment.

(C) In public and private employment in general.

(3) The overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received.

(4) Stipulations of the parties.

(5) The lawful authority of the employer.

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

(7) The cost of living.

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

f. In the event of a dispute during the terminal arbitration procedure, the commission shall have the power to decide which issues are mandatory subjects of collective negotiations. Arbitration shall be limited to mandatory subjects of collective negotiations.

g. During the terminal arbitration procedure, the chosen arbitrator or panel of arbitrators may mediate or assist the parties in reaching a mutually agreeable settlement.

h. The decision of an arbitrator or panel of arbitrators shall include an opinion and an award, which shall be final and binding upon the parties and shall be irreversible, unless the court vacates, modifies or corrects the award pursuant to N.J.S. 2A:24-7 et seq., or for failure to apply the factors specified in subsection e. of this section. Orders of the arbitrator shall be reviewable by the Superior Court in the county in which the dispute arose. The pendency of such proceeding for judicial review shall not, of itself, stay the order of the arbitrator.

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

j. An arbitrator while functioning in a mediatory capacity shall not be required to disclose any files, records, reports, documents, or other papers, classified as confidential, received or prepared by the arbitrator, or to testify with regard to mediation, conducted by the arbitrator under this supplementary act on behalf of any party to any cause pending in any type of proceeding under this supplementary act. However, no provision of this subsection shall exempt an arbitrator from disclosing information relating to the commission of a crime.

k. An arbitrator may administer oaths, require the attendance of witnesses, and the production of any books, papers, contracts, agreements and documents as the arbitrator may deem material to a just determination of the issues in dispute, and for that purpose may issue subpoenas. If any person refuses to obey a subpoena, or refuses to be sworn or to testify, or if any witness, party or attorney is guilty of any contempt while in attendance at any hearing, the arbitrator may, or the Attorney General if requested shall, invoke the aid of the Superior Court within the county in which the hearing is being held, which court shall issue an appropriate order. Any failure to obey the order may be punished by the court as contempt.

1. The decision of the arbitrator may be enforced at the instance of either party in the Superior Court with venue laid in the county in which the dispute arose. The commencement of a new public employer fiscal year after the initiation of arbitration procedures under this act, but before the arbitration decision, or its enforcement, shall not be deemed to render a dispute moot, or to otherwise impair the jurisdiction or authority of the arbitrator or the arbitrator's decision. Increases in rates of compensation awarded by the arbitrator shall take effect on the date of implementation prescribed in the award. The parties, by mutual consent, may at any time amend or modify an award of arbitration.

3. This act shall take effect on the 90th day following enactment, and shall apply only to actions filed on or after the effective date.

LABOR AND EMPLOYMENT

Education

Requires courts to take certain factors into account before issuing orders in labor disputes involving educational personnel, and authorizes court-ordered arbitration in those disputes.



New Jersey School Boards Association

Headquarters: 413 West State Street, P.O. Box 909, Trenton, New Jersey 08605
Telephone (609) 895-7600

TEACHER STRIKES

by Calendar Year

<u>State</u>	<u>1982</u>	<u>1983</u>	<u>1984</u>	<u>1985</u>	<u>1986</u>	<u>1987</u>
Illinois ¹	15	15	34	19	16	7
Michigan ²	31	3	12	6	7	19
New York ³	3	0	2	1	1	no data
Ohio ⁴	6	0	4	3	5	13
Pennsylvania ⁵	41	19	28	18	21	15
New Jersey	6	5	10	6	6	7

¹Right to strike law enacted in 1984

²Law specifically prohibits strikes; but Michigan is a labor-oriented state and the experience has been that judges generally don't enjoin strikes

³No right to strike and state law imposes "2 for 1" penalty wherein public employees are docked two days pay for each day of the strike

⁴Limited right to strike

⁵Right to strike law enacted in early 1970s

Source: Pennsylvania School Boards Association

PETITION

As employees of the Willingboro school district, we believe that we have been the victims of the failure of the State of New Jersey to enact a fair bargaining law for public employees. Given the present and past history of the Willingboro Board of Education, many of our fellow educators have been and are being driven from both this school district and from our profession.

Attached is a synopsis of events that have occurred during nineteen months of bargaining between the Willingboro Education Association and the Board of Education in Willingboro, New Jersey. We believe that this is adequate justification for a fair bargaining bill such as the Littell Bill. We urge you to quickly help passage of this legislation to prevent boards of education from doing irreparable harm to individual school districts and education in general.

This is a brief synopsis of events that have occurred as the Willingboro Education Association has attempted to bargain a new contract with the Board of Education of Willingboro, N.J.

In October, 1986 the Willingboro Education Association (WEA) sent a letter to the Willingboro Board of Education (board) requesting bargaining begin on a contract that would be effective on July 1, 1987.

In November, 1986 the proposal of the WEA was presented to the board.

In December, 1986 the duly constituted negotiating teams met on two occasions and many problems in the district and the district philosophy were discussed. Both teams agreed to adopt a win/win approach to the contract and to alter our proposals to realistic positions.

In January, 1987 after four lengthy meetings a tentative memorandum of agreement was signed which among other items contained raises of 8% for each year of a three year agreement with certified staff and 8½% for secretarial staff. The county average settlement at the time was 8½%.

On February 2, 1987 the local newspaper printed an inflammatory editorial implying some kind of duplicity between the board and association.

The membership of the WEA ratified the tentative memorandum. The board voted 5-4 to not hear the terms of the tentative agreement, to order their team to return to bargaining with a position. (The five board members who voted in this manner stated that their team had been bargaining without board direction or an approved proposal).

The WEA was never officially notified of any of these board related events.

The April election brought no change in the voting, however, a new board president was elected. He delayed appointing a negotiating team. A new professional negotiator was hired and the negotiator who had been used for over ten years was not rehired. When the board team was appointed, four board members and nine non-elected citizens (none of whom had children in the public schools) were appointed.

Despite repeated requests for a meeting date, the board was unavailable to meet until August 3, 1987, more than one month after the previous contract expired.

At this meeting the board presented a proposal that rejected all but those points in the memorandum which favored their original position and even rejected some of the items that they had formerly presented. Their salary offer was 0%, but this became 4.5% as they indicated they were showing movement. At this meeting the board also indicated that bargaining could only be on available Thursday evenings between the hours of 8-11 p.m.

The board indicated that it considered the tentative memorandum of agreement to be the offer of the WEA and would consider no other items in our original proposal.

Four bargaining sessions occurred between August and September, 1987 with little being resolved. No session began on time because the board team had to caucus before they met with the WEA.

The WEA unilaterally declared impasse in September.

A PERC appointed mediator attempted at three meetings to gain some significant movement. He expressed dismay that the non-elected citizens dominated caucus discussions and that their negative views prevented movement.

In November, 1987 fact-finding was accepted by both parties, but the board insisted that the sessions be televised on the local cable television station. The WEA agreed to this request. The fact-finding required fourteen hours and three meetings.

In January, 1988 the fact-finder's report was received by both parties. Among many recommendations was a salary recommendation of 7½%, 8%, and 8% for certified staff and 8½% for three years for secretarial staff.

The WEA accepted the fact-finder's recommendations.

The board accepted only those parts of the fact-finder's report that were in their favor.

(Attached are quotations from the fact-finder's report with page numbers cited. We urge you to either contact the fact-finder, Mr. Jeffrey Tener, or read his report if you have questions concerning his recommendations.)

In February/March, 1988 both negotiating teams agreed to the salary package recommended by the fact-finder leaving distribution of the money and development of the salary guide as one of two still outstanding issues.

The April, 1988 election again brought no change in the voting blocks on the board. The president of the board remained the same. The negotiating team was modified and only four non-elected citizens were appointed along with three board members.

The board president in newspaper articles after the election

stated that because the school budget was defeated, the agreed to percentages were no longer acceptable.

Between April 5, 1988 and April 28, 1988, the WEA held a general membership meeting authorizing the Executive Committee to order a "strike" if the board reneged on already agreed upon items in the contract or if the board did not bargain in good faith. Several demonstrations occurred, but still the membership took no job action which would affect students.

On April 28, 1988 over 500 parents, students and staff marched at the board office demanding a settlement. Bargaining that night continued until 2 a.m., April 29, 1988. The association agreed to the board's modification of a sick-leave buy-back plan. The board agreed to the 7½, 8 & 8% salary increases for certified staff and 8½% increases for three years for secretarial personnel that had been previously agreed to. Negotiations broke off when the board insisted that the WEA must accept their distribution on the salary guide without any modification. This guide gave some certified staff three year increases of 51%, 48%, 46% & 34% rather than the agreed to 23.5%. It gave 129 teachers with a BA degree who had 15 or more years experience, a three year total of 17.4% and a dollar increase of about half of what a new teacher with a Masters degree would earn. The 51 teachers with maximum experience on the BA + 30 scale received only a slightly higher 3 year percentage, 17.5%.

On April 29, 1988 the WEA called a general membership meeting for 4:30 p.m. The board of education did not release paychecks at the normal hour (11 a.m.) but checks were released later in the day. The paycheck was accompanied by two letters, the board's last salary guide and a salary guide that the association had withdrawn when the board rejected it.

On April 29, 1988 at approximately 5:15 p.m. the 537 members of the WEA who attended the membership meeting unanimously rejected the board's salary guide and instructed the association negotiating team to negotiate an equitable salary guide. The president of the WEA informed the news media that the two sides were so close that a work stoppage was unlikely unless the board refused to modify the salary guide to have it more equitably reflect the settlement for all members. At approximately 8 p.m. the WEA delivered a salary guide to the board of education as they held a special session to adopt a "strike" plan. The board president refused to allow a presentation to the full board. He had the guide given to the board negotiator and business administrator to be "costed out" and he stated that the full board would not be allowed to see the guide or the costing out unless the negotiating team (3 board members and 4 non-elected citizens) agreed to it. The chairperson of the board's negotiating committee stated that she would not allow consideration of any guide other than the one developed by the board. The board adopted a strike plan and sent letters to parents of all students announcing that a strike would occur on Monday, May 2, 1988.

On Monday, May 2, 1988 the staff of the Willingboro school district reported to work.

In addition to the WEA, the district's principals association and supervisors association are without contracts. The employees association are at fact-finding.

ADDENDUM TO WEA NEWS RELEASE

The following excerpts taken from the fact-finder's report should be made public especially due to the fact that the fact finding process was televised for the public to see. These statements are from the conclusion concerning the salary settlement recommended for the teaching staff.

1) page 27: First, there was a tentative memorandum of agreement. ...there is a reasonable expectation that the terms of a memorandum will be accepted and if they are not, that something close to the original terms ultimately will be accepted. ...the Board was represented in the negotiations by two (of nine) Board members, several administrators, and an experienced labor attorney... who had represented the Board for a number of years. It is simply unrealistic to expect that a significant deviation from the major terms of the original memorandum will be acceptable to the other side.

2) page 28: ...contrary to my prior experience, this Board is seeking a wholesale revision of the prior memorandum. It did not identify one or two areas that were of concern to it. It rejected most points of the memorandum. The Association, in an effort to move the matter to a conclusion, withdrew several items and modified some others but the Board continued to press for major and substantial changes.

3) page 28: ...salaries. The Board is asking that rather than the 8% originally agreed to, the WEA accept a \$1,400 or 4.5% increase. This is totally unrealistic.

4) page 29: The Board can point to no salary settlement in the 4%, 5% or 6% range.

5) page 29: ...notwithstanding the previous points, this Board has rejected the terms of the tentative memorandum. They are simply unacceptable to the Board.

6) page 29: I return now to the issue of the salary increase. As noted, if the sole standard were comparative percentage increases, I would recommend the Association's position without hesitation.

7) page 30: The reason that a below average percentage settlement in Willingboro represents above average dollars is that the average salary in Willingboro is high. It is high, in large measure, because of the years of teaching experience of the staff, both total experience and in district experience. The Willingboro teacher is six years older than average with three more years of teaching experience and two more years of in-district teaching experience than average. page 17: Willingboro also has more teachers than average with an MA degree or above: 43.5% v. 36.1%.

8) page 31: If the Board is concerned, as it says it is, with the well-being of its staff and with remaining competitive, it is apparent that increases similar to those contained in the original memorandum would be appropriate.

9) page 31: The only real argument of the Board must be its ability to pay. After considering the data and the arguments, I am convinced that this Board does not lack the ability to pay as much as it lacks — for whatever reasons — the willingness.

Testimony before the Assembly Labor and Assembly Education committees on A-2215, May 5, 1988, by Michael Scarpato, president, Elizabeth Education Association.

I am Michael Scarpato, president of the Elizabeth Education Association. You are currently considering a bill, A-2215 to aid in the resolution of contract impasses between school employees and school boards. This bill, if in effect last year, would have prevented the gross damage that has been done to the Elizabeth School System as a result of the Elizabeth Board of Education not dealing fairly with the teachers and other school employees.

What happened in Elizabeth must not happen again. Associations and boards of education must have a final resolution for impasse that prevents the following to be repeated.

In Elizabeth the board of education made only minor changes in its position during more than one year of negotiations. Once it was evident that the board was unwilling to negotiate, the association declared an impasse. Only during the first mediation

session on June 1, 1987 seven months into negotiations did the board propose a salary raise equal to the increments on the salary guide. Under the board's proposal the employees on the maximum steps on the guides would receive no salary increase at all. During the next six mediation sessions the association continued to modify its position on the issues. The association at this point lowered its demand to a salary increase equal to the going rate in Union County (9% for teachers and a little higher for active supportive members). During the seventh mediation session the board submitted a proposal that it labeled as a "fair and final" offer. The association rejected this final position of the board of education because it was 2-3% points per year lower than what the other school districts were settling for in Union County.

On Labor Day an eighth mediation session was held. The board refused to modify its position and reinstated its "fair and final" offer. On September 8, 1987 the association went on strike. The board of education continued not to negotiate. The board's attorney spoke of the board's synchronized strategy. That strategy was to stall in negotiations and wait until the courts forced the association back to work.

The court ordered the association to return to work and levied high fines against the organization as well as the individual teachers. On October 5, 1987, the fines amounted to more than \$327 million.

During the 29 days the strike lasted, the association modified its position several times. Each time the board responded with no change in its salary position. During the 11th mediation session on September 20, 1987 the board attorney stated, "The settlement will occur when the association accepts the board's offer." At this point the association proposed fair and final interest arbitration as a means of settling the impasse. The board's attorney rejected the offer out of hand. During the 12th mediation session the association modified its salary proposal -- again no response from the board of education. At the 13th mediation session on September 28, 1987 the board of education offered a salary guide that cost less than its "fair and final" offer on June 1, 1987. Not until September 28, 1987 at the 14th mediation session would the board modify its position and raise its offer, but it was still below the county average and did not provide for the needs of Elizabeth's school employees. The association rejected this offer. No other movement was made during the 15th and 16th mediation sessions. During the 17th mediation session on October 4, 1987 the board left the mediation session in anger at 5:30 p.m. The mediators left the hotel at 11:30 p.m. to meet with the board. At 1:15 a.m. on October 5, 1987 the mediator delivered the board's last offer, despite two further reductions of the association's position. The board refused to settle. The courts had declared that all teachers and staff members would be fired on October 5, 1987 if they did not return to work. Yet the board of education refused to even

remain at the site where the association and mediators were actively trying to settle the impasse. Once the association was sure that the board of education would allow the entire staff to be fired and thereby destroy the Elizabeth Public Schools for years to come, the association declared fact-finding and returned to work. The association had asked Judge Kentz to order interest arbitration early on in the conflict when the board of education refused to voluntarily agree. The judge said he was without authority to make such an order. The judge just continued to order fines and firings to end the strike. No action was taken against the board for its unwillingness to negotiate in good faith and settle the contract. Although the judge managed to force an end to the strike, he was not able to bring an end to the conflict. Even though the contract was settled after fact-finding, the conflict continues. Experienced teachers continue leaving the district by the dozens. Classes go without certified teachers, sometimes for months, because replacements cannot always be found. Morale is destroyed. No cooperation exists. The staff was treated unfairly by the board of education. The staff was treated unfairly by the law as it now exists.

This bill, had it been in effect in September, 1987 would have not only shortened the impasse and ended the strike, but it would have prevented the suffering that occurred in Elizabeth and would have saved a good school system. I urge you to enact this bill into law for the benefit of all involved in public education.

Thank you very much.



"The world is divided into those who want to become someone and those who want to accomplish something. There is less competition in the second category."

Jean Monnett 1888-1979

EXECUTIVE BOARD MEMBERS

Chartered September 25, 1961



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JAMES DILLON	JAMES KIRK		

NEW JERSEY STATE AFL-CIO
106 West State Street
Trenton, New Jersey 08608
(609) 989-8730

May 5, 1988

TO MEMBERS OF THE JOINT ASSEMBLY
LABOR & EDUCATION COMMITTEE:

RE: Assembly Bill 2215

Since separate public employee unions representing AFL-CIO members in New Jersey have expressed conflicting views on Assembly Bill 2215, the N.J. State AFL-CIO can not take a position on this issue.

We would, however, recommend serious consideration of Senate Bill 849, another piece of legislation that addresses the question of job actions by public employees in such a manner that I believe may be acceptable to all segments of the public employment sector.

S.849 provides that no injunction shall be issued unless it can be proven that: 1) a strike by the employees in a bargaining unit poses a clear and present danger to the public health and safety, and 2) that the recognized employee union has failed to make a reasonable effort to utilize the impasse procedures available under current law.

Sincerely,

CHM:mr
opeiu-20
afl-cio