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

before

ASSEMBLY LABOR COMMITTEE

on

ASSEMBLY, NO. 1448 and SENATE, NO. 1066
(P.E.R.C. Disputes)

Held:
June 16, 1977
Freeholders Room
Somerset County Administration Building
Somerville, New Jersey

COMMITTEE MEMBER PRESENT:

Assemblyman Joseph D. Patero (Chairman)

ALSO:

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

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# I N D E X



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Also:



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# ASSEMBLY, No. 1448

# STATE OF NEW JERSEY

INTRODUCED FEBRUARY 9, 1976

By Assemblymen BURSTEIN, JACKMAN, FORAN, NEWMAN, DOYLE, LITTELL, EWING, KAVANAUGH, HERMAN, STEWART, MARTIN and HOLLENBACK

Referred to Committee on Labor, Industry and Professions

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

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

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

2. It is hereby declared as the public policy of this State that the best interests of the people of the State are served by the prevention or prompt settlement of labor disputes, both in the private and public sectors; that strikes, lockouts, work stoppages and other forms of employer and employee strife, regardless where the merits of the controversy lie, are forces productive ultimately of economic and public waste; that the interests and rights of the consumers and the people of the State, while not direct parties thereto, should always be considered, respected and protected; and that the voluntary mediation of such public and private employer-employee disputes *and procedures providing finality for the resolution of public employer-employee disputes* under the guidance and supervision of a governmental agency will tend to promote permanent, public and private employer-employee peace and the health, welfare, comfort and safety of the people of the State. To carry out such policy, the necessity for the enactment of the provisions of this act is hereby declared as a matter of legislative determination.

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

2. Section 3 of P. L. 1941, c. 100 (C. 34:13A–3) is amended to read as follows:

3. When used in this act:

(a) The term "board" shall mean New Jersey State Board of Mediation.

(b) The term "commission" shall mean New Jersey Public Employment Relations Commission.

(c) The term "employer" includes an employer and any person acting, directly or indirectly, on behalf of or in the interest of an employer with the employer's knowledge or ratification, but a labor organization, or any officer or agent thereof, shall be considered an employer only with respect to individuals employed by such organization. This term shall include "public employers" and shall mean the State of New Jersey, or the several counties and municipalities thereof, or any other political subdivision of the State, or a school district, or any special district, or any authority, commission, or board, or any branch or agency of the public service *including bi-state agencies provided such coverage is permitted by the terms of the compacts establishing such bi-state agencies.*

(d) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer unless this act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of or in connection with any current labor dispute or because of any unfair labor practice and who has not obtained any other regular and substantially equivalent employment. This term, however, shall not include any individual taking the place of any employee whose work has ceased as aforesaid, nor shall it include any individual employed by his parent or spouse, or in the domestic service of any person in the home of the employer, or employed by any company owning or operating a railroad or railway express subpect to the provisions of the Railway Labor Act. This term shall include any public employee, i.e., any person holding a position, by appointment or contract, or employment in the service of a public employer, except elected officials, members of boards and commissions, managerial executives and confidential employees.

(e) The term "representative" is not limited to individuals but shall include labor organizations, and individual representatives need not themselves be employed by, and the labor organization serving as a representative need not be limited in membership to the employees of, the employer whose employees are represented.

This term shall include any organization, agency or person authorized or designated by a public employer, public employee, group of public employees, or public employee association to act on its behalf and represent it or them.

(f) "Managerial executives" of a public employer means persons who formulate management policies and practices, and persons who are charged with the responsibility of directing the effectuation of such management policies and practices, except that in any school district this term shall include only the superintendent or other chief administration, and the assistant [superintendent] *superintendents* of the district.

(g) "Confidential employees" if a public employer means employees whose functional responsibilities or knowledge in connection with the issues involved in the collective negotiations process would make their membership in any appropriate negotiating unit incompatible with their official duties. *All employees of the commission shall be considered as confidential employees.*

*(h) "Supervisory employees" of a public employer means employees having the power to hire, evaluate, discipline, discharge, or to effectively recommend the same.*

*(i) The term "negotiate in good faith" in public employment means the obligation of the parties to meet at reasonable times and make a genuine effort to negotiate with respect to grievances and terms and conditions of employment, or to the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation shall not compel either party to agree to a proposal or require the making of a concession.*

3. Section 5 of P. L. 1968, c. 303 (C. 34:13A-5.1) is amended to read as follows:

5. There is hereby established a Division of Public Employment Relations and a Division of Private Employment Dispute Settlement.

(a) The Division of Public Employment Relations shall be concerned exclusively with matters of public employment related to determining negotiating units, elections, certifications and settlement of public employee [representative] *representation questions* and public employer-*employee* disputes, [and] grievance procedures, *and unfair practice and scope of negotiation determinations.* For the purpose of complying with the provisions of Article V, Section IV, paragraph 1 of the New Jersey Constitution, the Division

of Public Employment Relations is hereby allocated within the Department of Labor and Industry, and located in the city of Trenton, but notwithstanding said allocation, the office shall be independent of any supervision or control by the department or by any board or officer thereof. *Notwithstanding the provisions of P. L. 1944, c. 20 (C. 52:17A-4, 11, 12 and 13), the commission shall have the power to appoint and employ a general counsel and such other attorneys or counsel as it may require, for the purpose, among other things, of giving the commission and the personnel of the Division of Public Employment Relations legal advice on such matters as they may from time to time require, of attending to and controlling all litigation, controversies and legal matters in which they may be a party or in which their rights and interests may be involved, and of representing them in all proceedings or actions of any kind which may be brought for or against them in any court of this State, and with respect to all of the foregoing shall be independent of any supervision or control by the Atorney General, by the Department of Law and Public Safety, or by any division or officer thereof. This authority shall not be construed to empower any attorney of the commission to prosecute or assist in the prosecution of any unfair practice charge before the commission.*

(b) The Division of Private Employment Dispute Settlement shall assist the New Jersey State Board of Mediation in the resolution of disputes in private employment. The New Jersey State Board of Mediation, its objectives and the powers and duties granted by this act and the act of which this act is amendatory and supplementary shall be concerned exclusively with matters of private employment and the office shall continue to be located in the city of Newark.

4. Section 6 of P. L. 1968, c. 303 (C. 34:13A-5.2) is amended to read as follows:

6. There is hereby established in the Division of Public Employment Relations a commission to be known as the New Jersey Public Employment Relations Commission. This commission, in addition to the powers and duties granted by this act, shall have in the public employment area the same powers and duties granted to the labor mediation board in sections 7 and 10 of P. L. 1941, c. 100, and in sections 2 and 3 of P. L. 1945, c. 32. This commission shall make policy and establish rules and regulations concerning employer-employee relations in public employment relating to dispute settlement, *including procedures providing finality,* grievance procedures and administration including enforcement of statutory

provisions concerning representative elections and related matters and to implement fully all the provisions of this act. The commission shall consist of [seven] *three full-time* members to be appointed by the Governor, by and with the advice and consent of the Senate, *with no more than two from the same political party. The Governor shall designate one of the members of the commission as chairman of the commission.* [Of such members, two shall be representative of public employers, two shall be representative of public employee organizations and three shall be representative of the public including the appointee who is designated as chairman.] Of the first appointees, [two] *one* shall be appointed for *a term of* 2 years, [two for a term of 3 years and three, including the chairman,] *one* for a term of 4 years *and the chairman shall be appointed for a fixed term of 6 years corresponding to and concurrent with his appointment as a member of the commission. The chairman shall be its chief executive officer and administrator. The other members of the commission shall be eligible to appointment to fill a vacancy in the office of chairman of the commission. Members of the commission shall be eligible for reappointment.* Their successors shall be appointed for terms of [3] *6* years each, and until their successors are appointed and qualified, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the member whose office has become vacant.

The [members] *chairman* of the commission[, other than the chairman,] shall *receive an annual salary of $2,500.00 more than the other members of the commission* [be compensated at the rate of $100.00 for each 6-hour day spent in attendance at meetings and consultations and shall be reimbursed for necessary expenses in connection with the discharge of their duties except that] *who shall receive an annual salary equal to that of a trial judge of the Superior Court* [no commission member who receives a salary or other form of compensation as a representative of any employer or employee group, organization or association, shall be compensated by the commission for any deliberations directly involving members of said employer or employee group, organization or association. Compensation for more, or less than, 6 hours per day, shall be prorated in proportion to the time involved.

The chairman of the commission shall be its chief executive officer and administrator, shall devote his full time to the performance of his duties as chairman of the Public Employment Relations Commission and shall receive such compensation as shall be provided by law.

The term of the member of the commission who is designated as chairman on the date of enactment of this act shall expire on the effective date of this act].

5. Section 7 of P. L. 1968, c. 303 (C. 34:13A-5.3) is amended to read as follows:

7. *a.* Except as hereinafter provided, public employees shall have, and shall be protected in the exercise of, the right, freely and without fear of penalty or reprisal, to form, join and assist any employee organization or to refrain from any such activity; provided, however, that this right shall not extend to elected officials, members of boards and commissions, managerial executives, or confidential employees except in a school district the term managerial executive shall mean the superintendent of schools or his equivalent, nor, except where established practice, prior agreement or special circumstances, dictate the contrary, shall any supervisor having the power to hire, discharge, discipline, or to effectively recommend the same, have the right to be represented in collective negotiations by an employee organization that admits nonsupervisory personnel to membership, and the fact that any organization has such supervisory employees as members shall not deny the right of that organization to represent the appropriate unit in collective negotiations; and provided further, that, except where established practice, prior agreement, or special circumstances dictate the contrary, no policeman shall have the right to join an employee organization that admits employees other than policemen to membership. The negotiating units shall be defined with due regard for the community of interest among the employees concerned, but the commission shall not intervene in matters of recognition and unit definition except in the event of a dispute.

Representatives designated or selected by public employees for the purposes of collective negotiations by the majority of the employees in a unit appropriate for such purposes or by the majority of the employees voting in an election conducted by the commission as authorized by this act shall be the exclusive representatives for collective negotiation concerning the terms and conditions of employment of the employees in such unit. Nothing herein shall be construed to prevent any official from meeting with an employee organization for the purpose of hearing the views and requests of its members in such unit so long as (a) the majority representative is informed of the meeting; (b) any changes or modifications in terms and conditions of employment are made only through negotiation with the majority representative; and (c) a minority organization shall not present or process grievances.

Nothing herein shall be construed to deny to any individual employee his rights under Civil Service laws or regulations. When no majority representative has been selected as the bargaining agent for the unit of which an individual employee is a part, he may present his own grievance either personally or through an appropriate representative or an organization of which he is a member and have such grievance adjusted.

A majority representative of public employees in an appropriate unit shall be entitled to act for and to negotiate agreements covering all employees in the unit and shall be responsible for representing the interest of all such employees without discrimination and without regard to employee organization membership. *A majority representative of employees and a public employer or his designated representative have the mutual obligation to negotiate in good faith. After the effective date of this act* [Proposed] *proposed* new rules or modifications of existing rules [governing] *changing* working conditions *covered by a collectively negotiated agreement* shall be negotiated with the majority representative before they are established. [In addition, the majority representative and designated representatives of the public employer shall meet at reasonable times and negotiate in good faith with respect to grievances and terms and conditions of employment.

When an agreement is reached on the terms and conditions of employment, it shall be embodied in writing and signed by the authorized representatives of the public employer and the majority representative.] *Public employers shall not be required to negotiate collectively any term or condition of employment concerning matters of intrinsic managerial policy or function or that contravenes any constitutional or statutory mandate.*

*b. (1)* Public employers shall negotiate written policies setting forth grievance procedures *for the settlement of grievances arising out of the interpretation or application of the provisions of a negotiated agreement* by means of which their employees or representatives of employees may appeal the interpretation, application or violation of [policies,] *collective negotiation* agreements, [and administrative decisions affecting them,] provided that such grievance procedures shall be included in any agreement entered into between the public employer and the representative organization. Such grievance procedures *shall* [may] provide for binding arbitration as a means for resolving disputes, *except for those items or provisions in the agreement that the parties themselves, by mutual agreement, specifically exclude from binding arbitration as*

*a final step.* Notwithstanding any procedure for the resolution of disputes, controversies or grievances established by any other statute, grievance procedures established by agreement between the public employer and the representative organization shall be utilized for any dispute covered by the terms of such agreement.

*(2) The parties may agree on a procedure for the selection of an arbitrator or arbitrators, including agreement on an appropriate agency to provide them with lists of arbitrators, or if they are unable to agree on a procedure or agency, an arbitrator shall be selected from a list drawn from the commission panel of arbitrators.*

*(3) A party may utilize only one grievance procedure for the resolution of a particular issue.*

*(4) Any collective agreement entered into prior to the effective date of this subsection shall not be subject to the provisions of this subsection.*

6. Section 1 of P. L. 1974, c. 123 (C. 34:13A–5.4) is amended to read as follows:

1. a. *Public employers* [Employers], their representatives or agents are prohibited from:

(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act.

(2) Dominating or interfering with the formation, existence or administration of any employee organization.

(3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act.

(4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under this act.

(5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative.

(6) Refusing to reduce a negotiated agreement to writing and to sign such agreement.

(7) Violating any of the rules and regulations established by the commission.

b. *Public employee* [Employee] organizations, their representatives or agents are prohibited from:

(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act.

(2) Interfering with, restraining or coercing a public employer in the selection of his representative for the purposes of negotiations or the adjustment of grievances.

(3) Refusing to negotiate in good faith with a public employer, if they are the majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit.

(4) Refusing to reduce a negotiated agreement to writing and to sign such agreement.

(5) Violating any of the rules and regulations established by the commission.

c. The commission shall have exclusive power as hereinafter provided to prevent anyone from engaging in any unfair practice listed in subsections a. and b. above. Whenever it is charged that anyone has engaged or is engaging in any such unfair practice, the commission, or any designated agent thereof, shall have authority to issue *and serve upon such parties a notice of hearing, following the filing of a complaint by either party alleging* [and cause to be served upon such party a complaint stating the specific] *that an* unfair practice, *has been committed* [charged] and [including a notice of hearing] containing the date and place of hearing before the commission or any designated agent thereof *together with a copy of the complaint which has been filed*; provided that no complaint shall [issue] *be filed* based upon any *alleged* unfair practice occurring more than 6 months prior to the filing of the [charge] *complaint* unless the person aggrieved thereby was prevented from filing such [charge] *complaint* in which event the 6 months period shall be computed from the day he was no longer so prevented.

In any such proceeding, the provisions of the Administrative Procedure Act, P. L. 1968, c. 410 (C. 52:14B–1 et seq.) shall be applicable. Evidence shall be taken at the hearing and filed with the commission. If upon all the evidence taken, the commission shall determine that any party charged has engaged or is engaging in any such unfair practice, the commission shall state its findings of fact and conclusions of law and issue and cause to be served on such party an order requiring such party to cease and desist from such unfair practice, and to take such reasonable affirmative action as will effectuate the policies of this act. All cases in which a [complaint and] notice of hearing on a [charge] *complaint* is actually issued by the commission, shall be prosecuted before the commission or its agent, or both, by the representative of the em-

ployee organization or party filing the [charge] *complaint* or his authorized representative.

d. The commission shall at all times have the *exclusive* power and duty, upon the request of any public employer or majority representative, to make a determination as to whether a matter in dispute is within the scope of collective negotiations *and to specify whether or not a subject is a required or permissive subject of collective negotiation.* The commission shall serve the parties with its findings of fact and conclusions of law. Any determination made by the commission pursuant to this subject may be appealed to the Appellate Division of the Superior Court.

e. The commission shall adopt such rules as may be required to regulate the conduct of representation elections, and to regulate the time of commencement of negotiations and of institution of impasse procedures so that there will be full opportunity for negotiations and the resolution of impasses prior to required budget submission dates.

f. The commission shall have the power to apply to the Appellate Division of the Superior Court for an appropriate order enforcing any order of the commission issued under subsection c. or d. hereof, and its findings of fact, if based upon substantial evidence on the record as a whole, shall not, in such action, be set aside or modified; any order for remedial or affirmative action, if reasonably designed to effectuate the purposes of this act, shall be affirmed and enforced in such proceedings.

*g. For the purposes of this section the Division of Public Employment Relations shall have the authority and power to hold hearings, subpena witnesses, compel their attendance, administer oaths, take the testimony or deposition of any person under oath, and in connection therewith, to issue subpenas duces tecum, and to require the production and examination of any governmental or other books or papers relating to any matter described in this section. Subpenas issued in proceedings under this section concerning scope of negotiation proceedings shall be enforceable in the Superior Court by commission application for compliance on notice. Failure to obey a subpena issued in unfair practice proceedings under this section shall be punishable by the Superior Court in the same manner as like failure is punishable in an action pending in the Superior Court, and the matter shall be brought before the court by the commission.*

7. Section 6 of P. L. 1941, c. 100 (C. 34:13A–6) is amended to read as follows:

6. (a) Upon its own motion, in an existing, imminent or threatened labor dispute in private employment, the board, through the Division of Private Employment Dispute Settlement, may, and, upon the request of the parties of either party to the dispute, must take such steps as it may deem expedient to effect a voluntary amicable and expeditious adjustment and settlement of the differences and issues between employer and employees which have precipitated or culminated in or threaten to precipitate or culminate in such labor dispute.

(b) *(1)* Whenever negotiations between a public employer and an exclusive representative concerning the terms and conditions of employment shall reach an impasse, the commission, through the Division of Public Employment Relations shall, upon the request of either party, *or upon its own motion* take such steps *including the assignment of a mediator* as it may deem expedient to effect a voluntary resolution of the impasse. *The cost of mediation shall be borne by the commission.* [In the event of a failure to resolve the impasse by mediation the Division of Public Employment Relations is empowered to recommend or invoke factfinding with recommendation for settlement, the cost of which shall be borne by the commission.]

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

*(3) Terminal procedures that are approvable include, but shall not be limited to the following:*

*(a) Conventional arbitration of all unsettled items.*

*(b) Arbitration under which the award by an arbitrator or panel of arbitrators is confined to a choice between (1) the last offer of the employer and (2) the last offer of the employees' representative, as a single package.*

*(c) Arbitration under which the award is confined to a choice between (1) the last offer of the employer and (2) the last offer of the employees' representative, on each issue in dispute, with the decision on an issue-by-issue basis.*

*(d) If there is a factfinder's report with recommendations on the issues in dispute, the parties may agree to arbitration under which the award would be confined to a choice among three positions: (1) the last offer of the employer as a single package, (2) the last offer of the employees' representative as a single package, or (3) the factfinder's recommendations as a single package.*

*(e) If there is a factfinder's report with a recommendation on each of the issues in dispute, the parties may agree to arbitration under which the award would be confined to a choice on each issue from among three positions: (1) the last offer of the employer on the issue, (2) the employee representative's last offer on the issue, or (3) the factfinder's recommendation on the issue.*

*(f) Arbitration under which the award on the economic issues in dispute is confined to a choice between (1) the last offer of the employer on the economic issues as a single package and (2) the employee representative's last offer on the economic issues as a single package; and, on any noneconomic issues in dispute, the award is confined to a choice between (1) the last offer of the employer on each issue in dispute and (2) the employee representative's last offer on that issue.*

*(4) The following procedure shall be utilized if parties fail to agree on a terminal procedure for the settlement of an impasse dispute:*

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

*(b) Upon receipt of such notification from either party or on the commission's own motion, the procedure to provide finality for the resolution of issues in dispute shall be binding arbitration under which the award on the economic issues in dispute shall be confined to a choice between: (1) the last offer of the employer on such issues as a single package and (2) the employee representative's last offer, on such issues, as a single package; and, on the noneconomic issues in dispute, the award shall be confined to a choice between: (1) the last offer of the employer on each issue in dispute and (2) the employee representative's last offer on such issue.*

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

*(6) (a) Prior to the arbitration proceedings, the parties shall submit to the arbitrator or tripartite panel of arbitrators, pursuant to rules and procedures established by the commission, their final offers in two separate parts: (1) a single package containing all the economic issues in dispute and (2) the individual issues in dispute not included in the economic package, each set forth separately by issue.*

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

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

*(d) Arbitration shall be limited to those subjects that are within the required scope of collective negotiations, except that the parties may agree to submit to arbitration one or more permissive subjects of negotiation.*

*(e) The decision of an arbitrator or panel of arbitrators shall include an opinion and an award, which shall be final and binding upon the parties and shall be irreversible, except where there is submitted to the court extrinsic evidence upon which*

*the court may vacate, modify or correct such award pursuant to N. J. S. 2A:24-7 et seq. or for failure to apply the factors specified in subsection b. (7) below.*

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

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

*(a) The interests and welfare of the public.*

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

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

*(2) In comparable private employment.*

*(3) In public and private employment in general.*

*(c) 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.*

*(d) Stipulations of the parties.*

*(e) The lawful authority of the employer.*

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

*(g) The cost of living.*

*(h) The continuity and stability of employment including seniority and tenure 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.*

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

*(9) The provisions of this subsection concerning terminal procedures shall apply to all negotiations for new agreements, renewals of existing agreements, or reopener provisions of existing agreements that are or shall become effective during the first full fiscal year of the public employer after the effective date of this subsection.*

(c) The board in private employment, through the Division of Private Employment Dispute Settlement, and the commission in public employment, through the Division of Public Employment Relations, shall take the following steps to avoid or terminate labor disputes: (1) to arrange for, hold, adjourn or reconvene a conference or conferences between the disputants or one or more of their representatives or any of them; (2) to invite the disputants or their representatives or any of them to attend such conference and submit, either orally or in writing, the grievances of and differences between the disputants; (3) to discuss such grievances and differences with the disputants and their representatives; and (4) to assist in negotiating and drafting agreements for the adjustment in settlement of such grievances and differences and for the termination or avoidance, as the case may be, of the existing or threatened labor dispute.

(d) The commission, through the Division of Public Employment Relations, is hereby empowered to resolve questions concerning representation of public employees by conducting a secret ballot election or utilizing any other appropriate and suitable method designed to ascertain the free choice of the employees. The division shall decide in each instance which unit of employees is appropriate for collective negotiation, provided that, except where dictated by established practice, prior agreement, or special circumstances, no unit shall be appropriate which includes (1) both supervisors and nonsupervisors, (2) both professional and nonprofessional employees unless a majority of such professional employees vote for inclusion in such unit or, (3) both craft and noncraft employees unless a majority of such craft employees vote for inclusion in such unit. All of the powers and duties conferred or imposed upon the division that are necessary for the administration of this subdivision, and not inconsistent with it, are to that extent hereby made applicable. Should formal hearings be required, in the opinion of said division to determine the appropriate unit, it shall have the power to issue subpenas as described below, and shall determine the rules and regulations for the conduct of such hearing or hearings.

(e) For the purposes of this section the Division of Public

Employment Relations shall have the authority and power to hold hearings, subpena witnesses, compel their attendance, administer oaths, take the testimony or deposition of any person under oath, and in connection therewith, to issue subpenas duces tecum, and to require the production and examination of any governmental or other books or papers relating to any matter described above. *Subpenas issued in proceedings under this section shall be enforceable in the Superior Court by commission application for compliance on notice.*

(f) In carrying out any of its work under this act, the board may designate one of its members, or an officer of the board to act in its behalf and may delegate to such designee one or more of its duties hereunder and, for such purposes, such designee shall have all the powers hereby conferred upon the board in connection with the discharge of the duty or duties so delegated. In carrying out any of its work under this act, the commission may designate one of its members or an officer of the commission to act on its behalf and may delegate to such designee one or more of its duties hereunder and, for such purpose, such designee shall have all of the powers hereby conferred upon the commission in connection with the discharge of the duty or duties so delegated.

(g) The board and commission may also appoint and designate other persons or groups of persons to act for and on its behalf and may delegate to such persons or groups of persons any and all of the powers conferred upon it by this act so far as it is reasonably necessary to effectuate the purposes of this act. Such persons shall serve without compensation but shall be reimbursed for any necessary expenses.

(h) The personnel of the Division of Public Employment Relations shall include only individuals familiar with the field of public employee-management relations. The commission's determination that a person is familiar in this field shall not be reviewable by any other body.

8. Section 7 of P. L. 1941, c. 100 (C. 34:13A–7) is amended to read as follows:

7. Whenever a controversy shall arise between [an] *a private* employer and his employees which is not settled either in conference between representatives of the parties or through mediation in the manner provided by this act, such controversy may, by agreement of the parties, be submitted to arbitration, one person to be selected by the employer, one person to be selected by the employees, and a third selected by the representatives of the

employer and employees, and in the event of any such appointment or selection not being made upon the request of the parties in the controversy, the department may select the third person to arbitrate the matter submitted; provided, however, that the failure or refusal of either party to submit a controversy to arbitration shall not be construed as a violation of the policy or purpose of this act, or of any provision thereof, nor shall failure or refusal to arbitrate constitute a basis for any action at law or suit in equity.

9. Section 12 of P. L. 1968, c. 303 (C. 34:13A–8.3) is amended to read as follows:

12. The commission in conjunction with the Institute of Management and Labor *Relations* of Rutgers, The State University, shall*:* develop and maintain a program for the guidance of public employees and public employers in employee-management relations [, to] *; provide for the objective collection, analysis, and publication of data and application thereof; provide for the training of mediators, factfinders and arbitrators;* provide technical advice to public employees and public employers on employee-management programs [, to] *;* assist in the development of programs for training employee and management personnel in the principles and procedures of consultation, negotiation and the settlement of disputes in the public service [,] *;* and *provide* for the training of employee and management officials in the discharge of their employee-management relations responsibilities in the public interest.

10. (New section) (a) There is hereby established in the Division of Public Employment Relations a Council on Public Employment Relations, which shall consist of 8 members, appointed by the Governor, by and with the advice and consent of the Senate, 4 of whom shall be representative of public employers and 4 of whom shall be representative of public employee organizations. Of the first appointees, one representative of public employers and one representative of employee organizations shall be appointed for 1 year, 1 representative of said interests shall be appointed for 2 years each, and 2 representatives of said interests shall be appointed for 3 years each. Their successors shall be appointed for terms of 3 years each. Members of the council shall be eligible for reappointment.

(b) A majority of the membership of the council shall constitute a quorum for the transaction of council business.

(c) The council shall meet with the commission at least 4 times a year.

(d) The employer representatives shall choose a chairman and the representatives of employee organizations shall choose a chairman, who shall serve as co-chairmen of the council, alternating in chairing meetings of the council.

(e) Members of the council shall serve without compensation, but may be reimbursed by the State for necessary expenses incurred in the discharge of their duties.

11. (New section) The council shall (a) help to promote the effective functioning of collective negotiations in public employment in the State; (b) assist the commission in its selection of panels for ad hoc mediation, factfinding, and arbitration under the jurisdiction of the commission; (c) aid in the settlement of individual disputes; (d) review the administration of the "New Jersey Employer-Employee Relations Act," including the commission's rules and regulations, and advise the commission regarding desirable changes in the administration and enforcement of said act; and (e) recommend to the Governor and Legislature any amendments to said act that it deems advisable.

12. Sections 1 to 4, 6 and 8 to 11 of this act shall take effect 30 days after the enactment of this act. The terms of the members of the Public Employment Relations Commission in office are terminated on the effective date of section 4. Sections 5 and 7 of this act shall take effect 60 days after the enactment of this act.

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STATEMENT

The purpose of this bill is to amend and supplement the "New Jersey Employer-Employee Relations Act" (P. L. 1941, c. 100; C. 34:13A–1 et seq.) so as to implement the recommendations of the New Jersey Public Employer-Employee Relations Study Commission, created pursuant to P. L. 1974, c. 124. The bill provides specific procedure to bring about the peaceful settlement of a persistent impasse in negotiations that occurs in any public employment covered by the "New Jersey Employer-Employee Relations Act," including State, county, municipal and school district employment. Public employers and employee organizations would be stimulated to adopt, by mutual agreement, one of six statutory procedures for resolving deadlocks that develop in negotiations should the parties fail to reach an agreement in direct negotiations. The bill requires submission of a continuing controversy to a form of binding arbitration, under which the arbitrator or panel of arbitrators would make an award by choosing between the final offers of the two parties on (a) the economic

issues as a single combined package and (b) the noneconomic issues on an issue-by-issue basis. The parties would be given an appropriate period of time to take those impasse procedures into account before the negotiations of a new agreement would be subject to them.

The bill also requires that negotiated agreements in covered employment provide binding arbitration as a terminal step in a procedure for the settlement of grievances that concern the interpretation or application of the provisions of a collective agreement. The parties could, by mutual agreement, exclude individual items from such binding arbitration. Statutory requirement for arbitration of unsettled grievances would not take effect before the parties had adequate time to discuss and to embody the necessary changes in a new, negotiated agreement.

Concerning the scope of negotiations, the bill provides: (a) that the Public Employment Relations Commission be given statutory authority to determine which are and which are not required subjects or permissive subjects for negotiation; and (b) that public employers not be required to negotiate concerning matters of intrinsic managerial policy or function.

The bill also provides that the Public Employment Relations Commission be changed from a tripartite membership (one member-chairman serving full-time and 6 members serving part-time) with 3-year terms, to a 3-member, all public commission with 6-year terms, all three serving on a full-time basis. A bipartisan council on public employment relations would be established to meet with the Public Employment Relations Commission for certain purposes, including possible assistance in the settlement of individual disputes and in the screening of arbitrators for a commission-established list, from which the parties of the commission would select neutrals for binding arbitration.

Provision is also made in this bill for the systematic development of objective, comparative data for use by the parties, by arbitrators (especially in applying statutory standards under interest arbitration), for the training of mediators, factfinders and arbitrators, and for analyses of the effects of the proposed changes in the law. The provisions regarding binding arbitration will necessitate some additional trained arbitrators.

Finally, seven technical amendments to the "New Jersey Employer-Employee Relations Act" are proposed that are primarily for purposes of clarification and efficient administration.

FISCAL NOTE TO

# ASSEMBLY, No. 1448

# STATE OF NEW JERSEY

DATED: JULY 1, 1976

Assembly Bill No. 1448 amends and supplements the "New Jersey Employer-Employee Relations Act" so as to implement the recommendations of the New Jersey Public Employer-Employee Relations Study Commission.

To provide the necessary personnel and support to implement this legislation, the Department of Labor and Industry estimates that an additional State expenditure of $203,587.00 would be required in fiscal 1976-77, $215,979.00 in fiscal 1977-78 and $227,680.00 in fiscal 1978-79.

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The fiscal note is based on an estimate of costs rather than actual cost information.

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In compliance with written request received, there is hereby submitted a fiscal estimate for the above bill, pursuant to P. L. 1962, c. 27.

ASSEMBLYMAN JOSEPH D. PATERO (Chairman): Good morning, ladies and gentlemen. As Chairman of the State Assembly Labor Committee, I would like to welcome you all here this morning.

We have called this second hearing in response to the continuing interest shown in some of the features of Assembly Bill No. 1448. Many of you are no doubt aware that its sections relating to final impasse procedures were recently incorporated, by supplement, into the State's Employer-Employee Relations Act for Police and Fire Department interest disputes. The bill encompasses the principal recommendations of the New Jersey Public Employer-Employee Relations Study Commission, which, if enacted, could have a significant impact on public employee relations for many years to come.

When your name is called, please come to the front desk with your testimony. It would be most helpful for the purpose of assembling an official transcript of this hearing, if you have a written statement, that you present copies of it to the Committee members, to our Committee's staff member and to the hearing stenographer at the same time that you present your comments. Also, anyone who has not already expressed an interest in speaking before the Committee and wishes to do so, will you please see Mr. Ben-Asher, who is sitting here on my right.

I am going to ask everyone to hold his (or her) remarks to no more than five or ten minutes. If you have a written statement, try to give us a brief resume of it and your entire statement will be made part of the official record.

Before our first witness begins, I will announce the procedure to be followed today. We are going to recess for lunch at 12:00 Noon - I hope we are completed by 12:00 today - and come back at 1:00, if necessary.

I presently have a list of about eight or nine names of people who want to testify and we will try to schedule those of you present in the meeting room in conformity with your requests. If I can't, I will try to schedule you as closely as I can to the time you want to be heard.

We will proceed with the sponsor, the Honorable Assemblyman Albert Burstein.

A S S E M B L Y M A N  A L B E R T  B U R S T E I N: Thank you, Mr. Chairman.

I do appreciate the opportunity afforded by this Committee to have another hearing on Assembly Bill 1448 because, although we have had one hearing already in public, it is an issue that simply won't go away. Although we now have Senate Bill 482 enacted into law, which has to do with a system that is paralleled in A 1448, relating to police and fire resolution of impasses, there still remains the balance of State employees who are not covered by any kind of impasse procedure. And that is what this bill now addresses itself to.

Having previously testified, what I would like to do is review the highlights very quickly and then answer any Committee questions that might exist with respect to it.

To begin with, the Bill not only provides the fair and final offer system of interest-issue arbitration, but also does something structurally to the Public Employment Relations Commission, itself; and, that is, to make it a full-time body and narrow it down to three members. The rationale underlying the recommendation by the Study Commission that gave birth to this legislation was that, in instances where public members now sitting on PERC have come into issues before

that body in which they have an interest, they have to disqualify themselves. As a result of that disqualification, the expertise that they have in the particular field, be it education or anything else, is lost to the Commission. The theory had been originally that their presence would add something to the deliberations of the Commission, giving some kind of notion as to where some technical or industry-intrinsic problems - and I use that word in the broader sense - might exist, so as to benefit the Commission's deliberations. But as it has turned out in practice, having to disqualify themselves in issues that come before the Commission, in which they do have an interest - and it principally, I would say, lies in the area of educational disputes - that kind of expertise and that kind of input is lost.

If you narrow it down to a three-member body, with the Commission Chairman serving full time, you then can avail yourself of that kind of assistance that is now lost to the Commission. And I think that the experience shown in New York State, as well as a number of other states in the nation that have gone that route, indicates that it is a useful route to follow, that ours is a kind of anachronism right now, and that we ought to change it.

Aside from the structure of the Commission, itself, what the bill serves to do is to offer parties who have gone beyond the fact-finding and mediation process and who still cannot resolve their disputes a mechanism whereby that dispute or series of disputes can, in fact, be resolved. At the moment, you do not have any such mechanism. That sustains a difficulty that has long been felt in the field of public employee-employer relations; and, that is the frustration on the part of public employees, who by case law have been prohibited in New Jersey from using the weapon of strike as an economic weapon to achieve their objectives, although strikes have, in fact occurred, contrary to law. We have seen the unwholesome aspects or results of that in the sense of public employees who have been under a restraining court order having gone to jail in defiance of that court order. That kind of compulsion that causes good people to defy a court order, not only erodes respect for the law, but, in truth, does not provide for a good setting for labor relations in the public sector.

So the effort made by A 1448 really is designed, among other things, to provide a ventilating mechanism for public employees not having the right to strike and to enable issues to be presented fairly by both sides, both the employer and the employee, in an arbitrating setting that affords a variety of choice to the contending parties. Now that variety of choice, we have gone through in Senate Bill 482 and I need not detail here, because I know the Chairman as well, I am sure, as those sitting in the audience, know what the variety is. But essentially what it comes down to is that if you get to the point between parties where they have not been able to resolve their impasse, it then would become a matter of submitting to the arbitrator the final offers of the contending parties. And the arbitrator in economic issues would make a decision, final and binding, on a package basis; and, on noneconomic issues, on an issue-by-issue basis. This is a variant of what most other states have done because most states have gone into a single-package, final-offer system. What we have tried to do by means of 1448 is provide some flexibility to the arbitrator and to the parties.

On the economic side, however, where you have the necessity for putting together an entire package that has economic impact upon the governing body or the

employer, you have to have - it is almost dictated by the necessities of the circumstances -- there you have to have a single-package system. But on the noneconomic issues, that is where the arbitrator should be afforded the opportunity to make an evaluation on an issue-by-issue basis as between the parties.

There is another area where we have a great deal of difficulty still in New Jersey, and I am sure in every state, that neither this law nor any other law will resolve; and, that is, the matter of determining what is a permissive subject of negotiation as opposed to a subject of negotiation that is required under law. I believe that what will happen in that area is that on a case-by-case basis, the decisions of the PERC Commission, as well as any matters that cannot be resolved by PERC that get into the courts, will give you a body of law built up over the years that will give some assurance to the parties of what the barometers of negotiability are.

So I believe it is not the kind of problem that is susceptible to easy solution and simply requires patience on the part of both the public as well as the parties who are concerned about it.

But getting back to the fair and final system, I should further point out that what is afforded to the parties and what the bill is attempting to stimulate is that they do not get to the point of ultimate impasse because it suggests to them an entire series of ways in which, prior to getting to the fair and final offer point, they can select out of about half a dozen choices means by which they can voluntarily submit their impasse to an arbitrator or a panel or whatever method they wish to use in order to resolve their disputes. It is only when they cannot do it on a voluntary basis, that we get to the ultimate point of the law now stepping in and saying, well, PERC , once having heard from the parties that there is an impasse, now appoints a panel of arbitrators or a single arbitrator if the parties so desire, who will then make the decision in accordance with law.

Now, when we get to that stage of the arbitrator or panel coming into the picture, the bill further provides a series of guidelines to the arbitrator within the parameters of which he has to work. So he cannot render a decision that does not allow for considerations being given to that series of restrictions; and, amongst them - and I say this by way of assurance or some means of assurance to the governing bodies that have expressed some concern about taking the authority to negotiate their own contracts out of their hands and into the hands of a third party, this being one of the criticisms offered of the bill -- The assurances that can be offered to them are, first, contained within the bill; and, second, the experience of states outside the bill.

The bill does require that the arbitrator take into consideration existing law. Now, existing law, among other things, would have to take in view the cap system that we now impose upon budgetary increases amongst municipalities and counties, and the State as well. So those cap increases become something that represents a governor, as it were, a restriction, over the kind of award that can be rendered. The tax impact on a community is another fact that the bill requires an arbitrator to take a look at. So an arbitrator really cannot act out of whimsey, cannot be wild in the determinations he makes, together with the very realistic fact that any arbitrator that does so will never be picked as an arbitrator again in succeeding cases.

The other element that I mentioned has to do with the experience of other

states. From what I have seen statistically, at least, out of Massachusetts and Wisconsin, which are two states that do have a final offer system, the awards, generally speaking, have not been excessive in the sense that monetarily they have gone beyond what the average experience of increases had been prior to the institution of the fair and final offer system. As a matter of fact, in general, over the last several years, they have been lower than the awards in dollar terms had been in prior years before the fair and final offer system went into effect.

If you look at it from another standpoint as to,in general terms, where the arbitrator fell with regard to a decision on the fair and final offer, as in Massachusetts, for example, as between management and labor, the majority of times, statistically, shows the arbitrators came down on the side of the employees.

So some of the fears that have been expressed by the governing bodies and unions I think are simply fears of the unknown and not based upon either experience or a realistic appraisal of what is in the bill.

I think that sums up the important part of what I would like to present to the Committee for its consideration.

By way of summary, I would only say that I still think this bill is important to the State. I think that the existence of the bill is a final backstop to labor negotiations. I think it will act as a stimulus toward the resolution of disputes even before they ever get to that stage. In the vast majority of cases now,and it will be if this bill ever becomes law, parties agree as between themselves without outside intervention at any stage. As to those agreements that cannot be made on a voluntary basis, many of them are settled, if not most, through the mediation process. So you really are talking about a relative handful of matters that have to be addressed by the terms of this bill. But that handful has significance. It has significance to the people of the State. I would emphasize that the public interest, as I view it, is in having some mechanism for the resolution of those impasses, so that you don't have job actions in the garbage collection field, you don't have job actions in the teaching field or any of the other very significant services that the public is used to and that they are directly affected by in the event of job actions.

Thank you.

ASSEMBLYMAN PATERO: Our staff,headed by Mr. Ben-Asher,has come up with some questions in regard to this bill. In talking to some of the labor people, it seems one of their fears is the effect the 5 percent cap will have on a school budget. They are afraid they may go out and spend all the money on other items and then, let's say, just leave 3 percent for salaries. Do you think this will have any effect on the arbitrator?

ASSEMBLYMAN BURSTEIN: I think it has to have an effect on the arbitrator to some extent. The cap laws have put a new element into this whole picture that makes the work of the arbitrator, I would say, even more difficult than it would have been before because he now has to take into consideration not only the dispute that is before him, but what the requirements of the governing body, whatever it may be - a board of education, a municipality, a county - are in other aspects of governance, what other employees have to get, what the increases in insurance, utilities and all the other things that go into making up a budget represent. So he does have to take that into consideration. It becomes a more complicated process.

But the structure, I think, is still sound. It still remains something that has to be done. We may have to look at the caps from a little different light

legislatively within the next year or so because of the very compelling restriction that is placed upon all public employees and the difficulties that we know exist in managing budgets on the county and municipal levels. So it is something that really has to be addressed parallel to a bill like A 1448.

ASSEMBLYMAN PATERO: Since a fixed and final offer is ordinarily a contradiction in terms of good faith negotiations, shall we allow final offers to be submitted any time before the conclusion of the arbitration hearing?

ASSEMBLYMAN BURSTEIN: I don't see it as a real contradiction in terms. I think you can certainly have good faith bargaining, even in the face of what is a fair and final offer. Parties, generally speaking, are trying to arrive at agreement. There are exceptions to it and I know that there have been various areas within the State that one can point to where you have an obstinate board of education or a very obstinate union or what have you. There are always those problems and those will never go away. Nobody will ever be able to write that into law in a way that changes the personalities of negotiators. But I still think you can have collective bargaining in the face of this fair and final procedure.

I think further that it may be something to be considered about allowing the parties to go into an arbitration system prior to the time set out in this law. That may be worthy of some consideration. I would not find that contrary to the intent of the law.

ASSEMBLYMAN PATERO: Another question: As has been the case in Wisconsin, should PERC here be required to investigate the disputes to determine whether a bona fide impasse has been reached before commencing arbitration procedures?

ASSEMBLYMAN BURSTEIN: That is a gap in this proposed bill and I am not sure whether we ought to change it or fill the gap unless we do something about beefing up PERC, because I think the two things go hand in hand. If PERC is to make that kind of an investigation, unless it is a very perfunctory one, they are going to have to assign some of their personnel to make a rather thorough review of what the process of negotiation has been between the parties, leading up to what is considered to be an impasse. That means that it is a new duty imposed upon their personnel and they already are very shorthanded. So it becomes a practical matter more than anything else as to whether you go that route.

Again, I would have no objection to seeing that in the law.

ASSEMBLYMAN PATERO: Is there a need to clarify whether arbitrators from other than PERC panels can be used prior to invocation of the fair and final offer procedure?

ASSEMBLYMAN BURSTEIN: I'm sorry. May I have that one again?

ASSEMBLYMAN PATERO: Is there a need to clarify whether arbitrators from other than PERC panels can be used prior to the fair and final offer procedure?

ASSEMBLYMAN BURSTEIN: I don't think the bill addresses itself to that point at all.

ASSEMBLYMAN PATERO: No.

ASSEMBLYMAN BURSTEIN: Yes, I think that probably something could be put in about that - that would be useful - so that if the parties did want to go to an outside person or panel, they should be enabled to do so.

ASSEMBLYMAN PATERO: Is there any limit or time that the arbitrator's award can go for; in other words, say the board of education is going for a three-year

contract and this does go before the arbitrator, is he limited to one year or could it be a two-year or three-year contract? Would he have this right?

ASSEMBLYMAN BURSTEIN: I believe he would have the right. Well, he would have the right if that were an issue presented to him by the two sides; in other words, if that were still an open issue, he would have a right to make some selection in the fair and final process as to the length of the contract term, as this bill now stands. I don't know whether the implication of the question is that perhaps there ought to be some restriction placed in the law.

ASSEMBLYMAN PATERO: That was what I was thinking of, whether he could only make a judgment for a one-year contract rather than, say, if they are negotiating for a three-year contract, make it for a three-year period with 5 percent for the next three years. Or would his decision be just for a one-year period?

ASSEMBLYMAN BURSTEIN: I think the experience in New Jersey has been that the multi-year contracts for public employees, in general, have not gone beyond two years. That is the longest I know about unless I am shown to the contrary.

I think restricting it to one year would be a little too restrictive because sometimes governing bodies like the idea of having some measure of stability over a multi-year period in their labor relations. So, if they can arrive at some reasonable conclusion, they might prefer allowing the arbitrator to go to a two-year contract. So, if there were to be a restriction written in the law, I would respectfuly suggest that it be not the one year, but at least a two-year period.

ASSEMBLYMAN PATERO: Mr. Ben-Asher would like to ask a question.

MR. BEN-ASHER: Assemblyman, do you feel there is any validity to incorporating by amendment into the bill a provision to allow that a factfinder's recommendations in advance be accepted as binding?

ASSEMBLYMAN BURSTEIN: That a factfinder's recommendations be accepted as binding?

MR. BEN-ASHER: --- before they go into arbitration.

ASSEMBLYMAN BURSTEIN: You mean if the parties voluntarily agree?

MR. BEN-ASHER: Yes.

ASSEMBLYMAN BURSTEIN: Isn't that part of ---

MR. BEN-ASHER: That is one of the six tests, but it is one of three choices that the parties have.

ASSEMBLYMAN BURSTEIN: Yes, if the parties voluntarily agree.

MR. BEN-ASHER: --- within the one selection opportunity. Let me get it.

ASSEMBLYMAN BURSTEIN: I think it is on page 11, 6 (b) (3) which deals with terminal procedures that are approvable.

MR. BEN-ASHER: This is further down the road, of course, once they have entered into the choice of arbitration proceedings where the arbitrator would, of course, be confined to a choice among the three alternative positions.

ASSEMBLYMAN BURSTEIN: Right, which includes in Subparagraphs (d) and (e) the factfinder's report. If the parties agreed, that would be possible. If you are talking in terms of having the parties directly agree that the factfinder's report should be binding, that is certainly not inconsistent with the thrust of the bill. I think it could be incorporated very easily.

MR. BEN-ASHER: Do you feel, Assemblyman, in light of the expertise that

will be required for arbitrators to make decisions concerning availability of funds,to ascertain the validity of positions that are being submitted by the municipalities and the unions in terms of this question, that the Committee ought to consider some requirement for arbitrators to have taken perhaps a course in Municipal Finance or something along those lines?

ASSEMBLYMAN BURSTEIN: Yes. The creation of a body of skilled arbitrators who would be usable in these settings in New Jersey is something that we are presently lacking. And I suspect we are lacking it simply because we don't have a system such as A 1448 contemplates. We do have mediators who have been working for the New Jersey Mediation Board and we do have a number of people that I have seen on lists myself from time to time who recur on those lists and who are probably quite good. We don't have enough of them though. I do think that building up a body of skilled individuals who would be available for arbitration purposes is important. The insertion of some such requirement to provide that kind of skill in municipal finance or any other area, for that matter, that might be pertinent to the resolution of these impasse issues, I am all for.

ASSEMBLYMAN PATERO: One last question: As you know, when I talked about having this public hearing, Assemblyman Newman, Chairman of the Education Committee, came up to us and requested that items be spelled out that would come under final binding arbitration. Do you think that this would be necessary - in other words, like a laundry list?

ASSEMBLYMAN BURSTEIN: A laundry list of managerial prerogatives - I think that is what he was talking about. The PERC Study Commission on which I served considered that. New York City's Office of Collective Bargaining Law incorporates a kind of laundry list of bargainable issues or what are managerial prerogatives, taking it from the other side. The problem with it is that you can throw as many words as you possibly can think of into that grouping, yet you still have difficulties in determining in grey areas what is or is not managerial prerogative. I don't look upon it as the solution, in other words, to that particular kind of problem. I still think you are going to get your difficulties.

Again, I have no objection to seeing it go in. As a matter of fact, at one point in the last session of the Legislature when we had S 1087 on the front burner, which eventually became law, that section on managerial prerogatives was in and out, and in and out several times on the Senate side before the bill finally came over without the inclusion of a managerial section.

I have no strong feeling about it. If it went in, it is perfectly acceptable to me. I simply think, if it goes in, we ought to understand that it is not going to solve all problems and that it ought to be looked at perhaps with a view of rewording some of the elements of managerial prerogative in the light of our experience in New Jersey over the last couple of years and the new restrictions, particularly, that have been placed upon municipalities, counties and the State with respect to their budget-making practices.

MR. BEN-ASHER: In the absence of language in the law that would spell out managerial prerogatives, as the Commission refers to them, do you feel that there is any need to codify what PERC has established with respect to the impact rule, as to what must be negotiated as far as the effect of what would otherwise not be required subjects for negotiation?

ASSEMBLYMAN BURSTEIN: I have a little difficulty in accepting, I guess, a fairly recent PERC finding with regard to that managerial prerogative issue.

I believe the way in which it has been enunciated is that a finding that a particular issue is within managerial prerogative does not end the matter there, but rather that the impact of that issue --- in other words, if you are talking about class size in a teacher board of education setting, the issue of class size may be something that the board of education has the right to determine, that you can have up to 35 children in a classroom in the fifth or sixth grades, whatever the issue may be -- but the impact of that class size determination granted to be within the scope of the powers of the board to set, nevertheless has its impact on the capability of a teacher to handle the class and rest time a teacher must now have in order to be able to cope with the larger number of students, etc. There are peripheral things, in other words, as I understand PERC's ruling, that arise out of a finding of managerial prerogative that they allow to be the subject of negotiation.

Now I am not sure that that ought to be the fact. I am not going to offer any fixed opinion about it right now because I think it has ramifications that have to be studied very carefully. But I think, if we are going to be thinking in terms of insertion of some new element in the bill, some amendment to the bill, which would deal with the matter of managerial prerogative, that that be given careful consideration and that perhaps there ought to be some limitations placed upon what actually can become permissively negotiable, arising out of that finding of managerial prerogative, and there be certain restrictions placed upon it so you don't have an open-ended kind of result that flows as a consequence of that initial finding.

ASSEMBLYMAN PATERO: Maybe we could have the State Department of Education look into the possibility of finding just what should be done.

ASSEMBLYMAN BURSTEIN: Yes. I think that that is an issue that really has to be looked at very carefully. It is an important one. It was a very significant decision on the part of PERC. I think it was probably a correct one in the light of existing law, but something that we ought to take a look at.

ASSEMBLYMAN PATERO: Thank you very much.

ASSEMBLYMAN BURSTEIN: Thank you.

ASSEMBLYMAN PATERO: The next speaker we will have will be Judy Owens, President of the NJEA.

J U D I T H M. O W E N S: Mr. Chairman, thank you for giving me the opportunity to speak today.

I am Judith M. Owens, President of the New Jersey Education Association which represents over 100,000 active, associate and retired school employees in New Jersey. NJEA affiliates are the sole and exclusive bargaining representatives for teachers in all but seven of the State's 590 school districts. In these districts, NJEA affiliates represent over 1100 bargaining units of teachers and other school employees.

With me today are John R. Pietrowicz, NJEA UniServ Coordinator of Field Services; James Morford, NJEA Associate Director of Government Relations; and Dorothy Dallah, an intern in our Government Relations Division.

On March 26, 1976, NJEA testified before the then Assembly Committee on Labor, Industry and Professions. Since the Committee reorganization into the Committee on Labor has included the appointment of new members, we are taking the

opportunity to retestify on NJEA's concerns with respect to the recommended changes to Chapter 123 as suggested by the Public Employer-Employee Relations Study Commission in A 1448.

The NJEA strongly opposes the enactment of the proposed legislation, primarily for the following reasons.

1. A 1448 would add a specific definition of the term "supervisor" which expands the definition already expressed in Chapter 123. The effect would be to deny to certain supervisory employees contractual benefits and security provisions they worked hard to gain during the past nine years.

2. The bill emasculates what is commonly referred to as the freeze clause. This clause has worked well and is a proper safeguard as stated. By limiting the provision to conditions covered by the negotiated contract, employees' rights would be weakened and the unilateral authority of school boards strengthened.

In effect, this change would violate basic standards of good-faith bargaining. With the suggested changes, management could unilaterally change working conditions. It is difficult to understand why this bill suggests any revision of the freeze clause. The clause has not proven burdensome to school boards. It has not enfringed upon so-called management prerogatives. In fact, there is no evidence, either before PERC or in the Study Commission's report, which demands consideration of such a drastic change in this essential provision of employer-employee relations.

3. The bill further endangers public employee rights by adding what may be termed a management rights provision. This proposal declares that employers would not be required to negotiate matters of intrinsic managerial policy.

No compelling reason exists to add this clause.

The statement of disagreement concerning the PERC Study Commission's report submitted by three of the Commission members expresses our position on this issue. They said, "The parties have had only a few months to work under this law, and no significant problems have been reported. We strongly believe that the commission should be given a reasonable period of time to determine the dimensions of the scope of negotiations under the existing legislation."

4. The proposed changes in Section 7b would limit the grievance definition to the interpretation or application of a negotiated contract. This limitation would eliminate the right to appeal the violation of policies and administrative decisions affecting employees. Adoption of this provision would clearly cause unnecessary confusion. Grievance definition was a major area of dispute in the early post-Chapter 303 era. This matter was resolved through negotiation and by mutual agreement. As a result, most negotiated contracts now contain the definition as stated in law. Any modification of that clause could be interpreted as permitting - and perhaps encouraging - employers to make adverse administrative decisions affecting terms and conditions of employment. In such instances, employee organizations would be left powerless to utilize a contract's grievance machinery. Also, such a change would require lengthy and costly litigation to resolve grievances. The legislative intent of Chapter 123 was to resolve disputes expeditiously and fairly, not to create barriers which inhibit resolution of differences.

5. An outstanding deficiency in this bill is the lack of due process court procedures for public employees in strike situations. Without such a provision,

school boards would continue to secure instant injunctions, thereby gaining additional leverage to pressure employees into concessions. The instant injunction provides the opportunity for a school board to circumvent collective bargaining and to utilize a judicial excuse to avoid real issues.

Injunctions continue to be issued automatically even though a specific strike does not endanger the public health or safety. The failure of this bill to provide for essential due process and day-in-court procedures only encourages management to abuse its inherent power.

NJEA is pleased to note that three PERC Study Commission members expressed their concern in the Commission's report about the issuance of automatic injunctions. They stated, "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."

Also, public employees in New Jersey are gratified that Assemblyman Jackman introduced Assembly Bill No. 402, which would give public employees the minimal elements of due process by granting a right to withhold services under certain circumstances. That bill has also been referred to this Commiteee and we respectfully urge you to support its concept which would establish reasonable and fair balance in the negotiation process.

6. The terminal procedure in A 1448, which would presumably provide for finality in negotiations, undermines the collective bargaining process. The recommended final step for an imposed impasse resolution - that is, last offer arbitration, or any form of impasse arbitration - minimizes the effectiveness of mediation and of fact-finding.

A new dimension has been added to our experience since NJEA last testified on A 1448. Our Working Conditions Committee conducted a year-long study of interest arbitration.

In investigating the terminology of final offer arbitration in the labor field, the Committee discovered that in no state other than New Jersey has the term "fair" been added to the descriptive terminology of this process. In other words, only in New Jersey has it become known as fair and final offer arbitration.

One labor expert who appeared before our Committee pointed out that there is absolutely nothing fair about the final offer procedure. To use this reference, she said, was to bedevil those considering it. Frankly, such outspoken testimony concerning the unfairness of the system is the fundamental basis for our resistance to it. NJEA insists forthrightly on fair play for all of its members.

Based on our Working Conditions Committee report, the NJEA reached additional conclusions which I would like to share with you today:

We feel that the objective of any negotiating process should be to stimulate bargaining. Negotiated settlements are better than imposed settlements.

Arbitration of all types is conservative by nature. It is very difficult, if not impossible, to get an arbitrator to break new ground.

Authorities are in general agreement concerning the lack of qualified arbitrators for compulsory interest arbitration.

The arbitration process is expensive.

Experience shows that arbitration does not necessarily prevent strikes.

Experience also shows that arbitration does not necessarily settle impasses with finality. Evidence from other states indicates that employers have attempted to overturn arbitrators' awards in the courts when employers lost the award.

Last offer arbitration does little to compel bargaining or to force compromise. Indeed, it provides the parties with opportunities to procrastinate, to avoid the real issues, and to blunt compromise. In addition, it encourages the parties to expend their energies preparing presentations for an arbitrator, rather than concentrating on free and open collective bargaining aimed at reaching a voluntary settlement.

NJEA believes that imposed settlements are temporary panaceas because the parties do not participate in a true exchange of ideas and proposals. When an arbitrator picks a winner and a loser,he guarantees little stability or acceptance. Rather, an arbitrator's award can force a loser to save face by whatever means are available, including immediate litigation and an attempt to modify or vacate the award. The loser's predictable response would delay implementation of the contract and exacerbate the positive bargaining relationships and the principle of finality, which the arbitration procedure was supposedly designed to promote.

In order to avoid any misunderstanding regarding our position, we should emphasize that NJEA does not oppose interest arbitration as a method for resolving impasses. Any form of arbitration which is mutually acceptable to the parties can and should be used. What NJEA vigorously opposes, however, is the imposition of any type of interest arbitration which purports to provide finality to the bargaining process. In any case, NJEA believes that true collective bargaining cannot occur without at least the limited right to strike.

The provision in A 1448 which would make PERC an all-public body fails to provide for meaningful input from employer and employee groups.

The fact is that the present seven-member Commission has operated efficiently with few complaints from either employees or employers.

The success of the present composition must be credited, at least in part, to the guaranteed input from the employer and employee representatives as well as the general public members. The present Commission provides balance through the free exchange of ideas and concerns of representative groups. Any suggestion at this time to alter its successful operation makes no sense to those close to public employment bargaining in New Jersey.

In summary, NJEA believes that A 1448 does little to promote equality at the bargaining table or to improve negotiation relationships between parties. If anything, the addition of certain amendments, the deletion of critical provisions, and the omission of needed improvements would weaken further an employee organization's already unequal bargaining position.

Thank you, Mr. Chairman.

(Complete written statement of Miss Owens can be found beginning on page 1X.)

ASSEMBLYMAN PATERO: I guess you realize what this bill is trying to do is trying to prevent strikes. I know some of the members of the Committee feel that the courts have dealt very unfairly with the strikers. The strike issue is another question. I am happy to have your comments here and I know the Committee will take

them into consideration.

MISS OWENS: Thank you.

ASSEMBLYMAN PATERO: I wish to thank you for appearing before the Committee.

I am told we have a representative of the Communications Workers of America, AFL-CIO here. Would you give us your name for the record.

M I C H A E L  D I E N E R: My name is Michael Diener.

ASSEMBLYMAN PATERO: You may proceed.

MR. DIENER: I am here representing the Communications Workers of America, AFL-CIO. My name is Michael Diener, President of Local 1082, which represents public employees in Middlesex County. I am here officially representing our statewide CWA Union. Our union represents approximately 6,000 public employees in the State of New Jersey.

Before I comment specifically on Assembly Bill 1448, I would like to comment about the timing of this hearing. We believe that the new rules and regulations,which the Public Employment Relations Commission is holding a hearing on today,should be enacted and given the opportunity to function prior to holding hearings on any new public employee legislation. Therefore, we wish to strongly register our displeasure that these hearings are taking place today. However, since the hearing is taking place, I would like to give you some overall observations on the proposed bill and then some specific objections which we voice.

A 1448 is specifically the product of the study provision of Chapter 123 of the Public Laws of 1974. Chapter 123 of the Public Laws of 1974 has been working well as it is presently written. No further changes are needed at this time.

A 1448 tries to put a finality to collective bargaining by submitting negotiations to binding arbitration. Trying to find a solution of finality for public employees without them having the right to strike still remains a complex unresolved problem.

Under certain circumstances, binding arbitration might be the answer, but it is not the carte blanche answer to negotiations for all public employees. If it is to be the answer for certain groups of public employees in their negotiations, then there must be a study of far greater depth in this most significant area of labor-management negotiations than has been achieved to date. A 1448 is certainly not this in-depth solution. Instead, it effectively weakens the power of employee representatives to negotiate wages, terms and conditions of employment. The strength to effectively negotiate by all parties is what collective bargaining is all about, whether it be in private industry or public employment.

Now, to get to some of our specific objections to the proposed bill --

On page 3, line 59, an attempt is made to further define a supervisor by adding "evaluation" to the definition. The present definition is sufficient and does not need more clarification. Adding "evaluation" to the definition only muddies the water because evaluation is frequently part of the non-supervisory employee's function.

Page 3, lines 62 to 69, is an exceedingly poor definition of good-faith bargaining. It opens the door to long-term legal hassling over the definition of bargaining in bad faith. In the meantime, it lets the public employer return to the old "pre-PERC days" when the employer could meet and not move anywhere whatsoever. Only the courts somewhere down the line would be able to define "genuine effort" and

I don't know how they could even decipher unfair bargaining when the definition from this section ends with "shall not compel the parties to move in bargaining." This proposed definition of good faith bargaining makes a mockery of the whole unfair bargaining aspect of the present law. We shall continue to allow charges of unfair bargaining to be determined, on their merits, before a hearing officer.

Page 4, lines 19-34 - this proposed section mandates by law that the Public Employment Relations Commission hire its own legal counsel as needed, free of other governmental authorization. The Public Employment Relations Commission has, of its own initiative, taken these steps, and for this we compliment Mr. Jeffrey Tener and the present Public Employment Relations Commission for having used its own initiative. It is, therefore, unnecessary to have this legal mandate placed in the statute.

Page 5, lines 15-55 - this section alters the makeup of the present Commission to three full-time commissioners. It eliminates the employee representatives and the public employer from membership on the Commission. The past contributions that both the public employer and employee representatives have given in the formulation of rules and Commission decisions, from its founding until the present, have been most invaluable. It is, after all, the public employer and employee representatives who have experience in negotiating and resolving public employee problems.

Any representative chosen by the Commission, try as he may to be totally impartial, will have a bias in his voice based on his life experience. Having members of different political parties on the Board will in no way guarantee different voices on the Commission.

Page 7, lines 55 and 57 - this section eliminates the present guarantee that employers will not unilaterally change working conditions. In public employment, it is well-nigh impossible to negotiate all the terms and conditions of employment into the contract. Again, New Jersey cannot allow the public employer to revert back to those chaotic pre-PERC days when the employer could unilaterally change working conditions without negotiations. The proposed new language will make the employer more hesitant to place all terms and conditions of employment into negotiations. There is a difference between the employee representative knowing what should be in the contracts and being able to achieve all those conditions at the bargaining table from the employer.

Page 7, lines 59 through 66 - this section deletes from the law the guarantee of reducing an agreement into a written contract. It returns to the days of talking to each other forever and ever in negotiations without reaching an agreement.

Page 7, lines 66 through 69 - this section restricts matters of intrinsic managerial policy from the scope of negotiations. It, therefore, places new vague limitations on negotiations. Labor management experts cannot agree on what the word "intrinsic" means. The experts, however, do agree that conditions of the work place will become more and more bargaining items in efforts to overcome the crisis of worker alienation.

Page 7, line 79 - we feel that binding arbitration as the last step of the grievance procedure, as proposed by this statute, is the proper conclusion for the grievance procedure, and that it is good.

Page 9, lines 39 through 56 - the new language of this statute weakens the ability of PERC to meaningfully enforce its decision-making powers in unfair labor practice charges.

From the bottom of page 11 to the top of page 15 - this section is entirely new and deals with various methods of binding arbitration as the conclusion in public employment negotiations in New Jersey. As we stated in our initial remarks, this is an immense step and it certainly needs much further study and thought before reaching into this area as the final solution for New Jersey public employees collective bargaining.

With binding arbitration as the final solution for contract settlements, the already-strained financial resources of PERC would be pushed beyond realistic capacity. It is hypocritical to pass legislation which cannot be properly funded for proper administration. With the economic crunch that New Jersey now faces, 1977 is not the time to consider binding arbitration as the solution to public employee collective bargaining. Thank you.

ASSEMBLYMAN PATERO: First of all, I am sorry you are displeased that we are having these hearings. But, as you know, we are a different body. As a result of these hearings, a decision will be made whether the bill will be coming up for a vote or not.

In the statement, you say on page 3, the bill contains a poor definition of good-faith bargaining. Again, this is the same definition that is used by the National Labor Relations Board in regard to unfair labor practices.

On page 4, you say, with regard to page 7, lines 59-66, of the bill, "This section deletes from the law the guarantee of reducing an agreement into a written contract. It returns to the days of talking to each other . . ." That is already in the bill on page 3, Section 2, Subparagraph (i), line 62. I will have Mr. Ben-Asher read it.

MR. BEN-ASHER: The definition of "negotiate in good faith" also includes the requirement that there be an execution of the written contract, incorporating any agreement reached,if requested by either party. So it was merely transplanted from that section.

ASSEMBLYMAN PATERO: We have some more questions.

MR. BEN-ASHER: Mr. Diener, you raised a question on page 2 of your testimony in regard to the definition of supervisor and you suggested that the addition of the word "evaluation" would complicate matters because evaluation is frequently part of the non-supervisory employee's function. As the definition is presently phrased, would it, in your opinion, clarify the waters a bit if instead of just using the word "or", following the expression "hire, evaluate, discipline, discharge", we insert "and" after "discipline", so that the definition reads: "'Supervisory employees' of a public employer means employees having the power to hire, evaluate, discipline, and discharge, or effectively recommend the same"?

MR. DIENER: In other words, they would have to meet all the conditions.

MR. BEN-ASHER: That's right - meet all the conditions.

MR. DIENER: I think that would clarify it.

ASSEMBLYMAN PATERO: Thank you very much.

Is there anyone else who wishes to testify? What is your name?

J O S E P H J. V I S O T S K I: Mr. name is Joseph J. Visotski. I live at 15 Country Lane in Morristown.

In the past, Mr. Chairman, the Newark Teachers' Union expressed its opposition to this legislation and a number of witnesses today and in the past have taken exception to specifics of the bill. I would like to approach it from

a different point of view.

The Newark Teachers' Union stands in opposition to the concept of fair and final offer and compulsory arbitration as a means of settlement of disputes. We support the collective bargaining process for public employees that is equal in concept to that enjoyed by the private sector in the economy.

Traditionally and historically, the very arguments that are used today in opposition to public employee rights were used one hundred years ago and fifty years ago in opposition to workers' rights in the private sector. Those arguments proved to be without merit then and, I submit, they are without merit now.

The Newark Teachers' Union has a record of activism in the public employees' sector that I believe is unequalled in the State by any other organization. The Newark Teachers' Union's strikes were not the acts of revolutionaries or irresponsible, deranged mobs. These were the acts of very responsible, dedicated public employees who were so frustrated by the actions and lack of actions of management that these employees were driven to take the desperate measures that we did.

The ultimate weapon any worker has is withholding of services. This bill looks to eliminate and take away that right.

In the past seven years in Newark, management has learned to live with the public employee union and, while everything has not been peaches and cream, nevertheless there is a growing and developing working relationship between a good deal of the central administration and the union, jointly resolving the problems.

I would like to make some comments on one specific item of this bill; and, that is, on the concept of managerial prerogatives. I would say that that concept is absolutely nonsense. I have been a negotiator for the Newark Teachers' Union and I have had the personal experience of sitting through many, many weeks and months of face-to-face negotiations. I can tell you over the last seven years, management has claimed the prerogative to do anything and everything. There hasn't been a single item that was ever proposed by the Newark Teachers' Union that they didn't claim was non-negotiable because it was a managerial prerogative.

Those in power and control always want to remain in power and control. That shouldn't be a revelation to anyone. I am very upset when I see the emphasis placed in this bill on resurrecting managerial prerogatives. You created PERC, a regulatory agency, and then by inaction or ambiguity you have almost rendered PERC useless in regulating the sector of the operations that it is supposed to regulate.

One thing that I thought that PERC did well was the issuance of the statement that everything was negotiable, excluding pensions. I disagree with PERC; I don't see anything sacred about pensions. Pensions are negotiated elsewhere. I think that the only sensible and positive approach that this Committee should take and the Legislature should take is to permit the people who are involved in the dispute to work out the dispute on their own, without side intrusion, without any limitation.

In the private sector, collective bargaining has not led to the abolition of private enterprise. Management still manages. Why should there be a fear in the public sector that management will suddenly disappear? It is ridiculous. Management will always manage. And the employees don't want to manage. The employees simply want to have the opportunity and the right to express their opinions and to bargain for what they can get.

I don't think that this is the time for regression or repression or even paternalistic legislation. And I see elements of all of those things in this bill. I see nothing progressive.

We in the Newark Teachers' Union and in the labor movement have no intention to go backwards in time. We have worked hard and we have fought long. We have made many sacrifices for what little rights we have. Our experiences have taught us that there is only one solution to the problem of public employee relations; and, that is, for free, unfettered collective bargaining.

You commented, Mr. Patero - and I noted it - that this legislation is intended to prevent strikes in the public sector. I tell you that, if this bill is made law, it will increase strikes. Even a cursory examination of past work stoppages or public employees' strikes will show that the causes of most, if not all, have been the employer's refusal to negotiate items because of managerial prerogatives. This bill will only encourage management to become more arrogant, more intransigent, in asserting their right to rule without question. The Newark Teachers' Union cannot and will not accept the abolition of collective bargaining - and that's what this bill is all about.

ASSEMBLYMAN PATERO: In your testimony you talked about the prerogatives of management. According to management, everything is their prerogative. As I asked Assemblyman Burstein, do you feel that the prerogatives should be spelled out?

MR. VISOTSKI: I believe that PERC was on the right track when they said it is up to the parties to decide what they want to talk about. What's wrong with that? What is so revolutionary about that? What is it that management has to fear that they can't even talk to the employees about an issue? Isn't that lunacy? I think it is. Why can't I talk to you if you are my boss? Why can't I talk to you about something I want to do? Why can't you say no? You are not forced to do everything I ask you to do. Why should management need special legislation to prohibit an employee from raising a question to his employer? I don't see the logic of that at all.

ASSEMBLYMAN PATERO: What brought this about was that the firemen and police did go into final and binding arbitration. We felt there has to be more discussion on this bill and that is the reason for this public hearing. We always had five members on the Board. That is the reason for this.

Any further questions?

MR. BEN-ASHER: Mr. Visotski, you mentioned in the course of your testimony before us here that you felt the legislation would increase the incidence of strikes.

MR. VISOTSKI: Yes, it would.

MR. BEN-ASHER: I take it then that you were basing your comments on the provisions governing scope of negotiations and "management rights" and not the concept of final offer arbitration because we have seen in other jurisdictions where final offer has taken effect that the incidence of strikes is, indeed, quite minimal.

MR. VISOTSKI: That may well be true. Many organizations may opt to go the route of arbitration. I don't think, however, that it has any real lasting effect. I think that neither side is happy in arbitration - neither side. I think, if you check with management, you will see that they are not too happy about the idea of having someone else make a decision for them. I know employee organizations are

not happy about that concept.

Now I suspect after a period of time, both sides will begin attacking this concept of compulsory arbitration in resolution of these problems because it is not going to satisfy either party. I don't think it is productive. I think in the long run it will be counterproductive because it is imposing a settlement in a dispute and neither party in the dispute is at all happy with the settlement. I think that just fosters resentment and that these things will constantly come to the surface. And, in time, I think it is going to be destructive. I think it is best to let people work out their problems.

You know we talk about strikes. But in the private sector - again, I go to history; I'm sorry, but I was a history teacher - they said the same things in the private sector: You are going to have an awful lot of strikes. Madness and anarchy are going to rule society and it is our end.

Initially it happens. You give someone an opportunity - a new right - and everyone goes out and tries it out. But soon you find that is the last step and that is the desperate measure. You don't look to that unless there is absolutely no other way out. You find relatively few strikes in the private sector where there are no restrictions. Why? Because both parties suffer. I have been through seven strikes. I am not happy about any of them. I didn't enjoy myself in any one of them. I had a lot of personal losses, financially, physically and mentally. There is no one in our organization who enjoys striking. And we do everything humanly possible to prevent it, to avoid it. We are no different from any other human being. People don't like it. But the law is what encourages it because management knows it can sit on its hands. It doesn't have to bargain. It can claim managerial prerogatives. And in certain areas in power within the government, management is going to get the favored treatment. The courts don't come down on management; they come down on the employees.

What I am telling you is that you are encouraging management to act even more rashly than they have acted in the past. I am going to tell you and I will predict when you pass this bill - and I guarantee it - that is what is going to happen. They are not going to bargain. They don't want to bargain now when PERC is saying every issue can be negotiated. And they won't bargain now when the agency that you created to regulate that has dictated, or at least set out the regulations, that, yes, these things are proper for discussions. They won't do it now. What do you think is going to happen when you stick this bill in there and say there are special managerial prerogatives, which are not listed in any way? They will take it and say, "everything is managerial prerogative."

ASSEMBLYMAN PATERO: First of all, what we are trying to do in regard to this bill is to try to prevent strikes.

MR. VISOTSKI: I know.

ASSEMBLYMAN PATERO: For one thing, management is always using excuses. They say they don't have managerial prerogatives. Sometimes they bring some weird cases and you say to yourself, is it right to go on strike for certain reasons? But there is more to it than that.

Also the members of the Legislature are very concerned about some of the penalties, as you mentioned, that are handed out to the employees for going on strike. The fines are outrageous as i s the sentencing of some of the employees, when we allow criminals to walk the streets and we send public employees to jail.

MR. VISOTSKI: That's right - for a year and a half.

ASSEMBLYMAN PATERO: During the summer vacation too.

MR. VISOTSKI: Or a nice Christmas present. They locked us all up during Christmastime so they wouldn't have to close the schools for a couple of days.

ASSEMBLYMAN PATERO: But the Legislature is trying to come up with something to get away from some of these hardships.

MR. VISOTSKI: Well, why not permit PERC to do its job? Why not let PERC regulate? You tie their hands. The Legislature doesn't pay attention to what is going on. PERC issues regulations and the courts say that the Legislature hasn't specifically said that they are allowed to do this or that they don't have this power. Why don't you give them the specific power? Why are you trying to cut them back? You are changing the language in there, for example, from PERC levelling a charge or being a charging party, to a complaint. Now what is that going to do to PERC? I think PERC is ineffective now. With what you are going to do, you might as well abolish it. With this bill, you are going to abolish PERC.

ASSEMBLYMAN PATERO: I think the experience has been that it is working in these other states that have it.

MR. VISOTSKI: Not here.

ASSEMBLYMAN PATERO: We haven't tried it here.

MR. VISOTSKI: We have PERC here.

ASSEMBLYMAN PATERO: I am talking about the final and binding arbitration.

MR. BEN-ASHER: The particular procedure to which, I believe, you are making reference was, I think, based on the experience with the NLRB where the NLRB is considered to be a more neutral agency because it doesn't, itself, bring charges, but just issues complaints by charging parties. That was the idea.

MR. VISOTSKI: But it has the authority to set rules and regulations and it has the authority to enforce its regulations. PERC makes a ruling and everyone ignores it. They throw it out.

MR. BEN-ASHER: They can go to court.

MR. VISOTSKI: All right. You argue it in court and the court says, gee, the law is awfully ambiguous - I don't think the Legislature really said that PERC has the authority to do that. So who has been slammed by PERC? The unfair labor practices charges - these things are going on all the time. They hold hearings, but nothing is ever done as a result.

MR. BEN-ASHER: Haven't most of PERC's decisions been upheld by the courts?

MR. VISOTSKI: Well, many of them have, but recently there has been kind of a retrenchment and the decisions of PERC have been overturned by the courts. I can't cite the cases, but I know I had three or four of them, about which I was very concerned, in which the court said that PERC had no authority to do that, they don't have the power to do that, in settling disputes between employees and employers. You know, this is the prime regulatory agency of the State and the courts are saying that the law is a little ambiguous with respect to the powers that you have delegated to PERC. I think you ought to address yourself to that. If you have no confidence in PERC, then abolish the organization. Why have something if you don't want it to do its job? Why expend public moneys for that?

If you do have it, why don't you say, "this is what PERC can do." You say it specifically, and then let them loose. Let them go out and do the job.

Why not rely on the experts to determine whether the issue had merit and whether something is legitimately a managerial prerogative or a right of an employee?

ASSEMBLYMAN PATERO: In this bill, Section 6, pages 8 to 10, does clarify PERC's subpoena power in unfair practice and scope of negotiations proceedings, distinguishing enforcement procedures applicable to unfair practice subpoenas from other Commission subpoenas.

MR. VISOTSKI: How about unfair labor practices?

ASSEMBLYMAN PATERO: It includes everything - unfair practice subpoenas ---

MR. VISOTSKI: You are aware of the fact, of course, that PERC has said everything is negotiable but pensions. Why is there included in that bill some kind of a reference to a special category of managerial prerogatives? Who is going to determine what those managerial prerogatives are? PERC has already ruled on that issue, haven't they? What you are saying in this bill is that PERC is wrong and we are ignoring them.

It seems to me from the current law and the PERC regulations, the issues have been spelled out very clearly. Everything is negotiable except pensions. Why then is there a clarification necessary if only to bring back some managerial prerogatives that don't exist now?

ASSEMBLYMAN PATERO: Okay, Joe. That's all we have. Thank you for coming here and testifying.

Is there anyone else in the audience who wishes to speak? Will you state your name and the organization you represent.

P A U L F. M c C A R T H Y: Paul McCarthy, New Jersey State Federation of Teachers, AFL-CIO.

This morning we would like to limit our comments because of the time. But I think essentially these matters have to be brought before you people before any decision or any new laws are put forth.

You have certainly limited the scope of our negotiations. And anyone in this room who does negotiate realizes how you are hampering us. Right away, we are limited at a table. You, the Legislature, have limited us on moneys already by putting on caps. I don't know where the reasonableness is when you talk about 5 percent, and the cost of living has gone up almost 6. What is allowed in the public sector compared to private industry - there is no equation. Over the years, in collective bargaining, gentlemen, you have hampered us. You have limited us. The very vehicle that you put forth to give equality to all has been destroyed - absolutely destroyed.

You have to be at the bargaining table. It is easy for you gentlemen to sit in your seats and think of these optimistic concepts which sound euphonious, but, in practice, they are the most devastating factors we have ever come across - yet you promulgated them. Because the firemen and policemen have chosen to take this course, right away, you want to implement it to every other phase of the public sector. This is a most drastic mistake you are making because it will not function. The very vehicle on which you built it has not been equated to justice.

I think what Joe has made reference to is very appropriate to bring before you.

The good faith in bargaining, you have put out completely because you haven't put a vehicle in there to insure it. As a matter of fact, you have put n o th i n g in there that would encourage it. There is nothing in that bill that

insures good faith bargaining. There are no limits other than the words "good faith bargaining." What have you put in to enforce it? There is nothing.

The grievance procedure which was probably the best control for the policing action for us to take to fulfill a contract is now again being annihilated. This grievance procedure was the only equity that any enforcing agency or any union or any association could have in order to fulfill the contract. In your language the grievance procedure, in essence, no longer exists.

The injunction aspect is likened to a kangaroo court. One is guilty before his case is even heard. I think, gentlemen, every citizen in the United States at a given time has the right to withhold his services. I think we all feel we have that right. And yet, through this procedure, where is that right? Have you not negated it? It is not active.

When a person comes forth with his right and his belief and his firm conviction about the things that are reasonably his, he should be given some consideration. No one is addressing himself to that point.

With all the limitations constantly being placed on collective bargaining since its inception, it is no longer the vehicle that it was supposed to be when it was created. It just doesn't operate. Yet we are looking for a panacea and suggesting that if we have a third party coming in, he can settle for both sides. It is just like an argument at home; it is never settled by a third party.

I think what you are trying to do is take the court concept and put it into negotiations. A court concept is not negotiations. And I think what we are really doing, Mr. Chairman, is destroying the very fibre on which collective bargaining was built.

The consideration of working conditions now has been limited because, all of a sudden, what has been open to all negotiable factors, we are now limiting. And this was what negotiation was supposed to be about, so both sides could come forth. Now what you are putting in and addressing yourself to are all the limitations, by which a negotiating group is now limited. That doesn't equate itself with justice. Because limits are put in doesn't mean you are going to resolve it. It is better to face all these issues, then they will be resolved. But to put them initially off the table doesn't bring out the harmony which this type of a board should enjoy. If anything, it is going to bring out the hostility.

These are the factors I think we have to honestly look at. We are not here as a self-interest group, per se; what we are really here for is the same thing I think you are looking for, the enactment of a law which will serve everybody. I think if you start off on the premise that because it worked for the firemen and police - and this type of vehicle was their choice - that is fine. We have no argument with it. But when you come to us and say because it functions here it must function there, it is a poor syllogism. It is invalid. It is not functionary.

I think in the final analysis, I must repeat what Joe has brought forth. If anything, Mr. Patero, what is going to happen is that we are going to incite more strikes because everyone has to vent their feelings. Where there are limitations on a person, the psychological fact is if one is not able to vent his feelings, but has to absorb them, they will only come out later. In our American society, I think there are individual rights which we are not addressing ourselves to here that people have the right to negotiate. And it doesn't mean that because we have

seen a strike that it doesn't function. We have automobiles that run along the roads every day and we have accidents. Yet we haven't taken all the automobiles off the road, have we? The reason is that the basic principle of that automobile as a vehicle of transportation is still functionary. The concept is there. Because somebody has misused it, doesn't mean that that is not a functional, operative mechanism which services people.

This collective bargaining process which we had -- yes,it had its limitations. But what you are advocating is like the patient who goes to the hospital and the doctors says, "The operation was a success, but the patient died." That is exactly what this is going to be in the final analysis. You are going to kill the initiative of both parties to come forth and truly negotiate a contract which is lasting. And the primary thing in any contract is the grievance procedure because it works for both sides.

Once you take out these vital parts, then it is not going to function as a whole and it is not going to be the final solution. I agree with you, Mr. Patero. I think your concept of looking for a resolution to strikes is correct. But I think the methodology being applied is going to be a negative factor and not a positive factor. I think if you talk to us or NJEA - and many of these fellows in the room negotiate contracts like we do - we will tell you of the hostility shown at these tables because all of a sudden everybody is yelling, "managerial rights." Good God, what we have created as the servant has now become subservient. If we continue this process and continue this analogy, then finally we will not be your servants, but simply subservient to the public. I don't think you want that, Mr. Patero, nor do I think the people on your Committee want that.

There must be justice. We all agree to that. I think we are all trying to achieve that concept. But, Mr. Patero, if you take away collective bargaining, per se, in the manner in which it is utilized today, there is no substitute that I have heard put forth in your bill or in any legislation throughout the country. Today you people have brought forth concepts of other states. We travel the country from time to time in our efforts for the organization. Some of the states you have made reference to as having the solution to this problem, I can tell you have not. Your information is not accurate. I think what we have to do is simply give PERC the right to function as PERC. That is where the problem is. If they can really be an enforcing agency, a true enforcing agency, to govern both sides in a harmonious manner, then I think most of our problems will be alleviated. Human nature being what it is, there is nothing that you can bring forth or NJEA or anybody else in this room that is going to finally resolve all the problems. We would be kidding ourselves. Human nature being what it is, there will always be some difference of opinion, even after a contract. But,good God, it will be better than what is being perpetrated with this bill. Thank you very much.

ASSEMBLYMAN PATERO: The reason we are holding this hearing is because of the seriousness of this bill. The Committee would like to get as much input on this as possible and that is what we have gotten today from all you people. I don't have any questions. Perhaps Mr. Ben-Asher has.

MR. BEN-ASHER: Mr. McCarthy, you indicated early in your testimony your dissatisfaction with the present mechanisms and, presumably, the law, dealing with insuring good faith bargaining.

MR. MC CARTHY: I am saying this: I think maybe you are taking it out of

context. What I am saying basically is that no one can insure good faith bargaining. That is inherent in the parties who come to the table. When you use the term "good faith bargaining," that is an assumption - that is not a fact. I just want to state that because when you go into a room to negotiate, my friend, the only way there is harmony or good faith is if both sides show it. I cannot say that that is the rule. It might be more the exception than the rule.

MR. BEN-ASHER: Do you think there is anything that the State can do at this time to make it easier to ascertain whether one party or the other is, in fact, engaged in good faith bargaining,by statute?

MR. MC CARTHY: Again, we would have to go back to that premise - and I know it sounds redundant because of its repetition. Gentlemen, you have referred to NLRB prior to this and we talked about how it functioned. But, remember, there is no final end.

Prior to coming to my present position, I worked for a union in heavy construction. When we went before the NLRB and the other party did not comply in good faith, we had another weapon. We could strike. Remember that. That is a very important thing because the man who is the employee has very, very few vehicles he can use to come up against an economic giant. What other thing does he have? The final decision he has to make is whether the injustice is so great that he can't live with it and he must strike.

I'll tell you something. Strikes are the worst for us because we go out without money, whether it be in the private or public sector. Everybody says people go out for money. But I can cite you the situation that occurred in Mercer County College. Those girls walked out for a condition, not for money. Everybody equates strike with money.

You know something, if you look at the history in the country for the last seven years, you will find over 52 percent of the strikes were not economic. That is fact. They were not economic, but it was for a condition which they felt they had an inherent right to.

So I think today when we look at all the parameters of strikes, we seem to always focus our attention on the monetary remuneration which someone might be hoping to attain. But, gentlemen, it is just the opposite. The indifference exhibited toward the individual that you are representing is where the animosity comes. If you want to talk about good bargaining, my friend, that is where it is instigated.

Oh, yes, everybody is interested in money. But I don't know of any teacher in the State of New Jersey that doesn't understand the condition of the board for which they work. I don't think the demands have been outlandish as they say in the newspapers. My goodness, you put caps on us. How far can we go? Yet how can you look at yourselves in all honesty --- I am glad Mr. Burstein said earlier that he thought they had better address themselves to this. In justice, you owe it to that servant who serves you every day, the public servant who everybody forgets about. Yet you look at your schools, you look at your government. What makes them function? Take these people out and take away their dedication, and, let me tell you, we have a problem. I don't mean to be philosophical, but I think it is important that we really know what we are dealing with.

A most amazing fact - and I think we can all laugh about it - is that 99.7 percent of public employees never fail to pay their taxes. That is amazing,

isn't it. The most loyal people to the country, according to an actual poll, came from those employed in the public sector. I think there is dedication required to work for the public sector. The fact is you people give up your time for the public. A lot of people think we do it for our ego. I disagree. Ego might be involved to some degree, but I think it is dedication. We represent those people who "give a damn" and those are the people, I think, who are going to be most affected by it, not the school boards. These people come in for three or four years. It is a political stepping stone for many - and I don't blame them if that is the vehicle they want to use. Here we are giving all the credence to those who serve us so shortly and we turn away from the fellow in the public sector who is going to work for twenty-five or thirty-five years in his profession. And we push him aside and we say, "managerial rights." For whom?

So the school board can come before a town and say, "We saved you a lot of money." At whose expense is this always done? I can think of a college where they just spent $176,000 for trees. But they told us about the caps and they could only give 5 percent to people who came in after hours so they could register more students in the college. These are the kinds of problems that are never brought forth, and we are grateful today that you have given us the opportunity to present some of them. We wish you could find it in your hearts to come out, whether it be with NJEA or with us, walk through their schools, talk to their teachers, and find out the dedication. Everybody thinks that you have to equate dedication with money. If a person isn't making much money, he is dedicated. That is garbage. We are looking for professionalism and you have professionalism.

The last thing I want to leave you with, and I didn't mean to be this loquacious, is the fact that the State of New Jersey - and you can check this with Commissioner Clark in the Labor Department because this was a subject we addressed two weeks ago - is the only state in the Union where any industry coming in, we have been able to supply with personnel - the only state in the Union. There has never been a company who has wanted to come into New Jersey that we didn't have people who could perform the work in that company. Then people tell me we have lousey teachers. Do we? Do we - when any governor can stand up and say there isn't an industry that can come into the State of New Jersey that cannot be implemented with the personnel needed? That's amazing, but it is factual.

So I don't think we have to put our heads down and say, we the poor little teachers, because we are not. I think our past practice, our fairness at the table, and our function within the confines of the schools have made us something to be proud of. And I think we are all products of what I am talking about.

I know we are only one interest group and I know you must take into consideration everybody. But, please do not have deaf ears to what we are putting forth. I think NJEA's approach was perfect. They gave you the salient factors and we are backing it up with the personal factors. I think if you put them both together, gentlemen, you will have a picture of what type of legislation to put through. Please, do not put in anything that would hamper the very man who serves you. Think about his position and put yourself in his place before you make any decision.

The only other recommendation we would make - and we do not mean to be presumptuous when we make this plea - is, please, allow PERC to serve you in the manner in which they were created to perform. Don't cut off the factors which made them function so well. It is when we started limiting them, that we are feeling

the effects here. Please give us that much. I think we are entitled to it. I think our past performance at tables proves it. I think the number of strikes is less than 2 percent in a year. Let me tell you it is the last thing either they want to do or we want to do. Nobody begs teachers to go out. But there comes a point when our own human dignity is at stake if we don't walk out and stand up as men and women. If we didn't have this self-esteem, I don't think we would have the stature to go in and teach a class of kids what courage is, what honesty is, what faithfulness and what self-dignity stands for.

Thank you very much.

ASSEMBLYMAN PATERO: Thank you very much.

Is there anyone else here who wishes to speak? If not, we thought we would get out by twelve o'clock and it is that time now. We thank everyone for coming here today.

(Hearing concluded.)

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STATEMENT by Judith M. Owens, President, New Jersey Education Association before the Assembly Committee on Labor, regarding Assembly Bill No. 1448, June 16, 1977.

Mr. Chairman and members of the Committee. Thank you for giving me the opportunity to speak today.

I am Judith M. Owens, President of the New Jersey Education Association which represents more than 100,000 active, associate and retired school employees in New Jersey. NJEA affiliates are the sole and exclusive bargaining representatives for teachers in all but seven of the state's 590 school districts. In these districts, NJEA affiliates represent over 1100 bargaining units of teachers and other school employees.

With me today are John R. Pietrowicz, NJEA UniServ Coordinator of Field Services and James Morford, NJEA Associate Director of Government Relations.

On March 26, 1976, NJEA testified before the then Assembly Committee on Labor, Industry and Professions, regarding Assembly Bill No. 1448. Since the Committee reorganization into the Committee on Labor has included the appointment of new members, we are taking the opportunity to retestify on NJEA's concerns with respect to the recommended changes to Chapter 123 as suggested by the Public Employer-Employee Relations Study Commission in A-1448.

The NJEA strongly opposes the enactment of the proposed legislation primarily for the following reasons:

1. A-1448 would add a specific definition of the term "supervisor" which expands the definition already expressed in Chapter 123 (p. 3, lines 59-61). By adding the term "evaluate" the scope of the supervisory definition would be enlarged and would encourage school boards to bring petitions before the Public Employment Relations Commission (PERC) in efforts to change the composition of present bargaining units. The effect would be to deny to certain supervisory employees contractual benefits and security provisions they worked hard to gain during the past nine years.

This proposal would serve only to provide employers with another opportunity to disrupt bargaining, cause confusion, and weaken employees' bargaining rights.

2. The bill emasculates what is commonly referred to as the freeze clause (p.7, lines 55-59). Chapter 123 now provides, "Proposed new rules or modifications of existing rules governing working conditions shall be negotiated with the majority representative before they are established." This clause has worked well and is a proper safeguard as stated. By limiting the provision to conditions covered by the negotiated contract, employees' rights would be weakened and the unilateral authority of school boards strengthened.

In effect, this change would violate basic standards of good-faith bargaining. With the suggested changes, management could unilaterally change working conditions. School boards could justify such an action by arguing that this right was granted through legislative intent, a principle upon which courts rely heavily in making judicial decisions. Public employees would then be forced to carry the burden of attempting to correct such injustices through unfair labor practice proceedings. In effect, the proposal would create disputes,

not resolve them. It is difficult to understand why this bill suggests any revision of the freeze clause. The clause has not proven burdensome to school boards. It has not enfringed upon so-called management prerogatives. In fact, there is no evidence, either before PERC or in the Study Commission's report, which demands consideration of such a drastic change in this essential provision of employer-employee relations.

3. The bill further endangers public employee rights by adding what may be termed a management rights provision (p. 7, lines 66-69). This proposal declares that employers would not be required to negotiate matters of intrinsic managerial policy.

No compelling reason exists to add this clause. By its new authority in Chapter 123 PERC has already made and will continue to make scope decisions regarding mandatory, permissive, and illegal subjects of negotiation. To include this clause would only cloud and confuse the negotiability issue.

The statement of disagreement concerning the PERC Study Commission's report submitted by three Commission members expresses NJEA's position on this issue. It reads in part, "The parties have had only a few months to work under this law, and no significant problems have been reported. We strongly believe that the commission should be given a reasonable period of time to determine the dimensions of the scope of negotiations under the existing legislation."

4. The proposed changes in Section 7b would limit the grievance definition to the interpretation or application of a negotiated contract (p. 7, lines 71-77). This limitation would eliminate the right to appeal the violation of policies and administrative decisions affecting employees, a benefit enjoyed by them since Chapter 303 was enacted in 1968 and reinforced by the Legislature in Chapter 123. Adoption of this provision would clearly cause unnecessary confusion. Grievance definition was a major area of dispute

in the early post-Chapter 303 era. This matter was resolved through negotiation and by mutual agreement. As a result, most negotiated contracts now contain the definition as stated in law. Any modification of that clause could be interpreted as permitting -- and perhaps encouraging -- employers to make adverse administrative decisions affecting terms and conditions of employment. In such instances, employee organizations would be left powerless to utilize a contract's grievance machinery. Also, such a change would require lengthy and costly litigation to resolve grievances. The legislative intent of Chapter 123 was to resolve disputes expeditiously and fairly, not to create barriers which inhibit resolution of differences.

Furthermore, the suggested change which provides for contractual provisions to be excluded from the arbitration process by mutual agreement does little to promote meaningful collective bargaining. Such a provision could lead to unnecessary impasse situations because management would be provided with an opportunity to establish conditions prior to and during negotiations. This concept was introduced by many board negotiators after the passage of Chapter 303 in 1968. Most school boards abandoned this posture by 1971 because it was not conducive to the bargaining process.

5. An outstanding deficiency in the bill is the lack of due process court procedures for public employees in strike situations. Without such a provision school boards will continue to secure instant injunctions, thereby gaining additional leverage to pressure employees into concessions. The instant injuction provides the opportunity for a school board to circumvent collective bargaining and to utilize a judicial excuse to avoid real issues.

Injunctions continue to be issued automatically even though a specific strike does not endanger the public health or safety. The failure of this

bill to provide for essential due process and day-in-court procedures only encourages management to abuse its inherent power. Unless such procedures are enacted into law, school boards will continue to utilize the courts and the injunctive process as weapons to punish teacher leaders rather than negotiate with them and to attempt to force contract settlements upon teacher associations.

NJEA is pleased to note that three PERC Study Commission members expressed their concern in the Commission's report about the issuance of automatic injunctions. In speaking to this issue, the three Commission members stated,

"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."

Also, public employees in New Jersey are gratified that Assemblyman Jackman introduced Assembly Bill No. 402 which would give public employees the minimal elements of due process by granting a right to withhold services under certain circumstances. That bill has also been referred to this Committee and we respectfully urge you to support its concepts which would establish reasonable and fair balance in the negotiation process.

6. The terminal procedure in A-1448 which would presumably provide for finality in negotiations undermines the collective bargaining process (pp. 11-14). The recommended final step for imposed impasse resolution -- i.e., last offer arbitration, or any form of impasse arbitration -- minimizes the effectiveness of mediation and of fact-finding. This is so because the parties tend to posture and to refrain from making concessions in order to effect the best possible decision from an eventual arbitrator.

A new dimension has been added to our experience since NJEA last testified on A-1448 last year. The NJEA Working Conditions Committee conducted a year long study of interest arbitration. The Committee dug into the subject for a year and then presented specific recommendations to NJEA's policy-making Delegate Assembly. The Delegate Assembly adopted those recommendations.

In investigating the terminology of final offer arbitration in the labor field, the Committee discovered that in no state other than New Jersey has the term fair been added to the descriptive terminology of this process. In other words, only in New Jersey has it become known as fair and final offer arbitration rather than final offer arbitration.

One labor expert who appeared before our Committee pointed out that there is absolutely nothing fair about the final offer procedure. To use this reference she said was to bedevil those considering it. Frankly, such outspoken testimony concerning the unfairness of a system is the fundamental basis for our resistance t it. NJEA insists forthrightly on fair play for its members.

Based on the Working Conditions Committee report, the NJEA reached additional conclusions which I would like to share with you today:

1. The objective of any negotiating process should be to stimulate bargaining. Negotiated settlements are better than imposed settlements. Although proponents of final offer arbitration suggest that the process could force bargaining, evidence reviewed by the Committee was not conclusive. Iowa's experience with final offer arbitration for teachers is too new to provide any data with respect to the effect of the process. Virtually all authorities agree that compulsory traditional arbitration chills free bargaining.

2. Arbitration of all types is conservative by nature. It is very difficult if not impossible to get an arbitrator to break new ground to resolve a problem.
3. Authorities are in general agreement concerning the lack of qualified arbitrators for compulsory interest arbitration.
4. The arbitration process is expensive.
5. Experience shows that arbitration does not necessarily prevent strikes.
6. Experience also shows that arbitration does not necessarily settle impasses with finality. Evidence from other states indicates that employers have attempted to overturn arbitrators awards in the courts when employers lost the award.

Last offer arbitration does little to compel bargaining or to force compromise. Indeed, it provides the parties with opportunities to procrastinate, to avoid the real issues, and to blunt compromise. In addition, it encourages the parties to expend their energies preparing presentations for an arbitrator, rather than concentrating on free and open collective bargaining aimed at reaching a voluntary settlement.

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

In order to avoid any misunderstanding regarding NJEA's position, we should emphasize that the Association does not oppose interest arbitration as a method for resolving impasses. Any form of arbitration which is mutually acceptable to the parties can and should be utilized. What NJEA vigorously opposes, however, is the imposition of any type of interest arbitration which purports to provide finality to the bargaining process. In any case, NJEA believes that true collective bargaining cannot occur without at least the limited right to strike.

7. The provision in A-1448 which would make PERC an all-public body fails to provide for meaningful input from employer and employee groups (p. 5, lines 16-44). Although the proposed PERC body would be required to meet with and seek the advice of an eight-member employer-employee advisory council, the council would not be guaranteed input before PERC decisions were made. The present tripartite arrangement provides effective representation for all groups -- employers, employees and the public.

The fact is that the present seven-member Commission has operated efficiently with few complaints from either employees or employers. Since the enactment of Chapter 123, the Commission has dealt creditably with matters of scope of bargaining and unfair labor practices. Yet, with little rationale and in the face of obvious success, this bill proposes a drastic change in the composition of the Commission.

The success of the present composition must be credited, at least in part, to the guaranteed input from the employer and employee representatives as well as the general public members. The present Commission provides balance through the free exchange of ideas and concerns of representative groups. Any suggestion at this time to alter its successful operation makes no sense to those close to public employment bargaining in New Jersey.

In summary, NJEA believes that A-1448 does little to promote equality at the bargaining table or to improve negotiation relationships between parties. If anything, the addition of certain amendments, the deletion of critical provisions, and the omission of needed improvements would weaken further an employee organization's already unequal bargaining position.

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JUN 13 1977

# M E M O R A N D U M

TO: Daniel L. Ben-Asher

FROM: Jeffrey B. Tener
Chairman

June 9, 1977

RE: Public Hearing on Assembly Bill No. 1448

We have previously discussed the unfortunate conflicts between public hearings of the Public Employment Relations Commission on proposed rules changes and of the Assembly Labor Committee regarding Assembly Bill No. 1448.

Although my attendance is required at the Commission's public hearing, I request that you extend to the Committee my regrets at being unable to attend the Labor Committee's hearing. Additionally, I would commend to the Committee a statement that I previously submitted to that Committee.

I have arranged for several representatives of this agency to attend that session and would like to express to you my desire to cooperate with the Committee in any way by providing information, answering any questions, or doing anything else that I can.

JBT:hkn