Volume II

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

before

SENATE AND ASSEMBLY COMMITTEES ON STATE GOVERNMENT

on

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

Held:
June 18, 1970
State House
Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Senator Willard B. Knowlton (Chairman)
Assemblyman Walter L. Smith, Jr.
Assemblyman Frank R. Conwell

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I N D E X

SENATOR WILLARD B. KNOWLTON: This hearing will please come to order.

The first witness this morning will be Mr. William J. Chamberlain, President of the New Jersey Civil Service Association.

Mr. Chamberlain, for the record, will you please state your full name and your affiliation

W I L L I A M J. C H A M B E R L A I N: I am William J. Chamberlain, President of the New Jersey Civil Service Association.

I would like to thank the Committee for the opportunity to once again speak on behalf of the Association concerning our position on Chapter 303. I must say that our position has not changed very much since I addressed the Committee on January 2, 1969, and again, the PERC Commission on March 12, 1969. And much of that which I submitted at that time is still appropriate. However, I have not attempted to repeat all of that material in this report today.

I would like to make two observations, however, before I start. Yesterday, later in the afternoon, a question was raised concerning money. I am certain that this is the basic problem, not only for PERC but for all of the governmental agencies, as well as the employees. And if we could resolve the problem of money, I think we probably cound dispense with amending Chapter 303 and conducting these hearings.

The second point that I wanted to make here. I have the feeling that, despite a large number of spokesmen appearing at this hearing, the bulk of the statements being made do not represent the feelings of employees. Most employees do not know what is happening and many are not concerned. Now I say this from experience. I have literally talked to hundreds of employees during the course of the past year and I know from experience that the employees really have little concern about Chapter 303. Those who have had concern lost interest in it when they

attempt to read it and understand it. And I can understand why they lost interest because I have a different interpretation of Chapter 303, different from those interpretations of many other persons.

I have attended a number of courses at Rutgers, I have participated in discussions, and there is no doubt in my mind that people read into this thing whatever they choose.

I believe that most of the statements presented in this hearing are prescriptions developed by vested interests.

Now I would like to state here that I believe that I have a dual interest, that of the New Jersey Civil Service Association and also that of an employee. I don't think that there will be many speakers here who will be able to state that they really have the interest of the employee in the sense that they are employees.

Now, one of the points that I would like to make concerning this is the fact that this is a time when there is much discussion about employees having an opportunity to participate in the decisions affecting him. I believe that considerable weight should be given to my statement. I believe really, and I don't know to what degree but I do believe that, speaking as an employee representing many employees, we should be given perhaps some additional time to discuss some of the points, or an opportunity to come back and discuss, perhaps, recommendations that may come out of this hearing before they proceed to the point where action is to be taken either aye or nay. At that point in time it is almost too late to really be constructive.

I state here that this whole matter of PERC really revolves around this philosophy of giving the employee an opportunity to participate in the decision-making process. I am sure everyone will say, well, you had a chance to participate by attending the public hearing; but I'm not sure that one appearance, one

brief statement, very readily fills the bill for discussion and participation in the decision-making process.

Now I would like to make a number of recommendations but I would like to try to clarify an important point, in that everything that I am talking about and the positions that I take are related only to employers and employees functioning under the authority of Title 11, the Civil Service Law. This is important.

Our basic premise is that there are three types of public employees in New Jersey, all of whom need not be treated under one omnibus type law found here in Chapter 303. There are teachers and other employees of boards of education who are functioning under Title 18; Civil Service employees functioning under the authority of Title 11; and all other public employees. And in this last group, there are many who are functioning under special provisions in law. For example, health officers, under Title 26, are brought to their maximum salary at the end of three years and granted permanent tenure after five years.

There are special provisions in law for tax assessors, as well as township clerks, and many others.

I tried to be brief and I tried to put this together in some sequence to make it a little more understandable. The next thing I have is a series of problems, as we Civil Service employees have seen them during the course of the past year. And the number one problem that I have not been able to fathom is the fact that Chapter 303 states that nothing in this act shall annul or modify any statute or statutes of this State. Still there seems to be a wide misunderstanding of the items that might be negotiable under the provisions of Chapter 303.

Under Title 11, Chapter 5, the Civil Service Commission is specifically responsible for the adoption and maintenance of classification and compensation plans for the State service. Title 11, Chapter 24 states that "The Commission shall prepare classifications and suggest

standards of salaries or wages to be paid to officers and employees in the classified service of the several counties, municipalities and school districts operating under this subtitle." Title 11, Chapter 5, further places employer-employee relations as a responsibility of the Civil Service Commission. This is the number one problem for Civil Service Employees.

A second problem, and this relates back to the hearing that was held by PERC when they were discussing the proposed guidelines. Mr. Parsonnet, then a member of the Commission, challenged some of my statements and asked me specifically if I did not think that Civil Service employees were adequately protected in Chapter 303 by this PERC provision that it not annul or modify any statutes, as well as the provision that referred to past practice. I indicated to him at that time that I was not satisfied that these statements were enough, and experience during the past year certainly has proven that they were not adequate because everyone appears to ignore these statements in the law. And I don't understand why the attorneys choose to ignore the statements in the law. They tell me that they are almost not worth the ink that it took to print them, and I don't understand why.

But related to Past Practice, as I say here, this was a grave error to believe that anything referring to past practice would hold water. Civil Service employees have been represented in varying degrees of effectiveness for over fifty years, at all levels of employment, state, county and municipal. Contracts are non-existent or have never been signed. We have negotiated conditions of employment. Compensation and fringe benefits have been negotiated year after year throughout the State culminating in the State appropriation for salaries as well as local ordinances establishing compensation plans. A hearing officer told me that this was not acceptable evidence in any hearing. The only thing that would be acceptable

evidence would be a written contract.

Now, if any of you are Civil Service employees and if you have participated in our negotiations, this must come as a shock to you, as it did to me. And this is one of the reasons why I believe that Civil Service employees need to be separated from any legislation that is to be applied to all other employees. I believe these are some of the problems.

Another problem that we have spent much money on during the past year - PERC has run out of money - our Association has spent probably in the neighborhood of $15,000 over the last year, and I would say that it was money down the drain, a complete waste of money. And if we have spent this kind of money, municipalities throughout the State have also had added expenses. And I am again only dealing with Civil Service employees. I'm only talking about municipalities who function under Title 11, who should have all of the procedures, the law, rules and regulations established and should not be involved in this kind of added expense.

But, nevertheless, an additional problem that we have seen is the section in Chapter 303 relating to the limitations as to membership in employee organizations. Employees at all levels and in all titles have been members of the Civil Service Association and have had the opportunity to be represented by this Association. Grievances have been processed through the various departments and many have resulted in hearings before the Civil Service Commission. Many hearings have pitted members of the Association on opposite sides of the issues with no real adverse effect on either party. The rulings handed down by the Commission have been based upon the law, rules and regulations which are comprehensive and cover nearly all aspects of conditions of employment.

I mention this because, in some of the hearings in which we have participated, considerable time has been taken

up discussing this problem as to who was eligible to participate in the Association. We have actually negotiated one contract in Hunterdon County representing all employees of the County, only to have PERC or, I guess, the Governor's Office challenge the contract on the basis of a certain group of employees should not have been members of the representative group or of the unit.

Another problem is that of the term Management. I feel that practically everyone employed under Civil Service is management, managing the affairs of government. The degree to which they manage or the level at which they manage may be challenged but, for the most part, they are all managers.

The simplest definition of management says that when you have two people working together and one directs the other you have a manager. However, if there is a need to define management for Civil Service employees functioning under this type of legislation, it would appear to be most reasonable to include as management only elected and appointed employees.

The fifth problem that I would like to cite, and I'm not sure that I have an answer to it but I believe it's related to any type of legislation, such as Chapter 303, is: Civil Service is adopted at the local level, that is at the county and municipal level, by referendum, by a vote of the citizens. I'm not certain of the appropriateness of taking away from the citizens their choice to have a merit system and to have their government operate under Title 11 by an act of the Legislature. And I say, take away Civil Service, because, to my mind, Civil Service, a merit system, is not compatible with a system based upon contracts for employment.

The general feeling of personnel officers throughout the country, and Civil Service Commissioners, as I determined at a conference in Detroit, last November, was that civil service commissions were on the downward road,

that is, with the growth of contracted negotiations civil service commissions would be left with only two functions, these functions to be recruitment and examination. And this was the feeling. However, related to this, I ought to make one more point.

I heard yesterday reference to similar labor-management legislation in Michigan, California, Hawaii, and other states. It's interesting to note that AFSCME has proposed federal legislation -

SENATOR KNOWLTON: What was that name?

MR. CHAMBERLAIN: AFSCME - American Federation of State, County and Municipal Employees. They are affiliated with the AFL-CIO. -- has proposed federal legislation because they feel that there are only ten states in the country that have labor-management acts or bills or laws that are anywhere near adequate.

I stated at one of the earlier hearings that most of the acts that have been passed by state legislatures have occurred within the last two years. Many of them are, I would guess, experiments or stop-gap legislation. Connecticut does not apply to state employees. Wisconsin, the first to pass this type of legislation, limits in the act the items that may be negotiated. But, more than that, and this is where I feel that enough attention hasn't been given, - all of these states, although having merit systems, have questionable types of merit systems, have variations from what we have in New Jersey. And I think that any consideration that's given to a labor-management bill in another state must also be studied as it relates to the Civil Service Law in that state, the experience and the length of time that that particular state has functioned under a merit system.

Now, let me get back to the paper here. I get lost. I say here that employment under a merit system imposes upon the employer and the employee responsibilities not found in private employment. It is, therefore,

incumbent that actions taken to deal with problems arising under negotiations be related to Civil Service Law and not necessarily related to decisions rendered under the National Labor Relations Act.

Now keep in mind, everything that I am saying relates to Civil Service employees. I don't presume - I have enough trouble relating to Civil Service Law without trying to consider or make recommendations concerning teachers or any other public employee in the State.

Now, in order to resolve the problems cited above for Civil Service employees, we recommend that the following steps be taken:

1. That the provisions of Chapter 5, Title 11 be recognized and that all Civil Service employees be exempt from the provisions of Chapter 303.

Now, we also recognize that there are some good features in Chapter 303 that we do not want to lose. Therefore, we would like to have established in the Department of Civil Service an Office of Negotiations - or call it whatever you will, we don't care what you call it - with the authority to establish procedures for conducting negotiations at all levels of government, with the power to invoke sanctions against the employer and/or the employee representative failing to comply with procedures so established.

Next, that all classified employees in the State Service be determined to be a unit for negotiating purposes.

I'm not sure that I mentioned unit determination as being one of the major problems, but unit determination is one of the major problems.

For Civil Service employees, the classified service is a logical and realistic unit and we don't believe there is any need to fragment it.

Also, that the classified service in each county or municipality be determined to be the unit for negotiating purposes for each county or municipality.

Further, organizations representing civil service employees shall admit to membership none but civil service employees.

The reason for this, we don't believe that employees who are not functioning under Title 11 have the interest, have the concern, have the desire, to maintain the merit system and, therefore, if they were members of such an organization they would be in a position to weaken it.

We state also, recognizing here past practice, that each municipality may establish separate units for negotiating purposes for their police and firemen.

Now, I made a statement earlier concerning a definition for management, and this has a reference to that. No employee in the classified service should be placed in the position of representing the employer in any matter of negotiations.

Now, I think this is logical. If the classified service is to be the unit, it would be difficult for a person in the classified service to be representing the employer.

Lastly, and again, in order to give employees a little stronger voice in the decision-making process, we suggest that there be established an advisory council to the Civil Service Commission, consisting of employees in the classified service, three of whom shall be state employees, two county employees and two municipal employees.

Now, it seems incomplete to stop there. So, I added another sentence and I suggested that one of the primary concerns of this advisory council would be to direct its attention to preventing conflicts between negotiated issues and Civil Service laws, rules and regulations.

I have completed the paper that I have here but I think I had better add a further statement that, although we suggest that Civil Service employees be taken out from under Chapter 303 and be placed under Civil Service law, and

a unit having power to establish negotiations, and although I have stated that Civil Service is basically incompatible with a contracted type of employment, there are areas in the Civil Service rules and regulations that establish only minimums for the guidance of county and municipal employees, as well as for the guidance of the Governor and the Legislature, I believe. For example, vacation schedules established by Title 11 are minimal schedules. This type of fringe benefit or condition of employment might be a reasonable kind of issue to negotiate with a public employer at the county or municipal level.

I haven't screened all of the rules and regulations to find out what other things are established as minimal guidelines but, I suppose, there are enough that we could participate in contract negotiations.

At the municipal level, the Civil Service Commission is charged with establishing standards, I believe. This is the area that we have participated in for years in many municipalities. However, there are a number of municipalities of the State who unilaterally decide what the compensation plan shall be and discuss it with no one. These are the areas where Civil Service employees could benefit if there was a requirement for the municipalities to negotiate with the employee representative. So, although I say completely incompatible, there are some areas and it is very difficult to spell out completely those areas. But this, again, is additional reason why I believe that there should be special legislation dealing only with Civil Service employees. It becomes so complex and complicated that to try and attempt to cover all types of public employees in one bill really defeats the purpose of the bill, to my mind.

Thank you very much.

SENATOR KNOWLTON: Mr. Chamberlain, we have a few questions to ask you.

First of all, will the record please note that

Assemblyman Frank Conwell, a member of the Assembly Committee on State Government, is with us today.

Mr. Chamberlain, what percentage of State employees come under the Civil Service Laws? Would you say 75 or 80 percent?

MR. CHAMBERLAIN: Now wait, when you say State employees you mean public employees in the --

SENATOR KNOWLTON: In the State Government.

MR. CHAMBERLAIN: Seventy-five percent are, I would say, in the Classified Service.

SENATOR KNOWLTON: And how would you characterize the remaining 25 percent?

MR. CHAMBERLAIN: They're in the Unclassified Service and these are either elected officials or appointed.

SENATOR KNOWLTON: The department heads and --

MR. CHAMBERLAIN: Department heads, commissioners, and so forth and so on. And each department head has so many appointments. In the Unclassified Service there is a problem in that there are special types of employees hard to recruit, for example, doctors, psychiatrists, and a number of others who are unclassified by reason of the law. There are probably 25 such classifications. These should be given special consideration.

SENATOR KNOWLTON: Now, with respect to county employees in the Classified Service, how many would you say - what percentage of Classified Service employees come under Civil Service?

MR. CHAMBERLAIN: I would think a larger percentage of the county employees.

SENATOR KNOWLTON: And again the unclassified would be --

MR. CHAMBERLAIN: Smaller.

SENATOR KNOWLTON: -- freeholders and top management people.

MR. CHAMBERLAIN: Right.

SENATOR KNOWLTON: Now we have 570 municipalities in the State, how many of them have Civil Service employees?

MR. CHAMBERLAIN: I think there are over 200 and these are mostly the larger. So that the remaining municipalities are really the smaller where they only have five or six employees, many of whom are part time.

SENATOR KNOWLTON: Now I take it that the New Jersey Civil Service Association is composed of members of the Classified Service. Is that right?

MR. CHAMBERLAIN: Yes.

SENATOR KNOWLTON: And how would you characterize the relationship between the New Jersey Civil Service Association and the Civil Service Commission? What do you do with respect to the Civil Service Commission?

MR. CHAMBERLAIN: We have not done the job that we should have done over the years but, generally speaking, we are the ones who might be considered the thorn in the side of the Commission in that we have represented over the years employees. We are the watchdog at all levels of government concerning the application of the rules and regulations. As soon as we discover an administrator, or anyone, attempting to circumvent the rules and regulations, these are the types of grievances that predominate, we take it first to the department and then to the Commission and, if need be, we go through the normal grievance process to the extent of having a hearing and having our employees represented by counsel.

SENATOR KNOWLTON: Now, if a Civil Service employee on any level, that is state, municipal or county, feels that he has been hurt or damaged in some way by action of his superior and he comes to your Association, what do you do about that?

MR. CHAMBERLAIN: We have these daily, as a matter of fact. I get phone calls every day from every department of State Government. I get them from counties and municipalities, from our representatives, mostly, out in the counties, who

are asking for assistance because perhaps I have access to people who are a little more familiar with the law and the rules and regulations. I also have access, because of closer proximity and it is easier to call the district offices of the Department of Civil Service, and I investigate to find out if the statement being made is so. For example, I had a call from Ocean County concerning a truck driver on the list in the Transportation Department who claims he has been bypassed. I checked with the Transportation Department and/or - in this case I went directly to Civil Service, to the Examination Division where they take care of the lists and asked for information concerning it and I found out that the person in fact had not been bypassed, that it was a misunderstanding on his part, that the individual who was placed in the job actually had been on an earlier list and everything was proper. I relayed this information back. And I would say that 70 to 80 percent of the problems are handled in this manner.

SENATOR KNOWLTON: Mr. Chamberlain, does a table of organization of your Association include a committee to handle grievance problems brought to them by Civil Service employees?

MR. CHAMBERLAIN: Yes. Our organization has a local council in each county. Each local council is responsible to carry on or carry out, at the local level, its own grievance procedures, referring these problems only to the State Organization when they are unable to obtain satisfaction. We then, at the State level, have a Civil Service Committee, as well as a special committee on institutional grievances.

SENATOR KNOWLTON: Do you think that the laws and Civil Service regulations respecting tenure of a Civil Service employee protect him a great deal or not a great deal or just so-so, or what?

MR. CHAMBERLAIN: The permanent status of an employee

who has passed an examination, completed his probationary period, I think gives him excellent protection.

SENATOR KNOWLTON: How would you compare the job security of the public sector in relation to job security in the private sector?

MR. CHAMBERLAIN: Really, just based on very limited experience, I would almost state that there is no comparison. The first job I ever had was with Thermoid Rubber Company, as a laborer, and at that time Thermoid was one of the largest employers in the City of Trenton. Friends of mine who stayed with Thermoid saw it change hands and become H. K. Porter Company and, after 25 years of employment with H. K. Porter or Thermoid, see Thermoid close down and in fact lose their pension provisions that they had paid in to the pension system because they were the last to leave and the pension system was broke.

I don't know how many times I have seen this happen. The area of problem for tenure, and it is a serious problem and for the most part this has occurred at the local level where, for one reason or another, services have been contracted out and hundreds of employees who had permanent status were let go. Now, this contracting out develops under the guise of economy. And under this type of economy moves, persons have lost their security under Civil Service.

This is, as I see it, the one real problem area. And we have proposed legislation that places the responsibility for proving the economy upon the municipality. As it is now, I believe, we have to prove that the move was not an economy move.

SENATOR KNOWLTON: Do you think that the present Civil Service structure provides a good basis for dealing with problems in management-employee relations in the public sector?

MR. CHAMBERLAIN: This is a problem because, in a sense that we have had to deal, or we have dealt in the

past, in many areas. Now I am talking about the broad problems of fringe benefits and salaries, vacations and so forth. We have dealt, over the years, with the Governor, with the Legislature, perhaps with the Budget Director. And I suppose who we have dealt with over the years has been determined, in a sense, as to who would see us. And this has not really been satisfactory, this phase of it.

The structure of the Civil Service Law provides, I believe, practically everything that is necessary to handle all other problems. Additional law isn't very helpful if you are not applying the law that is already on the books.

The Committee on Efficiency in Government in 1963 made a series of recommendations for the improvement of the personnel system. To my knowledge, none of those recommendations have been adopted. And this was seven years ago when they made recommendations for improvements. But the basic law, I think, is comprehensive enough, complete enough, to really resolve all of the problems, or at least most of the problems, if you have efficient and effective application. And this is the kind of thing that our Association strives to get out of the Civil Service Department. Of course, we are handicapped to the extent that all of our officers and chairmen of committees and everyone else does it on a part time basis. And, again, we can only go after those areas that are brought to our attention. We don't have the means available to us to see everything that's going on.

SENATOR KNOWLTON: Do you feel that the Civil Service Commission deals fairly with grievances brought before it by Civil Service employees?

MR. CHAMBERLAIN: Yes. I think, generally, most of the decisions that have been rendered by the Commissioners have been fairly taken. And possibly in some areas where

you might dispute that, it's possible that the cases were not well presented. And this is a failing on the part of the employee not to have gotten, you know, our assistance or the assistance of somebody who could argue the points.

SENATOR KNOWLTON: Excluding management personnel, division heads and the like, are most of the employees of the Department of Transportation, New Jersey Turnpike Authority, New Jersey Parkway Authority, - are they covered by Civil Service?

MR. CHAMBERLAIN: Most of the employees of the Transportation Department are covered by Civil Service. The other authorities are under special legislation and, as a matter of fact, I have an inquiry in to the Attorney General's office that deals with this problem, that is over two years old. The question was directed to the employees of the junior colleges, I believe in the counties. And then Attorney General Sills had issued an opinion that these employees should be covered by Civil Service. And he quoted a section of the law. Within a week or two after that, he withdrew his statement and we've been waiting two years to resolve it. And with the new Attorney General, I've directed another inquiry to him concerning that particular question.

I wanted to look into and see how that question of employees of junior colleges related to the establishment of employees for all other special authorities, to find out what the difference is.

SENATOR KNOWLTON: Yesterday after, Mr. Frank A. Forst who is President of Local 195 or the International Representative of the American Federation of Technical Engineers, AFL-CIO, told this Committee that some 2,000 employees of the Department of Transportation were ready to go out on strike because they could not negotiate a contract with the Department. Has any employee covered by Civil Service in that Department brought this to your

attention?

MR. CHAMBERLAIN: Recently?

SENATOR KNOWLTON: Yes.

MR. CHAMBERLAIN: No.

SENATOR KNOWLTON: Assemblyman, do you have any questions?

ASSEMBLYMAN CONWELL: Not at the moment, no.

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

MR. CHAMBERLAIN: Thank you very much.

SENATOR KNOWLTON: Mr. Eastwood?

Mr. Eastwood, may we have your name in full and your affiliation, for the record?

E D W I N C. E A S T W O O D, JR.: I am Edwin C. Eastwood, Jr., Assistant County Counsel, Bergen County.

Senator, I prepared a written memorandum of the position of Bergen County with reference to amendments and changes in Public Law 303. I would like to just comment briefly on the contents of that memorandum and, at this time, present a copy to you. (For memorandum - see p. 99 A)

Senator, we in the Bergen County Law Department have had some 20 to 25 applications for certification of various sized units since the inception of P.L. 303, approximately 18 months. We have found the major objections to be threefold.

Firstly, the fragmentation of units. Public Law 303 defines it as a "community of interest" of the employees. We feel that that should be somewhat modified to include also the interest of the employer.

The hearing officers have tended, during our experience at these hearings, to grant as appropriate bargaining units very small units within a facility. As, for example, the Bergen Pines Hospital. Over the opposition of Bergen County, there was one unit granted as appropriate involving 6 persons that worked in the

heating plant. If we carry this to its natural conclusion, within that facility alone, very conceivably, we could have 30 to 40 different bargaining units of nurses, nurses aides. Among the items the hearing officer considered pertinent was whether a person was mobile, if you will, or stayed in one place. Now this could conceivably lead to certain nurses who are on one floor and others who are transient. We find that it would become intolerable to bargain with all of these various units.

To date, in the Bergen Pines Hospital, we have had two elections. One, a six man unit, voted in favor of the bargaining unit. Another unit was certified, of some 42, I believe, which voted against having this as a bargaining unit.

It seems to us in Bergen County that the law should be amended to include the interest of the employer as a facility, possibly into two or three bargaining units within that facility. Certainly it seems appropriate to us that all maintenance personnel should be within one unit; that we should not have a separate bargaining unit for laundry workers, for kitchen workers, for maintenance workers, for watchmen. We don't know how we could conceivably bargain with them. It would be a 24 hour day, 7 days a week, to get contracts with these various units.

Secondly, we find great difficulty with the present definition of "employer." Former Attorney General Sills, last year, at the request of our Legal Department, rendered a decision that the county judges were the appointing officers and employers of the probation employees, thus rendering it necessary for the county judges to bargain with the probation officers. However, as we all know, the judges have neither authority or means to raise funds for it, nor are they cognizant of general policies such as fringe benefits, hospitalization, and other things. That is the duty of the freeholders who have to raise this money by taxation.

Another good example, I think, was the Newark Teachers Association vs Newark Board of Education, where one of the comments of the PERC representative was that the Board of Education should in no way concern itself with how this money is raised, just keep the children in school. Well, we all want to keep the children in school, certainly, but I don't think we can ignore the financial problem. And this is what is resulting from this definition of employer.

Another example which I think is very pertinent was in Jersey City, again a Board of Education matter, where the official said, the document agreed upon by collective bargaining was "a worthless piece of paper" because we have no way of raising the money for it, since those officials in charge of raising the money had no control, no ability to enter into collective bargaining. We feel this is an impossible situation.

Thirdly, there has been great difficulty with the status of professionals and supervisors. The Act defines a supervisor as one with the right to hire, fire, discipline, or effectively recommend the same. Well, so far we have found this to be a question of fact. It has caused extensive litigation, which I personally have been involved in, as to who is a supervisor within this act.

One of the recent cases was the Middlesex Welfare Board case where there were ten supervisors under the qualifications set forth by the Welfare Board; however, a PERC hearing officer held one to be a supervisor for reasons that I could not understand under the decision, although I read it several times. I thought it was trivia that distinguished one from the other nine.

In addition, what is a professional? Is he one who has a college degree? Does this, in and of itself, render him a "professional" or does he have to have some special training and special abilities? I personally have just finished litigating and am awaiting a decision

on caseworkers in the Bergen County Welfare Board, whether they are professionals. It was the position of the prospective bargaining agent that because they were college graduates - and I might add their degrees ranked from Art to Economics - they were professionals. I submit, this cannot be so, and I think it is most important that a clear definition of "professional" and "supervisor" be written into this Act to avoid tremendous litigation.

I think basically these are the three basic problems as we see them. My memorandum goes into detail on cases involved in each individual item, examples, suggestions as to rewriting, which I don't feel we have to go into at this time, unless you desire me to.

SENATOR KNOWLTON: Go ahead. Why don't you just discuss a few, Mr. Eastwood, in more detail perhaps than you have done here in your statement.

MR. EASTWOOD: Well, as I alluded to before, community of interest. My suggestion is that the law reads: "The negotiating unit shall be defined with due regard for the community of interest among the employees of the employer concerned." Now, "of the employer" is not part of the Act now. And this would again relate to community of interest within a whole facility of a public employer, as opposed to a laundry worker, because he is a laundry worker, should be a separate bargaining unit without taking into consideration that he's an integral part of, say, the operation of a hospital, as is a food worker; and that the community of interest is not because he is a laundry worker or is a food worker or is a maintenance man, but rather because he is an integral part of the operation of a hospital, and that if one group of these people should go out on strike, it could very effectively stop the total operation of this facility.

With reference to "employer". I certainly think that there should a consolidation of the person who is

the employer under the Act and that person who has to pay the bill, to raise the money to pay the bill, as are freeholders, as are mayors and councils of our various towns who have to pay the educational bills. And I think, until we have that, taxation problems, budgetary problems become an impossible situation. We don't know how to budget. Where are we going to get the money from at a late time? Sure we might say emergency appropriations but how many emergency appropriations can any political subdivision have in any one year? How many bond issues for an emergency? I think this is terribly important.

Basically, that's our problem and I think that's what we would like some correction on.

SENATOR KNOWLTON: Mr. Eastwood, I think Assemblyman Conwell would like to ask you a few questions.

ASSEMBLYMAN CONWELL: Mr. Eastwood, in the examination of the three problems you have presented, would you tell me, if you were restructuring the law and the chapter, what criteria would you use for identifying, let's say, professional personnel, supervisors, etc.?

MR. EASTWOOD: Well, if I may take professional first. I certainly think that the criteria should be beyond merely graduating from a college or a university. I think that there should be graduate training within that field prior to qualifying a person to be a professional. By that I do not mean to imply that I would restrict professional to an engineer, a lawyer, a doctor. However, I think, if I may take the example of a welfare board, a caseworker, certainly I think that that person should have graduated training in a limited field, such as psychology or sociology, as opposed to possibly an undergraduate degree in art or history to qualify him as a professional.

So, to summarize briefly, I think the criteria should be a limited number of degrees directly allied

to the field in question, graduate training, and at least a two-year job training experience in that field, and evaluation prior to certification.

ASSEMBLYMAN CONWELL: Well, has it been just the establishment of the person's status with regard to training as a supervisor which has represented the road-block in negotiations?

MR. EASTWOOD: What it has been is, a prospective bargaining unit will file an application with PERC and request certain employees to be members. It has been the policy, at least in Bergen County, to check what is the job rating of these various employees, by the administrator, and whether they are deemed to be supervisors or not. And I certainly feel, now changing from professionals to supervisors, that one cannot restrict a supervisor to the right to hire, fire, discipline or effectively recommend same. We must realize that this is municipal and state government and there is a limitation on delegation of authority in those fields.

Therefore, I think that it should be also to generally supervisor under the fields, to direct a person, check their work, if you will, guide them, train them. I don't think we can limit it to those three criteria because of the nature of our field.

ASSEMBLYMAN CONWELL: Well, is this presently the law or is this presently a practice?

MR. EASTWOOD: Well, the law is, hire, fire, discipline or effectively recommend the same. So, from my personal experience in quite a few cases, having tried them before PERC, we get into extensive litigation on who is a supervisor and who is not, and we are far apart, so far, on who is and who isn't. And we've had to rely then on hearing officers. And, as a matter of pure economics, this has taken days, two and three days of trial, where I think a proper definition would eliminate

this, at least 90 percent of the time.

ASSEMBLYMAN CONWELL: May I move back to area two, your second area of concern. You indicate in the case of the county judge who in fact becomes the actual employer because of the statute, etc., - here, again, how would you change these regulations in a new act, since judges or freeholders represent merely - not freeholders but judges, in the main, represent appointees and appointees representing arms of the law and acting in the capacity of employers for counties?

MR. EASTWOOD: Well, my recommendation would be that that branch of government responsible for raising the funds and making proper provisions within the budget and preparing the budget of that particular political subdivision be deemed the employer. And I submit to you that the judges are not happy being termed the "employer." I think that they wish not to be involved in this type of negotiation,

ASSEMBLYMAN CONWELL: What would you do in the case of school teachers?

MR. EASTWOOD: In the case of school teachers, I think that it should provide that the bargaining agent be in fact the mayor and council, or their appointed representative, in conjunction with your school board.

I don't think that this authority to bargain should be exclusively the school board's, for the simple reason they, in many cases, are not professional in their field, they are appointees or electees who do this, I think in a majority of municipalities in the State of New Jersey, on a part-time basis, donating their services as citizens of interest, and are not cognizant of the various budgetary problems and tax problems. And I think certainly the bargaining agent should be made up equally of representatives from the mayor and council, if you are dealing with a municipality, and representatives of the school board.

ASSEMBLYMAN CONWELL: Then the first area over here, which you started out with, the "community of interest" area. Were you suggesting then that because of the autonomous nature of particular bodies that small segments ought not be allowed to exist?

MR. EASTWOOD: Yes, that is my absolute suggestion. I think that if we want to have a breakdown it can be limited to three or four. For instance, professional, craft, blue collar, would be an example, and white collar. There are four.

ASSEMBLYMAN CONWELL: Well, in the main, where there would be conflict because of their work and the nature of their particular jobs, would you then eliminate the right of these people to act on their own independently in terms of sanctions against an employer?

MR. EASTWOOD: I would not wish in any way to indicate that I would deprive any employee of his right to act against an employer. I just feel that there would not be a conflict if one were to line up the classifications as suggested. I could see no conflict among various professionals, various white collar workers, various blue collar workers, and the craftsmen. I see no reason why a group of plumbers, carpenters, - I mean licensed by this, real craftsmen - licensed electricians, could not have one bargaining agent for them and effectively put forth their position to the public employer.

ASSEMBLYMAN CONWELL: Thank you.

SENATOR KNOWLTON: Mr. Eastwood, Mr. William J. Chamberlain, President of the New Jersey Civil Service Association, said to us this morning that he felt that the Civil Service Law should be amended to give the Civil Service Commission powers to negotiate contracts or working conditions, things of that sort, with the public employer.

Now, let's assume that to be a fait accompli. Or, in the alternative, let us assume that 303, in some

version, remains on the books. Don't you think it becomes necessary for each county to employ people who have skills in the field of public labor relations?

MR. EASTWOOD: Without doubt. Bergen County has employed, as a labor consultant, Mr. Paul Smith who has had some 40 years in this area in the NLRB as Labor Consultant and Relations for Western Electric. I have been, in the last year and a half, exclusively in the labor field. As you probably know, I had some experience prior thereto representing teacher associations and PBA's and NLRB work, myself. And I think that in the next ten years this will be singularly the most important and biggest problem facing any county.

SENATOR KNOWLTON: Do you think it would be feasible for a county, having developed a division, you might call it, of some kind of a collective bargaining agency representing the county, also to represent those municipalities who are covered by, say, Civil Service, or who have employees who wish to select another bargaining agent?

MR. EASTWOOD: I think certainly this would be the most economical and best situation. From my limited experience with municipalities, I have observed that some of the persons doing the collective bargaining have had no experience in it and have very limited understanding of both Civil Service law and P.L. 303. However, as you know, Senator, there was extensive objection to the charter in Bergen County . So I don't know whether it would ever be workable.

SENATOR KNOWLTON: Getting back to something you said before, you told us that you had extensive experience representing teacher associations.

MR. EASTWOOD: Well, I have represented several teacher associations.

SENATOR KNOWLTON: Have you represented teachers before the Commissioner of Education?

MR. EASTWOOD: No. That was with P.L. 303 and with the boards of education in fact finding, mediation, etc., on contracts.

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

MR. EASTWOOD: Thank you.

SENATOR KNOWLTON: We will take a five minute break, now.

(Recess)

(After recess)

SENATOR KNOWLTON: The hearing will come to order, please.

So that you can make arrangements, we will go on until 1 o'clock, break for lunch for an hour, and then come back and see if we can finish up today.

Mr. Robert Luse?

Mr. Luse, for the record, will you please state your name in full and your affiliation?

R O B E R T T. L U S E: Senator Knowlton and Assemblyman Conwell, I am Robert R. Luse, Director of Public Relations and Publications of the State Federation of District Boards of Education. I was privileged to serve on the initial Commission to Study Public and School Employee Grievance Procedures. Because of that experience, I have had a particular interest in Chapter 303 and the subsequent functioning of public employment relations under the bill.

In addition, I represent the members of the 598 local boards of education, who, as you know, employ the largest number of public employees of any agency in the State. Our members have now negotiated for two years within the statutory limitations of Chapter 303. As a result of these collective experiences, we feel we can offer testimony today which could improve Chapter 303

in a manner which would make it possible to protect the rights of employees and the prerogatives of employers and to safeguard the public welfare under the law.

Much of our testimony will be confined to Senate Bill 564 and its companion, Assembly Bill 498, which contain the most comprehensive amendments to the bill.

We are pleased to note that the first major amendment to Chapter 303 proposed in S 564 is the inclusion of the public as a component in the resolution of disputes. While we agree that the rights and duties of the public employer and the public employee are the just concern of Chapter 303, we submit that the rights of the public must be granted equal consideration. The proposed amendment properly puts public welfare in the context of the resolution of disputes and seeks its protection.

DEFINITION OF SUPERVISOR

Many of the problems inherent in unit determination have arisen over the question of inclusion or exclusion of supervisors. Basic to the problem is the need to determine what is meant by the term, "supervisor."

The Federation is in agreement with the definition of the term, "supervisor," which S 564 adds to the list of definitions in Chapter 303. We have repeatedly urged that this definition be incorporated into present law. We believe its use will assist in resolving problems of unit determination and we urge its adoption.

TERMS AND CONDITIONS OF EMPLOYMENT

We agree also that a definition of "terms and conditions of employment" is needed. Present law requires public employers and employees to negotiate in good faith concerning "terms and conditions of employment" but it gives no definition or clue as to what the phrase means. Consequently teacher organizations have generally taken the position that "terms and conditions of employment" include almost everything of interest or concern to the employees including many matters of management policy and prerogative which the education law spells out as responsibilities of the board of education alone. Many boards have refused to accept such a broad meaning for the statutory phrase. Drawing a vital distinction between educational and management policies on the one hand and concrete pay and working conditions of employees on the other, many boards have agreed that only the latter are negotiable. This wide diversity between the employers and the employees with respect to the interpretation of the law has led to impasses and difficulties, most of which could have been avoided if the law had contained some definition or set of standards by which one could judge whether an item constituted a term or condition of employment.

While some test cases now before the Public Employment Relations Commission should result in some important interpretations by the Commission, it may be months, or even years, before an authoritative appellate court decision establishes the principal guidelines for applying the statutory definition. We believe it would be for the best interests of everyone concerned that the

Legislature hasten a resolution of these uncertainties by defining the phrase in question but we believe such a definition needs to be more limiting than that set forth in S 564. Accordingly, the Federation recommends that the following definition be substituted for amendment (i) under amendments to Section 3 of S 564.

> (i) The phrase "terms and conditions of work" shall mean compensation of every kind paid or furnished to the employee; length of work day and work week, rest periods and meal hours; physical conditions at the place of employment which affect the health or safety of employees; and fringe benefits as the term is commonly understood in public employment.

We believe this definition is sufficiently clear and inclusive and gives due regard for the health and safety of employees, management prerogatives and employer - employee communications. Incorporation of our definition into the statute would save long hours of discussion and limit future litigation.

ACT LANGUAGE

We would applaud the simplification of the language of the act by substitution of the word, "commission," in place of "Division of Public Employment Relations." We hope this terminology already in general use will be made a part of the law.

COMPOSITION OF COMMISSION

Senate Bill 564 proposes a nine member commission made up of five public and four partisan members. The Federation has made an extensive study of the merits of an all public board versus a tripartite board as presently exists under the law. The proposed amendment would simply add two more public members but retain the tripartite composition of the Public Employment Relations Commission.

The Federation believes that the tripartite structure of the Public Employment Relations Commission should be terminated as expeditiously as possible and be replaced by a five-member, all-public body. The Federation recognizes the contribution which has been made initially by the partisan members in educating the public members to the complexities of public employment, in helping to mediate major disputes and in attending to the formulation of fair operating policies and rules. However, because of the importance of the issues which will now be before the commission, it is essential that the judgment of the commission not only be righteous but also that the manner in which it is arrived at beget no suspicion as to the impartiality of the decision.

CONFLICT OF INTEREST

Under the present tripartite structure of the commission, from time to time there is bound to be conjecture as to the conflict of interest of partisan members with regard to certain matters before the commission. While the

conflicting interest must be substantial, not inconsequential or remote, it is not limited to a financial one; the interest may be "psychological" or "personal" as well. It is enough that the conflict may, as a reasonable possibility, affect the motivation of the official. An excellent statement of the law on this point is found in the following excerpt from Aldom vs. Roseland, supra, 42, N.J. Super. at pages 502, 503:

> The interest which disqualifies is not necessarily a direct pecuniary one, nor is the amount of such an interest of paramount importance. It may be indirect; it is such an interest as is covered by the moral rule: no man can serve two masters whose interests conflict. Basically, the question is whether the officer, by reason of a personal interest in the matter, is placed in a situation of temptation to serve his own purposes to the prejudice of those for whom the law authorized him to act as a public official. And in the determination of the issue, too much refinement should not be engaged in by the courts in an effort to uphold the municipal action on the ground that his interest is so little or so indirect.

Furthermore, as the New Jersey Supreme Court said in Griggs vs. Princeton Borough, 32 N.J. 207, 219: "The question is whether there is a potential for conflict, not whether the public servant succumbs to the temptation or is even aware of it."

It is inevitable that any partisan members at some time or other will have direct personal interest in the decisions at hand. We believe participation by these members will render commission decisions vulnerable to attack and will undermine public confidence in the commission and cast suspicion on its prior actions. For these reasons the Federation recommends that, in the interest of the public and its confidence in the commission, partisan membership on the commission be terminated in favor of an all public board. The initial terms of the members would, of course, be of varying lengths so that the commission would never be left with less than a majority of experienced members.

Senate Bill 862 recommends a seven member all public board and S 564 calls for five public and four partisan members. The Federation rejects these proposals. We believe five public members would be sufficient to carry on the business of PERC, particularly since a strong staff has now been recruited and trained.

NEGOTIATIONS PROCEDURE

When bills defining a negotiations procedure were first introduced in the Legislature, the Federation urged introduction of clauses guaranteeing the constitutional right of employees to present and make known their grievances and proposals through representatives of their own choosing. Senate Bill 564 has included such a provision in its amendments to section 7 of the act, and we urge that it be adopted.

We also believe that employers must be given more latitude in the making or modifying of rules governing working conditions, especially in emergency situations. We, therefore, urge adoption of the proposal in S 564 to eliminate the words, "be negotiated," in the sentence, "proposed new rules or modifications of existing rules shall be negotiated" and the substitution of "whenever practicable, be announced in advance and discussed with the majority representative..."

As you know, the Appellate Division in affirming a Commissioner of Education's determination in Newark has ruled that a provision in a school contract may be unilaterally changed by the board of education when it is rendered impracticable by subsequent events which demand changes in the educational program. The aforementioned substitution for the present language in the law provides the means for making such changes.

GRIEVANCE PROCEDURES

The last paragraph of section 7 of Chapter 303 provides in broad terms that public employers "shall negotiate written policies setting forth grievance procedures by means of which their employees or representatives of employees may appeal the interpretation, application or violation of policies, agreements and administrative decisions affecting them ***." A literal reading of this clause would require boards to entertain grievances on such matters as the failure to renew the contracts of nontenure employees and refusals to grant increments. In the case of failure to renew contracts, compelling a board to entertain a grievance would emasculate the hitherto unrestricted right of the board to hire such employees as it sees fit, subject only to the requirements of the Law against Discrimination and the unfair

labor practice provisions of Chapter 303. Refusals to grant increments, on the other hand, are already subject to appeal to the Commissioner of Education; and if a grievance followed by arbitration were forced upon the board of education, we would find important questions of teacher performance passed upon not by the Commissioner of Education, who is expert in this field, but by an arbitrator who presumably had no experience in this area.

It is the opinion of the Federation's Counsel that the grievance procedure paragraph of Chapter 303 should be construed, on well settled principles of statutory construction, so as to exclude from its operation (a) matters lying within the sole and unlimited discretion of the employer, and (b) cases where another method of review is already prescribed by law, or by any rule or regulation having the force and effect of law. However, boards of education should not have to be subjected to the burden of establishing their rights through litigation when an appropriate amendment to the law would solve the problem. We also believe that public employers cannot legally submit to binding arbitration matters which the law has placed within the exclusive authority and responsibility of the employer. To delegate such authority to an arbitrator would contravene the statutory directive.

In accordance with the foregoing observations, the Federation recommends that the last paragraph of section 7 be amended to read as follows:

> Public employers shall negotiate written policies setting forth grievance procedures by means of which their employees

or representatives of employees may appeal the interpretation, application or violation of policies, agreements, and administrative decisions affecting them, provided, however, that the employer shall not be obligated to negotiate a grievance procedure with respect to any matter for which a method of review is otherwise prescribed by law; and provided further that the term "grievance" and the procedure relative thereto shall not apply to the failure or refusal of the employer to employ a person or to renew the contract of a probationary employee. Such grievance procedures shall be included in any agreement entered into between the public employer and the representative organization. Such grievance procedures may provide for advisory or binding arbitration as a means for resolving disputes."

STRIKE BAR

Senate Bill 564 bars strikes by inserting an amendment to section 8 of Chapter 303 which makes clear that the Act does not grant public employees any rights not expressly granted in the Act. It emphasizes the ruling of the Supreme Court in denying the right of public employees to strike.

In February, the Federation presented extensive testimony in opposition

to Assembly Bill 810, which would authorize public employees in New Jersey to strike, slow down or act in concert or other similar ways in order to compel the government to accede to their demands. The Federation finds this proposal of Assembly Bill 810 unsound in theory, harmful to the public in practice and unnecessary to the welfare of employees of counties, municipalities and school districts of this state. We support the prohibition against strikes in S 564.

We believe public interest demands that governmental services not be disrupted, and that proper self-interest of public employees be taken care of without harm to this over-riding public interest. We further believe that the fact that persons in private employment have a right to strike affords no reason for granting this right to persons in public employment because of the essential differences between government and private enterprise. The differences between private and public employment are fundamental. Many of the conditions which lend themselves to pressure tactics in private employment do not exist in public employment. Over-riding all concerns is the obligation of the government to keep functioning. Public employment must rest upon foundations wholly different from those between private employer and employee.

The use of coercive measures by groups of public employees is not necessary to enable them to obtain their demands for fair compensation and good working conditions; the New Jersey Employer - Employee Relations Act already provides ample machinery for the settlement of disputes concerning these matters; and if the present procedures are not adequate, others can and should be devised for this purpose.

An alternative outlined by the Federation at the hearing on A 810 suggested that the Legislature establish a procedure for resolving an impasse by which each side would make what it believed to be a fair and final offer and the authorized agency would then decide which of the two offers was most fair and reasonable, this decision to be final and mandatory on both government and the employees. Fairness would almost be guaranteed by this device.

The Federation is not necessarily recommending the above procedure at this time. We believe that in the next year or two numerous questions and disputes over such matters as negotiability and unit determination will have been decided; and that mediation, fact-finding and other procedures now in the law will produce the desired results.

In reference to A 810, we reiterate our earlier conclusion that the door to economic pressure by public servants should not be opened even part way. If it were, the question would immediately arise as to how far the door should open, and any group which had not the right to strike would have great difficulty in accepting any differentiation between it and some other employee group which had been given that right. We recommend that the present impasse regulations of Chapter 303 be given a further reasonable period of time within which to solve public employment problems in this State. If and when amendments in this area are considered, we recommend that a trial be given to the Federation's suggestion of each side making a last fair and final offer on which settlement must be based.

MEDIATION COSTS

It is fitting while we are discussing impasse regulations that we refer to S 537. Senate Bill 537 amends Chapter 303 to provide that the costs of the Commission in providing any service under mediation be borne by both parties equally. Present law requires that only fact-finding costs be shared by both parties.

Inasmuch as mediation services are often the means of keeping both sides negotiating and of avoiding serious polarization of positions, it seems important to us to have the state pay the costs of mediation to insure its early use in event of impasse. Requirement of payment of mediation by both parties could serve to delay negotiating beyond the time when the services of a mediator would be most helpful. We would recommend that the whole process of mediating and fact-finding be given a longer period of trial before change of the present procedure is made.

EDUCATION SERVICES

The Federation welcomes the addition of employees to those for whom Rutgers must provide educational services in the art of negotiating. It may be that as both employers and employees become more expert, the law will become more functional. Certainly if strife continues or grows worse, then it will be time to amend the law still further. It can be expected that greater expertise in negotiating on the part of both public employers and employees will bring to light those sections of the law which are clearly unworkable and in need of amendment.

Until that time, the Federation believes the amendments we have considered today will go a long way toward smoothing the present somewhat stormy course of negotiations.

Gentlemen, you will find attached to my statement bills containing amendments to Chapter 303 as developed by the State Federation of District Boards of Education for submission to the Legislature, including the one labeled No. 2 concerning the right to strike and the possibility of strike penalties. We submit those for your information (See page 107 A)

Thank you.

SENATOR KNOWLTON: Mr. Luse, you said that the public employer, or in this case the board of education, should not be obligated to negotiate a grievance procedure with respect to any matter for which a method of review is otherwise prescribed by law.

Suppose the law is so general that it is impossible to determine how a grievance procedure should be arrived at? Would you say that should be negotiated?

MR. LUSE: I beg your pardon, Senator.

SENATOR KNOWLTON: In other words, suppose a law is so general, suppose a law sets up some provisions for grievance procedures but its terms are so general and vague that a fair difference of opinion could arise over the interpretation of the law. Do you think that should be a negotiable item between boards of education and representatives of a teachers' group?

MR. LUSE: I think that would sound reasonable to me.

SENATOR KNOWLTON: We have a case in this State of a board of education that refused to negotiate with a teachers' group; as a matter of fact, the representative of the teachers' group found this board in a local bar. Don't you think that sanctions should be visited upon a board of education that doesn't bargain in good faith with a teachers' group?

MR. LUSE: Yes, sir, I think we do. I think we believe that the law should be adhered to and that there should be provisions for penalties on both sides if the processes are not followed. I do not think most boards of education would object to that at all.

SENATOR KNOWLTON: What do you think about a three member commission, as in New York State, with an advisory body of public employees and public employers representing all echelons of government? For instance, a public employee representative and a public employer representative from a municipality, from a county, from a board of education, do you think that might solve the problem here?

I ask this question because it seems to me from testimony which we've had here that representatives of public employees and public employers have helped that commission to arrive at some determinations.

MR. LUSE: The Committee with which our Federation worked over the last year and a half considering just this question, investigated I think about every possible alternative that we could turn up or that was suggested to us. Our recommendation is really based on the feeling that, yes, in the initial time, while we are getting used to negotiations, the partisan members' advice was of considerable use in training some of the new members coming in, of the staff, but that in order to expedite the vast number of cases and questions coming before it that a small group would be able to do this more expeditiously.

At this point, I am not sure whether an advisory panel would really serve any special function because you now have your staff trained, you have members currently on the commission who are now well apprised of the particular peculiarities of public employment, to which they were perhaps not so at first. And I think the new members on the commission would quickly be oriented by the members on the commission who had some experience, and by the staff which was now well equipped to handle

such functions.

SENATOR KNOWLTON: With respect to the problem of bargaining units, Chapter 303 excludes superintendents of schools from all bargaining units. Do you think that principals of schools should also be cast in the posture of management?

MR. LUSE: Yes, sir.

SENATOR KNOWLTON: And, therefore, excluded from bargaining units?

MR. LUSE: From a teachers' bargaining unit. I think it's perfectly reasonable for principals to be represented by themselves in management bargaining units, in a unit of middle management where they would speak for their own needs and wishes. But there is such a conflict of interest between the two groups. The principal is expected to be the first step in a grievance procedure. He is expected to, within his building, enforce the contract. He is expected to supervise the activities of the people in that building. Many of the things which the teachers would be negotiating, by the very nature of the process, would be taking away some of the prerogatives or abilities of that principal really to function or perform his management function. Therefore, we think the needs of the two groups are entirely separated and that the principals are part of management and the board needs them, the board has to have them as part of management to insure that it can move the educational enterprise along.

SENATOR KNOWLTON: Do you think that such personnel as director of curriculum, school psychiatrist, in other words, educational specialists which operate usually out of the superintendent's office, - do you think they should be part of management or do you think they should be in the teacher group, for the purpose of collective bargaining?

MR. LUSE: This, I think, would really be a matter of exactly what their job entails. If they were supervisory,

if they had certain - as we suggested in our testimony, if their jobs and duties embraced supervisory responsibilities, within that definition, then I think they should be in a separate unit with supervisors.

I think it's very difficult to draw a fine line in some of these other areas, and many of them might well be construed to have the same community of interest as the teachers. I think that would be difficult to tell without looking at the specific case there. But if they fell within the definition, as we suggested, by all means then they should be in a supervisory unit.

SENATOR KNOWLTON: One of the larger problems that we have is the scarcity of trained personnel, people having skills in the area of public employee relations. Do you think it would be feasible to have attached to the staff of a county superintendent of schools people who do have these skills, who could serve the local school board?

MR. LUSE: I think this is certainly one possibility. I imagine that most of your larger districts will go to having someone on the staff in personnel relations. I think this is a coming field which would definitely see a great increase. Now, as for helping the smaller districts that may not be able to employ someone specifically in this area, I think this might be an interesting proposal.

SENATOR KNOWLTON: Thank you.

ASSEMBLYMAN CONWELL: Mr. Luse, on page 12 you've indicated that there's a possibility that the existence of two offers might be a very good thing. And a little later on you indicate that you are not recommending the above procedure as one that presently ought to be adopted or even put to use. What do you believe or think ought to happen to these people who think it's important to withdraw services as an alternate weapon?

MR. LUSE: Well, sir, at this point it is our opinion that public interest is paramount. And even if you had to include as a part of each new employee's

orientation before going into public service, I think an employee should understand the difference between private and public employment, that while it's altogether fitting and proper in private employment with a proper motive for management-labor to have special interests and work for those special interests, dividing up the pie, so to speak, that when you are talking about public employment you're talking about a different framework and that the public good is the basis, the fundamental principle upon which all public service is based, and that this must supersede special interests, and special interests do not have the same kind of right in public employment. And I think every employee should really understand this. And I think there is a definite line there. There are procedures provided here and if it is the feeling of employees, through their organizations, that these methods are not sufficient and that they are still not getting what they believe to be a fair shake, then I think they ought to work on some other method rather than withdrawal of services which could open the door to bringing all government to a halt, and I do not think we can allow government to stop functioning. This is something that we just simply cannot allow to happen in the country.

ASSEMBLYMAN CONWELL: Are you avoiding suggesting any new legislation for that very reason or just to delay what you believe, that the problems already there will somehow be solved without legislation?

MR. LUSE: At this point we are not seeking further legislation on this matter, although we are seeking to tie down very tightly the question of the right to strike. If it is proved in the future - our experience is really rather limited. We've really, by and large, compared to some of our neighboring states which have gone into this type of law, and this has particularly struck the education establishment early because prior

to PERC even being set up to operate and function, we have not had too many strikes that have actually come to fruition. The machinery already set up has done a considerably good job in getting employers and employees together. If it appears obvious in the future that this is not working better but perhaps the situation worsens then perhaps we must look to some other kind of alternative at which point we would suggest this question of each side proposing a last, fair and final offer and one or the other could be chosen, which I think would insure that both parties would make a very fair, final offer.

SENATOR KNOWLTON: One final question, Mr. Luse. Has the State Department of Education handed down to district boards of education guidelines and suggestions as to how to conduct collective bargaining sessions with teacher groups?

MR. LUSE: Not to my knowledge, Senator. We, within our Association, have set up a pretty broad in-service education program for the assistance of local school board members. This has been going on now for, well, a year or a year and a half prior to the enactment of 303.

SENATOR KNOWLTON: Thank you very much.

Professor Weisenfeld? Professor, do you have a prepared statement?

A L L A N W E I S E N F E L D: I must apologize, Senator. I have a statement prepared but it came back to me in draft form, last night, and I could not correct it for distribution, so I would like to submit it early next week.

SENATOR KNOWLTON: That's perfectly all right. Would you please give your name in full and your affiliation and the nature of your employment?

PROF. WEISENFELD: Yes, sir. My name is Allan Weisenfeld. I am Professor of Education and Labor Studies at the Rutgers University Graduate School of Education.

Until last year, and for 28 years preceding that,

I was Executive Secretary of the New Jersey State Board of Mediation. For the last two years, three years, I have been a member of mediation, fact-finding and hearing officers panels of PERC in this State, PERB in New York, the Office of Collective Bargaining in New York City, the Federal Mediation and Conciliation Service in Washington, and even in the Suffolk County, Long Island, Employment Relations Board. And for each of these agencies I have participated in one or more public employee disputes during this period of time.

I would like to have the record note, if I may, that the views that I express before your Committee, sir, have the support,and they are in complete accord with them, in fact, of the Association of University Professors, of which I am a member.

A statute which is designed to extend bargaining rights to employees,and to assure these rights,must concern itself with the areas which the several bills before this Committee do express views. Basically, such a statute must concern itself with the definition of an employee and the unit appropriate for purposes of bargaining. It must concern itself with the area of bargaining. It must, of course, provide for mechanics of administration. And, finally, it must concern itself with procedures which will insure, to the maximum degree possible, a continuity of work.

I might note in passing, sir, that while I comment basically on companion bills, Senate 564 and Assembly 498, the comments that I make are in the nature of being critical, perhaps, but at the same time I want to note that I do not make the comment in general. I support the matters to which I do not refer.

Traditionally, in both the private and public sectors of the economy, the determination of appropriate bargaining units, the conduct of elections, and the certification of majority representatives in a unit appropriate for purposes

of collective bargaining, have been delegated to an administrative agency. Thus, in the present Chapter 303, the Public Employment Relations Commission is charged with these responsibilities.

In Senate 564 and Assembly 498, the elaboration on the definition of public employee by including one who holds a public office by virtue of a contract with a public agency, I raise a question of whether such an employee who bargains unilaterally for a contract of employment may properly be included as an employee in a bargaining unit.

Both of these legislative proposals seek to more narrowly define the area of bargaining from the typical wages, hours, terms and conditions of work, - the language presently contained in the present 303 - by including the phrase, "within the legal jurisdiction and power of the appointing authority to determine." This would suggest that a public employer, who believes that a demand from his organized employee intrudes upon his managerial prerogatives, would fight this phrase as a means of estopping further discussion. This Pandora's box of potential disputes over what is bargainable is sought to be relieved by a subsequent provision vesting in the Public Employment Relations Commission the authority to determine, following a public hearing, "the terms and conditions of employment, if any, in addition to those enumerated," and they refer to the Laws of 1941, the Mediation Act, "should be negotiable when within the legal jurisdiction and the power of the appointing authority to determine."

I find it difficult to conceive of a provision of law, labor law, that can cause greater confusion and completely log-jam the calendar of the Commission and subsequently the courts.

Congress faced the same problem in the enactment of the original Wagner Act, in 1935. Since that time

hundreds of cases involving the area of bargaining have been adjudicated by the NLRD, guided solely by the phrase "wages, hours, terms and conditions of work." Over time experience has evolved a set of guideposts generally accepted by labor and industry in the private sector. We have no reason to believe, once the shakedown period in the public sector is over, that we won't have a similar experience.

The area of bargaining is both dynamic and changing, but also, at any given moment of time, of different interest to different employee groups. For example, to cite a simple illustration, teacher organizations, over, sometimes, vehement protests of school boards, have insisted on bargaining over such matters as class size, duty free lunch periods, remedial teachers, school calendar, and the like.

Issues relating to the area of bargaining, in my judgment, are better left to the administrative agency to determine on a case by case basis, given the simple guidelines currently provided in Chapter 303.

Given the myriad of agencies, municipalities, authorities, etc., any effort to determine by public hearing the area of bargaining within the legal jurisdiction and power of the appointing authority would, in my judgment, propel the Commission on an unchartered sea with shoals behind every wave.

I have two final comments respecting the determination of bargaining units relative to proposals contained in these bills.

First, language is suggested that "The Commission shall be concerned exclusively with matters of public employment related to determining bargaining units, elections, authority to negotiate certifications and settlement of public employee representative and public employer disputes and grievance procedures."

You may have noticed that I have sought to emphasize the phrase "authority to negotiate certifications."

In no labor legislation, that I am familiar with, does such language appear and, I think, for obvious reasons. As I have already indicated, in both the private and public sectors responsibility for determining the propriety of a bargaining unit, the conduct of an election, and subsequent certification or dismissal of a representation petition is vested in an administrative agency.

The act of certifying or withholding certification is a legal responsibility and not a matter for negotiation.

And the latter part of the sentence, "settlement of public employee representative" I presume is a title. I think the "settlement of employee representation disputes" and not "representative disputes" and "public employer disputes" is a confusing kind of language suggesting, I think, that only public employers have disputes. And I submit, you have to have two to tango.

Secondly, both A-498 and S-564 would appear to divert the Commission from a passive administrative agency which acts only upon the submission of a representation petition, an unfair labor practice, or a request for assistance in resolving a bargaining dispute, or for the appointment of an arbitrator to interpret an existing agreement, to a policeman, by adding to the present obligation to refrain from intervening "in matters of recognition and unit definition, except in the event of a dispute, or in the event of a threatened or actual act in violation of law or of rule by the Commission."

In no jurisdiction, with which I am familiar, is such a provision found. In every jurisdiction having statutes extending bargaining rights to public employees, the obligation for the maintenance of responsible performance rests with the parties. The injured party files a complaint,or seeks other relief, imposing, I think, an initial obligation on the Commission to act where violations of rules or law are threatened or a fact, is

to make the Commission into a minor league FBI and to threaten the State with the cost of enforcement, to burden the State, rather, with the cost of enforcement.

Assembly Bill 862 would convert the present seven man, tripartite board, to a seven member all-public board.

Assembly 498 and Senate 564 would perpetuate the present tripartite structure but increase the membership to nine.

My own view is that neither approach should be adopted. The Commission is essentially a policymaking and law enforcement agency. The tripartite structure, useful where compromise is useful, does not lend itself to policymaking and law enforcement where sharply divergent views must be resolved, and resolved frequently in terms of black and white.

The most nearly comparable agencies to PERC are the NLRB and State labor relations agencies. Not one of them are tripartite in character. Even State labor mediation agencies, which rely on compromise as an instrument of dispute settlement, have discarded the tripartite device. New Jersey, I think, is the last to retain this kind of structure in its State Mediation Board.

Every state and federal agency which deals with the determination of appropriate bargaining units, conduct of elections, certification procedures, and handles unfair labor practices, have all-public boards.

I think the evidence is overwhelmingly in favor of an all-public board in this area. The next question is how big a board or commission. I think seven or nine are both too large, unwieldy, and unnecessarily costly. No state has such a large commission. New York State, more than twice the size of New Jersey in terms of public employees, seems to manage quite well with a three-man

board, of which only the chairman is a full-time employee. I think we can do as well and I would certainly recommend that we go to a three-man public board.

The methods relied on as techniques of dispute settlement in the public sector are mediation and fact-finding recommendations. These methods will continue to be the basic techniques for insuring a continuity of governmental services. In a free society, however, the best of techniques cannot guarantee freedom from interruptions of service. However, such interruptions may be deplored, stringent laws, ex parte injunctions and jail sentences do not bring peace. Such instruments may effect a resumption of operations but at the cost of hostility and bitterness that bodes ill for effective and cooperative performance of services.

I was not surprised by the increase in strikes that followed the enactment of Chapter 303 two years ago. On the contrary, I would have been surprised had there not been such an increase. Exactly as there was an initial increase in strike activity following the enactment of the NLRA, so was there an initial upswing of strikes by public employees following the enactment of state laws extending bargaining rights to those employees. In large measure, this increase in militancy and strike activity is due to a lack of sophistication on the part of the parties thrust suddenly into an unfamiliar labor relations arena and told to get along.

There was, on the part of public employers, an unwillingness to change suddenly established patterns of behavior. Every request made by employee representatives tended to be viewed as another effort to erode managerial prerogatives. I am convinced that, given time and experience, strikes in the public sector will be reduced to the irreducible minimum.

Whatever the arguments may be, and there are many, in favor of extending the right to strike to public

employees as a means of equalizing bargaining power, I do not believe at this time - and I must confess that this conclusion is off the top of my head and not the result of any Gallup poll or any other poll, but I do not believe, at this time, our public is ready to adopt the proposal in Assembly 810 which would extend the right to strike to all public employees other than State employees. Why they discriminated against State employees, I don't know. If this belief is a fact, we are obligated to sharpen the mediation and fact-finding tools that we have so that overt disputes are reduced to the irreducible minimum.

Senate No. 537 would impose the costs of state mediation and fact-finding services upon the partners, presumably in the belief that to avoid dipping into their respective treasuries, at the preaviling minimum rate of $150 a day for mediators and fact-finders, they would bargain more diligently and reach an agreement without a third party intervention.

Based on my experience as a mediator and fact-finder in New York State public employee disputes, it was I who suggested the incorporation into present Chapter 303 of the current provision which provides for imposing fact-finding costs upon parties. And I did so hoping that the necessity to finance the procedure would make the parties more diligent in the free process and reach agreement without resort to easy, if I may use such a word, fact-finding. But given our two years of experience, I doubt that this matter of cost has been a real deterrent to moving from mediation to fact-finding when agreement is frustrated in the former procedure. And I might note that there is nothing in the law that prevents any public employer and any group of public employees from retaining private mediators if they so elect. If such a provision is required by law, then I can only conceive of problems developing over who

shall be the mediator in the same way as, what shall we bargain about now, shall we resolve differences. The problem of getting agreement on the identity of a mediator will be a substantial one.

To some limited extent, sophisticated parties in the private sector have gone this route of engaging private mediators on a retainer basis. To those parties having the particular expertise desired available to them, when needed, cost is not a factor. The task we face is to make our dispute settlement procedures so effective as to minimize the breakdown of relationships.

Toward that end, I have proposed, in an article I published a little more than a year ago, what I finally hoped would be a more meaningful fact-finding procedure.

I suggested that certain risks be built into the procedure that would equally affect both parties. Thus, if a public employer rejected a fact-finding recommendation, that employer would run the risk of a legal work stoppage following a show cause order, perhaps, as to why he shouldn't accept the award in a proceeding before PERC. The burden would be upon him to demonstrate his resistance to the recommendations. And, conversely, of course, an employee organization's refusal to accept fact-finding recommendations and resorting to economic coercion would subject it to all of the legal pressures currently available to public employers.

We might give consideration to Mr. George Meany's proposal that he enunciated several months ago, that in this area of public employee-employer disputes we may have to swallow, I use the word advisedly, our antipathy to compulsory arbitration, and require that as a condition of maintaining a continuity of performance both parties submit differences over terms and conditions of employment to arbitration, final and binding arbitration.

Now these suggestions do not represent a panacea for work stoppages. Such a panacea is simply nonexistent.

Even in authoritarian states strikes occur. Even compulsory arbitration is not a complete answer. If, we note, the experience we are currently "enjoying" in the private sector has any meaning, roughly one out of seven, agreements negotiated by union and employer representatives across the bargaining table is rejected by the rank and file. And there is simply no way to know whether or not awards pursuant to compulsory arbitration may not follow the same kind of pattern in time. They've simply run out of popularity.

I think we ought to experiment with private mediation in the public sector but I suggest we leave that to the parties.

We ought to continue mediation in the public sector in the manner that it is currently provided by the State, for two reasons, I think. First, it is imperative, I believe, for the administration of this State to keep a finger on the pulse of what is going on.

Secondly, it provides a kind of continuity and develops an expertise that is simply not found anywhere. I know about the problems of hiring mediators. You don't pluck them off trees. They're as scarce as hen's teeth.

Finally, I want to direct attention to the administrative character of mediation services. In Michigan and Wisconsin the labor relation agencies perform both the law enforcement and mediation functions in both the public and the private sectors. The early fears, that the performance of the mediation function might dilute the law enforcement function, have been laid to rest. Only in New York and New Jersey have there been created separate agencies for dispute settlement exclusively for public employees.

In New York the creation of a separate agency seems

to have been dictated by the peculiar problem prevalent in New York City.

We have no problem comparable to those found in Fun City to warrant separate mediation and fact-finding agencies in the public and private sectors respectively.

In the controversial area of labor relations, where consensus is difficult if not impossible to achieve, there is consensus that except for technical differences the techniques required for the settlement of disputes in the public and private sectors are similar if not identical. The experience in Wisconsin and Michigan attest to the accuracy of this assertion.

Professors John Linn and Chester Nolte, writing in The Collective Dilemma: Negotiations in Education, a recently published book, note that: "Where the state has an existing mediation agency, staffed with skilled mediators, considerations of economy, efficiency, and sound administrative practices, might dictate the use of the expertise of that agency supplemented by ad hoc specialists in matters of mediation."

I recognize that there may exist certain institutional impediments for vesting all mediation in both the private and public sectors with the New Jersey State Board of Mediation. I made such a recommendation to the Senate Committee which conducted hearings that led to the enactment of Chapter 303, two years ago, without avail. But in these days of financial crises, I urge legislative creativity to the end that the expertise developed over almost a generation, expertise in mediation, the art of mediation over almost a generation, be utilized fully and that duplication of services be avoided as a plague. There simply is no warrant, gentlemen, to support two agencies doing similar work.

Thank you very much.

SENATOR KNOWLTON: Professor, you mentioned that you thought that one state mediation board could handle both the public and private sectors. Now, is it not a fact

that in the private sector you have two parties, the employer and the employee, management and labor; whereas, in the public sector don't you think that we really have three parties, the public employer, the public employee and the public who pays the taxes?

PROF. WEISENFELD: Oh, not really, Senator, because there is such a thing as the consumer in the private sector that is affected by private sector disputes.

If you were victimized, as I was a couple of years ago when I couldn't get an airplane to Washington because of an airline strike and I had to go by train and was late, I was upset.

The real difference, as I see it, in the problem of mediating a labor dispute in the public sector as distinct from the private sector is the difficulty of pinpointing really who the employer is and what the line of his authority is, to what extent can he effectively bargain to a conclusion.

I know that in the private sector when I have the vice president in charge of industrial relations in front of me and he says, yes, I agree, I have an agreement that binds the corporation. It's a little bit more difficult to get that kind of acquiescence in the public sector because of the not quite so definite line of authority as to who is boss.

But, other than that, the problems are the same, the mechanics of handling the problems, I think, are the same. And, I repeat, I see no reason for having dual services.

SENATOR KNOWLTON: You mentioned your experience in New York State. Let's assume that a department of the state and the employees of that department arrive at a contract with respect to wages. Now this, of course, necessitates appropriation by the Legislature. Suppose the Legislature, for good reasons of its own, thinks that that contract is not in the public interest and refuses to implement it by appropriating the necessary funds. Do you think that the

public employees should go out on strike? Has that happened in New York State?

PROF. WEISENFELD: I am not familiar with whether or not it has happened. I was trying to think of a reasonable response to your question, which is a very difficult question. And I hope you will forgive me if I sound impertinent by saying, if you were those public employees, what would you do? frustrated by a Legislature for sound reasons, perhaps. Where do you go from there?

SENATOR KNOWLTON: That's a fair question to my unfair question. I don't have the answer anymore than you have the answer to my question.

PROF. WEISENFELD: There are simply no answers, sir, that are all-embracing to all questions that we can conceivably raise. I think we must be like the English have said they are, muddle through this business.

SENATOR KNOWLTON: I wasn't trying to put you on the spot, Professor.

PROF. WEISENFELD: I understand.

SENATOR KNOWLTON: But this is a real genuine question and something that has been on my mind and on the minds of most of the Legislators.

PROF. WEISENFELD: We have it frequently, Senator. When a board of education bargains with a teacher organization to a conclusion and then the mayor's council refuses to ratify it, what do they do?

SENATOR KNOWLTON: Well, in Newark they went on strike.

PROF. WEISENFELD: O.K. You haven't asked me but I will venture the opinion that while I recognize the pragmatic problems of the right to strike, and I have indicated that in my formal presentation philosophically, I don't cringe at the thought of a strike in quite the same way that others of my colleagues might. For example, since you mention Newark, in the education enterprise we

give the kids something like a week or ten days off for Christmas, another week at Easter time, two days off when the teachers have a convention, every national hero is celebrated by giving the kids a birthday off, and, if it snows, they have time off, and we don't think that their education is unnecessarily and unduly interfered with. So if they have a couple more days off because of a strike, I don't think it makes that much difference.

SENATOR KNOWLTON: Well, suppose the strike lasts for three or four months?

PROF. WEISENFELD: There hasn't been one yet, is my only answer to that. The pressures that build up are so great that everybody wants to get off the hook and then you call Ted Kheel in and he settles it.

ASSEMBLYMAN CONWELL: Professor, having come through the kind of training of which you are a part, can you tell me, if we were proposing alterations or modifications in legislation, what things are proper for negotiation. If you are annoyed at size of classes, for instance, the use of specialists in certain areas --

PROF. WEISENFELD: Mr. Conwell, may I respectfully point out that I would not limit any employee organization anywhere from asking for any damn thing it saw fit to ask for because, if you are sitting at the other side of the table as the employer representative, there is absolutely no obligation imposed upon you by law or anything else to agree. You simply take the position, if you are so moved, to say either (a) this is not negotiable, for whatever reasons you think it may not be; or simply refuse to acquiesce and you move on to the next item.

ASSEMBLYMAN CONWELL: Well I wanted to be sure I understood you. Were you delineating areas of concern that ought to be spelled out specifically, what is negotiable and what is not?

PROF. WEISENFELD: I understand. I think it would be an error to try to delineate it because the matters of

interest to different employee groups and different employer groups vary so widely that to try to encompass them all under one umbrella would be a task that I don't think can be done.

ASSEMBLYMAN CONWELL: The other thing which concerned me was that you already indicated that you could not possibly cringe at the thought of strike yet, somewhere along here, you also indicated that you were not encouraging strikes either.

PROF. WEISENFELD: As a peacemaker of long standing, I can hardly take the position of encouraging strikes. It would be in conflict with a basic philosophy. I propose that people negotiate agreements to a peaceful and successful conclusion, but sometimes there has to be drastic surgery.

SENATOR KNOWLTON: One further question, sir. I am referring to Senate Bill 564, section 5, paragraph A, on which you have expressed an opinion that the authority to negotiate certifications should not be conferred upon the commission and that this would leave the commission to run upon rocks and shoals. Could you elaborate a little bit more specifically? Could you give us a hypothetical situation?

PROF. WEISENFELD: If I understood what the language means by - I'm sorry, would you repeat that phrase for me, please?

SENATOR KNOWLTON: "The Commission shall be concerned exclusively with matters of public employment related to determining negotiating units, elections, and authority to negotiate certifications."

PROF. WEISENFELD: Yes. The "authority to negotiate certifications" seems to suggest that you would bargain over what unit should be certified as appropriate for purposes of bargaining. And my point was that this is not a fit matter for bargaining. This is a matter for determination by a quasi judicial agency, namely, PERC.

SENATOR KNOWLTON: I understand you now.

Do you have any further questions?

ASSEMBLYMAN CONWELL: Yes, one other question.

You've indicated here some concern about the equal risk being built into negotiations, which I believe is a very good thing, and then, next to that, you indicate that there ought to be some sort of show cause before a - is this to say that a board of education, before it can move directly into the courts asking for an injunction, ought to have to produce sufficient evidence for asking why?

PROF. WEISENFELD: At the risk of being impertinent or lacking respect for our courts, I humbly submit they are not experts in labor relations. And I would urge, and I underscore "urge", that we keep labor relations within the confines of the people who are experts in the area. In this case we are talking about PERC. And that's why I suggested that before there be any movement anywhere it should be a proceeding before PERC to justify, if possible, whatever action someone is taking.

ASSEMBLYMAN CONWELL: In other words, if you go into a strike you must, first of all, have made use of PERC.

PROF. WEISENFELD: Well, if you go into a strike it becomes an illegal act by its inception. I think if we so provide by statute, the parties will behave in accordance with the provisions of the statute. And an employee organization, for example, which is frustrated by an employer refusing to accept the fact-finding recommendations which it has accepted will simply file an unfair labor practice charge of failure to bargain in good faith with PERC and let PERC carry the ball for it, as does the NLRB today for employers and unions complaining of malpractices one against the other.

ASSEMBLYMAN CONWELL: Then PERC could make an immediately decision.

PROF. WEISENFELD: PERC could make an immediate

decision and the parties could take it from there, as they will.

ASSEMBLYMAN CONWELL: Thanks very much.

SENATOR KNOWLTON: One final question, Doctor.

Section 7 of Senate 564 - you found some difficulty with this sentence, "The negotiating unit shall be defined with due regard to the community of interest among the employees concerned and for consistency with the legal jurisdiction of the public employer involved."

Could you elaborate a little more on that?

PROF. WEISENFELD: Would you tell me what page that is?

SENATOR KNOWLTON: That's on page 5 of the bill, down near the bottom. It's the third line from the bottom of the page, lines 24 and 25.

PROF. WEISENFELD: It's the phrase "consistency with the legal jurisdiction of the public employer involved," which I felt could create problems. The question can be raised by some employer who objects to the definition of the unit which is proposed that it doesn't have legal jurisdiction, and you get a real hassle over what constitutes jursidiction here. And what I am suggesting is that we limit, to the point where we can't further reduce them, any possibilities of hassling. I think we know reasonably well today, by the enabling legislation of each agency, what the limit of their jurisdiction is.

SENATOR KNOWLTON: Do you favor compulsory arbitration as a last resort?

PROF. WEISENFELD: You're putting me on a very difficult spot, Senator.

SENATOR KNOWLTON: I don't mean to.

PROF. WEISENFELD: I'm damned if I do and I'm damned if I don't.

SENATOR KNOWLTON: Well, I don't mean to, sir.

PROF. WEISENFELD: I understand.

SENATOR KNOWLTON: These are problems that we've

got to consider and we have to come to some kind of judgment.

PROF. WEISENBERG: Philosophically, I am dead opposed to it. As a practical matter, I think we may have to go that route. We've had some experience in this State with compulsory arbitration in disputes involving public utilities. It was my fate for years to administer that provision of law. And, initially, I endorsed it because I thought this was one way to curb harassment of our public at large by the periodic threat of no gas or no electricity or no something constituting a utility. And then I learned, in administrating this statute, that the parties were simply utilizing the mediation procedures as a facade to get to arbitration quickly, and they weren't negotiating. Unions, for example, were asking in a typical posture for more than they really hoped to get and employers offering less than they ultimately expected to part with. And each held to that position for fear that if they moved from that, that would be taken as a point of departure in any subsequent arbitration proceedings and they would be stuck with it. So nothing happens of substance in the collective bargaining procedure. We stymied collective bargaining by that statute. That's why I'm opposed to it philosophically.

On the other hands, when we are dealing with matters of government and the sovereignty of government, I may just change my mind and say that in this area I see no alternative but compulsory arbitration in the event parties can't otherwise settle their disputes.

Now my guess is, parties may get burnt a couple of times by an award and decide that rather than run the risk of some screwball arbitrator coming up with the wrong answer they better do it themselves. That's the hope.

SENATOR KNOWLTON: Thank you very much, Doctor.

PROF. WEISENFELD: Thank you, sir.

SENATOR KNOWLTON: If you have any bibliography to give to this Committee, we're already amassing a library, we'd appreciate it.

PROF. WEISENFELD: Bibliography with respect to matters germane to public service?

SENATOR KNOWLTON: Yes. Thanks very much.

We will break now and return from lunch at 2:15.

(Recess for lunch)

[Afternoon session]

SENATOR KNOWLTON: This hearing will please come to order. Is Mr. Benjamin Halperin here?

For the record, will you please state your name in full and give your affiliation.

B E N J A M I N H A L P E R I N: My name is Benjamin Halperin. I am a Trustee of the Fair Lawn Board of Education.

SENATOR KNOWLTON: Do you have a prepared statement?

MR. HALPERIN: Yes, sir.

SENATOR KNOWLTON: Do you have copies of that? Will you please give them to our ladies here. I am going to ask the witnesses this afternoon if they have prepared statements to high-light the more important points in their statement. We have a full house here and I would like to get through by six o'clock if possible or before.

MR. HALPERIN: Sir, my statement is a high-light. It is very short.

My testimony will be to give to the Committee the problems I encounter as the Chief Negotiator for a district trying to live under Public Law 303.

It is my opinion that there is a need for the law in question but experience indicates that changes are required. It has become very costly in money and time consumed in attempting to negotiate terms and conditions

of employment without definitions being incorporated into the law as to what are terms and conditions of employment.

If I were an employee or a representative of an employee or an employee organization, I would maintain, and rightly so, that every element of control, building size, class size, equipment availability, directly affects my employment. With tapes, closed circuit TV, learning machines and with minimum class size, I could teach better, with less effort, be less tired at the end of the day than I could with large class sizes and use of text books and libraries only. Thus, if I take the liberal interpretation there is very little left for a Board of Education or a Superintendent of Schools to do relative to operating a school districtif I negotiate and give the teachers each and every term they demanded in their standard contract. The Board would merely raise the money to pay them what they think they need to buy the equipment to make their teaching life easier, etc.

I have listed approximately 25 items that the teachers placed before the Board for negotiation. Each of these 25 items are in addition to salaries and fringe benefits. I will not go through the items, but they are listed. Some of them, of course, are legitimate items but these are a scope for which they demanded negotiations and it is very time consuming to try to discuss all of these. Many of these items were for board policy and teachers insisted they be taken out of policy and

be made part of a firm contract.

The Board of Education representatives, four of us, met with an average of six teacher representatives from October 15, 1969 to June 12, 1970 for over 112 hours. Some of the meetings lasted over 10 hours and were conducted on Saturdays, and one or two on Sunday.

In order to prepare for these negotiation meetings, the Superintendent's Office, the administrators and others had to expend almost the same amount of time to furnish data required by the Board negotiators to meet the challenge. The Board members, in addition to the direct confrontation time, had to spend untold hours in reviewing the data supplied and to inform and obtain positions from the Board on each and every element raised in the negotiators. Each hour utilized in this venture meant the inability of the Board and its administrators to try to improve the educational processes in the District. The meetings included direct negotiations, mediation, factfinding and meetings with the PERC representative.

Finally we just settled this last week end when all authorities under PERC were exhausted, when both parties knew that they had to come to terms and the parties finally reached an agreement.

My recommendations are:

That the law be further defined to limit negotiations to salaries, fringe benefits and direct working conditions. (This does not mean that teachers and their organizations should not influence and exert pressure in other areas. They are experts in education. They have good and adequate background to advise. Their rights in educational matters should end there.)

On the other hand, if this Committee should find it is very difficult to limit the terms and conditions, the least the Committee should do is add items of exclusion to give us a more compact area in which to negotiate.

The law as constituted makes negotiations so time-consuming and so physically and mentally overbearing that no executive in his right mind would be willing to give his non-business or his relaxation time to this very important area of public business.

The time factor is important not only from the standpoint of total number of hours involved, but critical to the planning and operation for the ensuing year. We in Fair Lawn did not reach an agreement until June 15th when the prospect of ending the school year without an agreement created sufficient pressure. It is therefore recommended that a date be set by which time negotiations must be concluded. This date should be prior to adoption of the proposed budget which is submitted to the public for approval. Without such a time limit it is impossible to provide for adequate staff since prospective new employees will not accept a position unless the salary is stipulated.

I have two other additional recommendations which I believe will take time.

SENATOR KNOWLTON: Why don't you read them, because we would like to have them.

MR. HALPERIN: That consideration be given to divide the State in economic areas and that the salary and fringe benefits in areas be uniform. Thus, the salaries for the counties of Bergen, Passaic, Morris and Sussex should be uniform with negotiations conducted by a committee of the county superintendents. If this is not feasible, then a countywide negotiation with a countywide contract. In return for a uniform contract, all teachers in the area would have transfer rights, sick leave and such fringe benefits as agreed to by the parties.

In Bergen County alone we have 75 districts. With 75 districts, if each one uses four board members to negotiate, you have 300 people putting in over 112 hours, and the same on the teachers' side. So if we could at least confine it to a countywide basis it would be better, and I maintain that a teacher in Lodi is entitled to the same salary as a teacher in Ridgewood. They are teaching American children, and all children should have an opportunity to have teachers of equal calibre.

If certain districts presently have higher rates or more fringe benefits than others within a negotiation unit, these could be phased in over a 2 or 3 year period so that there would be no great hardship on any one district.

SENATOR KNOWLTON: Mr. Halperin, you mentioned the costs here. How much of your Board's budget was allocated to collective bargaining?

MR. HALPERIN: Mr. Cannito, do you know? Mr. Cannito is the Superintendent of Schools.

MR. THOMAS J. CANNITO: Are you referring to the cost of mediation?

SENATOR KNOWLTON: Yes.

MR. CANNITO: We have been paying $40 an hour for the attorney or aide in negotiations, plus we have had an untold number of hours of mediator time and fact-finder time.

SENATOR KNOWLTON: How many bargaining units do you deal with in your Board of Education?

MR. CANNITO: We have one for teachers, one for administrators, one for secretaries, one for custodial help, and one for cafeteria. We find it better that way, because we are able to negotiate with each group in their own sphere.

SENATOR KNOWLTON: Now in the supervisory category, what do you include in that?

MR. CANNITO: We have the principals -

SENATOR KNOWLTON: You are Mr. Cannito? Thomas J. Cannito, and you are Superintendent of Schools in Fair Lawn.

MR. CANNITO: Yes.

SENATOR KNOWLTON: Incidentally, Mr. Cannito, are you in Title I School District or in Title 2 School District?

MR. CANNITO: Title I. The supervisory unit at the present time is made up of approximately 25 of our administrators or supervisors, all of whom are on a 12-month basis. It runs from the Assistant Superintendentsthrough Directors of Education to Principals, Vice Principals, Directors of Guidance, Director of Adult Education, and Director of Audio-Visual Aids. Each is responsible for an area and in the case of Principals obviously they have staff directly responsible to them.

SENATOR KNOWLTON: Do you have a Director of Curriculum?

MR. CANNITO: We have a Director of Elementary Education and a Director of Secondary Education and in effect they are the curricumlum coordinators at the secondary and elementary level, respectively.

SENATOR KNOWLTON: And that personnel is included in the definition of Supervisors?

MR. CANNITO: Yes.

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

ASSEMBLYMAN WALTER SMITH: Yes, I do, I have a few.

I don't think you answered the Senator's question as to the cost of mediation. You gave us the price per hour but could you give us, say, a "ball park" figure of two thousand, three thousand, or ten thousand, or whatever it cost?

MR. HALPERIN: My guess this year is it was about seven or eight.

ASSEMBLYMAN SMITH: Seven or eight thousand, and that would be comparable to a salary budget of how much - just the salary budget?

MR. HALPERIN: Our average salary for a teacher is ten thousand.

ASSEMBLYMAN SMITH: Well now you are not telling me anything again. I want to know how much your overall cost would be approximately.

MR. HALPERIN: Sir, do you mean how much would it cost us if we hired a full-time negotiator?

ASSEMBLYMAN SMITH: No, I mean how much - you said you spent about seven or eight thousand dollars in negotiations.

MR. HALPERIN: Right.

ASSEMBLYMAN SMITH: What is your total budget for salaries in your school district?

MR. HALPERIN: I would say it is about one-tenth of one per cent. Our budget for salaries is in excess of seven million dollars.

ASSEMBLYMAN SMITH: And you spent approximately seven to eight thousand for negotiations.

MR. HALPERIN: That's right, sir.

ASSEMBLYMAN SMITH: I'm interested in your statement that this act should be limited to salaries, fringe benefits, and grievances. Is that what you were saying?

MR. HALPERIN: Yes.

ASSEMBLYMAN SMITH: How many of these items that

you list, in your opinion could come under grievances? You have 25 listed.

MR. HALPERIN: I would say none of them - none of these fall under grievances, none of these fall under direct salary either, or fringe benefits.

ASSEMBLYMAN SMITH: Well then, how many of these could be included if the act were amended as per your suggestion?

MR. HALPERIN: I would say about half could be included in the fringe benefits.

ASSEMBLYMAN SMITH: So we would be eliminating about 50 per cent of these.

MR. HALPERIN: At least 50 per cent. These do not include all. I just picked the highlights out of their package.

ASSEMBLYMAN SMITH: Some of them were a little shocking to me, very frankly, but you were faced with these problems.

MR. HALPERIN: Each and every one took a period of time either to negotiate it out or give in to it before we could get an agreement, yes.

ASSEMBLYMAN FRANK R. CONWELL: Mr. Halperin, I notice these items which you indicate, the 25 of them, and evidence a great deal of concern about them. I take it you do agree that teachers ought to be concerned with working conditions as far as grievances are concerned and that this ought to be one of the things to which you should rightly direct your attention?

MR. HALPERIN: Sir, working conditions is a wide open term. Working conditions could be the number of students in the class, which is class size; working conditions could be how many specialists we bring into a class. We may have a teacher who is teaching - most of our classes are only 25 in number. They are not telling us -- we think for this class number we should have a specialist in music come in so many times a week, and

so forth and so on,- areas that fall strictly within the Superintendent's area. It does make it easier for the teacher, I'll admit, and that you could say could fall within an interpretation of a fringe benefit. But we say at some point that the administration must run - and the school must run the school.

ASSEMBLYMAN CONWELL: You are aware of the fact that of the 25 items listed here, other than items 9 and 10, the rest could quite aptly be cross-overs of working conditions or things related to employment. All the other items somehow seem to be related to employment. But that is not the point I am concerned about. I am concerned about corrective legislation in one form or another and if you were then to provide us with some measure of what could be done in terms of corrective legislation, how many of these things would you eliminate and what things would you include specially as items worth negotiating as far as local boards are concerned?

MR. HALPERIN: As far as local boards are concerned, I agree that the normal type of working conditions should be limited to negotiation. How many students in the class?- it has many ramifications. If I agreed to bring our students down to 19, I might find myself with a building program which would require the vote of our public.

You have the same situation happening in New York City where they have limited the class size and I understand from information I have received from teachers they have to bring in more than one teacher staying in the same classroom. So there has to be a certain amount of rationale in where you draw the line on terms and conditions of employment.

ASSEMBLYMAN CONWELL: But you would agree with the premise, however, if you were providing us with some type of legislation, that teachers as professionals deserve the right - and I would think not only the right, but they ought to have the professional wisdom to decide how many children you can adequately teach in a classroom, and the

numbers ought to be determined by them much more so than by boards who represent lay people usually?

MR. HALPERIN: No, sir. I don't agree with you for this reason: Boards of Education do not in fact decide the number of children in the class. That is why we have a Superintendent of Schools, a Director of Curriculum, Director of Primary and Secondary Education, and the Board, I know in our district, relies completely upon a staff that has been trained to determine that and not the bargaining unit of a couple of teachers to decide whether they can teach 25 or 26. We have to rely upon the people trained and hired for that.

ASSEMBLYMAN CONWELL: Are these people usually in conflict with the teacher's opinion and also with State recommendations in regard to the class sizes usually?

MR. HALPERIN: I can't talk about other districts. I can talk about Fair Lawn. In Fair Lawn we have been bringing our class sizes down to 25 and our average is now about 25. We are down to the recommended amount but, of course, on top of that they now tell us in their terms and conditions how many specialists we will bring in, how many this will bring in - that they won't take the register anymore, that they don't want to stand in the hall to keep order - we should hire outsiders. There comes a time when the cost is going away from education into side issues and we have to keep the money as closely as possible to education.

ASSEMBLYMAN CONWELL: Then, even if you were not recommending specific legislation, the direction of the Fair Lawn Board of Education seems to be following the philosophy already mandated by the State in terms of what is useful and what is good in school systems generally. Wouldn't you say that?

MR. HALPERIN: I would say that we are following what we think is good educational practice as recommended by the State Board of Education and educators throughout the country, yes.

SENATOR KNOWLTON: Mr. Halperin, has your Board or has Mr. Cannito received any guidelines from the State Department of Education relative to conducting collective bargaining sessions with teacher groups and other bargaining units?

MR. HALPERIN: Not from theState Board of Education. We have received guidelines from the State Federated Boards. They have been very helpful and they have been furnishing us data upon which we can base decisions on where to go or where not to go or try not to go.

ASSEMBLYMAN CONWELL: Is it your recommendation that in regard to the interested groups in terms of community of interest for employees, you would reduce these cutting across all lines, or would you suggest some type of county legislation which would be a better kind of a blanket then a reduction of just community interest.

MR. HALPERIN: Sir, I don't follow you on that.

ASSEMBLYMAN CONWELL: Talking about dealing separately with janitors, teachers, nurses, supervisors and administrators inside the bill on separate districts, would you prefer that there be some sort of uniform county law in regard to coverage of all groups?

MR. HALPERIN: I think it would be better. I think there is no reason why Fair Lawn should pay more or less than Glen Rock or Ridgewood on any level of the educational system. I think people are entitled to a living wage and we shouldn't have to be competing with our neighboring communities as to who is going to pay more for the next teacher. I think the teachers should be hired based on what we have to offer - the comforts of the school, the climate and the educational climate rather than how much money.

ASSEMBLYMAN SMITH: I have another question. When you say on a county basis, you are thinking of Bergen

County. Is that not so?

MR. HALPERIN: Well, I just use Bergen County as an example. I would prefer, since I am a Federal employee, that it be a statewide negotiation.

ASSEMBLYMAN SMITH: Well, let's take the great city of Newark where all the problems are there, so they tell me.

MR. HALPERIN: They sure have them.

ASSEMBLYMAN SMITH: Do you think that should be a separate entity rather than on a county basis because they say they can't get teachers, the students are incorrigable in many areas, and they have many problems which are not in common with your town or mine. Now do you think that the cities should be handled separately?

MR. HALPERIN: It is very difficult for me, living in a fairly wealthy suburb to try to -

ASSEMBLYMAN SMITH: You don't really know about that, is that it?

MR. HALPERIN: I have had a lot of thoughts on the matter and I think the State Legislature has to do something separately for the cities, and I think it is very important for the cities to give them special legislation and special money, because they have problems that we don't have. They have problems of children coming in from the South and elsewhere or coming to a community where housing is cheap and, therefore, they have the problems for the whole State of New Jersey, and I think it's a State problem -

ASSEMBLYMAN SMITH: Well, it's a State problem, I agree.

MR. HALPERIN: I think the State should do it even if the suburbs like where I live pay part of it through a State tax, because they are really aiding us by having them all in one place. If they fanned out to the suburbs, it would come out that way anyway, so I think, even to the detriment of my own community, I would like to see more money go to the cities.

facing it. We don't have as great a problem, and I think communities like Fair Lawn should be helping Paterson and Hackensack and those other communities. I do believe it. They are all Americans and they all should get a decent education.

ASSEMBLYMAN SMITH: And you don't think the tax rate has anything to do with it?

MR. HALPERIN: Sure it has something to do with it, but isn't it better to pay taxes than send them to jail?

ASSEMBLYMAN SMITH: I am talking about where you have a high tax rate in many areas of the suburbs because they have these kinds of schools.

MR. HALPERIN: Right. But I say it's part of our American system -

ASSEMBLYMAN SMITH: And you feel that these people should encourage a higher tax rate to aid these other areas?

MR. HALPERIN: Yes, sir, I think so.

ASSEMBLYMAN SMITH: OK. I have no further questions.

ASSEMBLYMAN CONWELL: Mr. Halperin, may I ask another question. Is Fair Lawn one of the communities that still makes use of privately-owned facilities for public school purposes; namely, the synogogue there around the corner from your high school? Are they still using that?

MR. HALPERIN: No more, sir.

ASSEMBLYMAN CONWELL: They are not using it any more?

MR. HALPERIN: No, we purchased and rented portable classrooms.

ASSEMBLYMAN CONWELL: You are now using portable classrooms?

MR. HALPERIN: Right.

ASSEMBLYMAN CONWELL: Does this then not also suggest probably one of the problems that your teachers work with is the difficulty of having to work with make-shift facilities of one sort or another from time to time?

ASSEMBLYMAN SMITH: Well, it's going there.

MR. HALPERIN: I think it should go there. I think they need it. I definitely think they need it and we should do everything to help them.

ASSEMBLYMAN SMITH: But speaking of your areas - you think they should be treated separately and apart? Your recommendation was that we should have economic areas. Isn't that what you say?

MR. HALPERIN: For negotiations, yes.

ASSEMBLYMAN SMITH: For negotiations primarily with respect to salaries, isn't it?

MR. HALPERIN: Right. If you are talking about my personal feeling on what we do with the children, I happen to be a great believer in bussing but I don't dare mention that.

ASSEMBLYMAN SMITH: Well, I'm glad you didn't mention it. I didn't even hear you.

MR. HALPERIN: That's what I'm saying. I believe that is the only way you are eventually going to help these children - get them out of all one area and spread them around the State and give them a half-way decent education.

ASSEMBLYMAN SMITH: You don't think we can elevate the schools in the cities?

MR. HALPERIN: I think it is going to be very difficult because I don't think the State is going to come up with the kind of money that is needed to get these people decent school conditions and a decent number of teachers, because many of them are under-educated and it takes more teachers to teach an under-educated child, and I don't think you are going to come up with that kind of money. I think the only way you are eventually going to solve the problem is by spreading them out and letting each community help the cities.

ASSEMBLYMAN SMITH: Don't you have these problems in Fair Lawn?

MR. HALPERIN: Yes, we have them, but we are

MR. HALPERIN: No, sir, I think most of our teachers would like to get into the portable classrooms. They are of a large area and air-conditioned. They do like them -

MR. CONWELL: They don't give rise to any 25 or 75 indicated-

MR. HALPERIN: No, sir. They have recommended more of them if we could afford it.

SENATOR KNOWLTON: Are there any further questions? [No questions].

Mr. Halperin and Mr. Cannito, thank you very much for coming down here. I mean that, because it is refreshing to get the voice from the grass roots or from the boondocks if you want to characterize it, and it is very enjoyable to hear the fellows on the firing line.

ASSEMBLYMAN SMITH: Mr. William Ramsay, Executive Director, New Jersey Association of School Administrators.

W I L L I A M R A M S A Y: Off the record, this doesn't have that many pearls in it that they should be asking for a copy.

Assemblyman Smith, I am William Ramsay, Executive Director of the New Jersey Association of School Administrators. This statement is actually being made on behalf of the New Jersey Council of School Administrators, which includes membership of the Department of Elementary School Principals, the New Jersey Association of Secondary School Administrators, and our group.

ASSEMBLYMAN SMITH: Is Assemblyman Conwell a member of that?

DR. RAMSAY: I don't know, to tell you the truth.

ASSEMBLYMAN SMITH: We will have to disqualify him if he is.

DR. RAMSAY: Senator Knowlton has asked that we not read verbatim, so I shall not and I will just refer to the main points here.

We appreciate the fact we are able to make some recommendations regarding amendments to P.L. 303 and the first two are more in the form of proposals to the Legislature to pass on its recommendations to PERC. I am

glad Mr. Pease is seated here.

The first one is under the concept "Negotiating requires skilled negotiators," amd I mention here that our membership is concerned with the practice which has been developing over the past year in more than a few school districts where the board members and teachers become involved directly in negotiation procedure. We find that, of course, with exceptions, neither group is particularly skilled in the negotiating process, and there is a great deal of "heat" generated during these sessions which we feel mitigates against effective employer-employee relationships. We have some reason to believe that perhaps the involvement of the board members themselves and the teachers may tend also to complicate the process and to lengthen the term of negotiations.

Yesterday Mr. Pease mentioned a concern that he felt negotiations were becoming complex at points because members of local teams were not too well-versed themselves. I know that, for example, Mrs. Page has done and is doing a tremendous job through her Association to alert board members to Chapter 303, etc., but board members are transitory and they are here and they are gone, etc. Teachers perhaps have a greater degree of stability within the situation and there too the NJEA, I think, has done a marvelous job working with them, a great deal or orientation.

But there is this factor of the heat which is generated when a board member who might already have had a conflict with a teacher is seated at a table across from that teacher. And we are recommending that you pass on to PERC a request that they ask boards of education and education associations to retain qualified negotiators. We are recommending to each board that the negotiator they appoint be responsible to the Superintendent. We feel that the board in negotiations has a policy-making role. We think in the final analysis

this kind of procedure may do a great deal toward developing better relationship and perhaps a more efficient negotiating session.

Secondly, we are concerned about the fact that budgets are going to press so to speak and matters have not been negotiated and we would like to have recommended to PERC that they establish some kind of time table appropriate for each grouping of public agencies; for example, boards of education, municipal governing bodies, etc. I merely mention that in the case of Boards of Ed it might call for a submission of proposals no later than September 1, with sessions beginning no later than September 15, as an example, permitting PERC to resolve the impasse no later than December 31.

Now I am not so naive as to think that all impasses will be settled by then, but apparently there is great concern that time is lost and budgets are ready to go to press, but they are unrealistic because they don't always contain the proposals that are being discussed by the teacher group and the boards.

We realize too that as 303 is now written that PERC may intervene in an impasse situation when either party makes a request. It may be necessary to amend 303 to permit PERC to intervene on its own motion. This too would be in accord with what the PERC Chairman indicated yesterday.

In this regard we do oppose the provision of Senate Bill 537 which would assess each party for the cost of mediation. Now we agree that mediation might be used indiscriminately but we would not like to see it discouraged to the point where it is not used when needed.

Our third point - and now we get into a point which has more bearing on amending the law. We feel there should be a clarification of unit composition. Chapter 303

as presently written is, we think, unclear regarding inclusion of supervisors in negotiating units containing non-supervisory personnel. We believe very strongly that in the conduct of negotiations, as in all board matters, boards of education should have the benefit of the thinking and the recommendations of their total management team. If principals and supervisors are members of a negotiating unit containing non-supervisory personnel, we feel their effectiveness as advisors to the superintendent, and hence to the board, is extremely limited.

We recommend in here the inclusion of the definition of the term "Supervisor," and in our case here we say "supervisor" means any individual having authority, in the interest of the employer, to hire, transfer, suspend, promote, discharge, assign, reward or discipline other employees or effectively to recommend such action.

We recommend further that Section 7, paragraph 1, be so amended that in effect we would delete the clause "except where established practice, prior agreement or special circumstances dictate the contrary." Here we are following, I think with some consistency, our point that we do not believe that supervisors should be in a unit with non-supervisory personnel.

We do recommend that principals and supervisors establish their own negotiating units.

Fourth, we obviously feel that Chapter 303 should not supersede Title 18 A and I know that in Section Section 10 of the Act it does say "nor shall any provisions hereof annul or modify any statute or statutes of this State." We would like to have added there something along these lines: "Nothing in this Act shall be construed to abrogate or modify the statutory authority of governing bodies in meeting their responsibility to the electorate." Now we inserted this in line with our

thinking on the definition of terms and conditions of employment.

We appeared last March before the Senate State Government Committee and we did recommend that Chapter 303 be amended to be more specific regarding this definition. We have thought a great deal about that since then. We have had a committee working on this and we realize that considering the number of public bodies with which PERC has to deal, this may not prove to be feasible. So, therefore, we are suggesting that in order that the responsibility of the boards of education and the public not be compromised, this statement be added somewhere in that section so that it becomes quite clear that the board in its responsibility to the public must still make certain decisions where it feels it has its responsibility to the electorate.

Fifth, we feel that PERC's role in settling impasses should be strengthened. We recommend that some kind of machinery be established, with perhaps an impasse panel, to assist PERC in settling impasses when all voluntary efforts fail. We mention that although there is no unanimity of opinion among our members regarding binding arbitration, many feel that the threat of a third party "outsider" to settle a dispute may be less frightening than the threat of a strike.

Regarding strikes, we are on record as opposing Assembly Bill 810 which legalizes strikes, work stoppages, etc. We realize that there is a wealth of opinion

supporting the right to strike in the public sector on the basis that "the denial of this right makes second-class citizens of public employees." We are also aware that in some states where there is strike prohibition legislation , they don't have enviable records for avoiding strikes. We feel that nevertheless at this critical juncture in our Nation's history, we cannot condone the cessation of the educative process as a device to improve upon the the educative process. We are concerned that that the legalization of the strike in the public sector might serve as a catalyst for work stoppages. We would have to say, yes, there are some boards of education too ready to say: "If you don't like it, strike," and unfortunately we feel there might be an equal number of education associations ready to accept that challenge.

It seems that labor and industry over the past fifty years have learned that the strike is a costly weapon, and we question whether we should repeat this experience in the public sector. We can say that our efforts as school administrators - and here again I am not trying to take a Utopian viewpoint - but we can assure you that our efforts will be directed toward the development of a climate within which strikes perhaps are neither necessary nor desirable.

Thank you.

SENATOR KNOWLTON: Dr. Ramsay, two or three witnesses have suggested to us that as a last resort where the parties just cannot agree, in order to avoid strikes a law should be enacted providing for compulsory arbitration. How do you feel about that?

DR. RAMSAY: I'm not sure that I hit that directly - probably on the oblique - but we have mixed feelings about it. I think that it might have to come to this. I mention here that we might find this more palatable than strike.

SENATOR KNOWLTON: Do you think that a Superintendent of Schools is part of management?

DR. RAMSAY: Yes.

SENATOR KNOWLTON: Would you say a Principal is?

DR. RAMSAY: Yes.

SEN. KNOWLTON: Would you say such staff personnel as a Director of Curriculum, Director of Speech Therapy, and various other similar jobs who come under the Superintendent's Office, should be included on the management team?

DR. RAMSAY: Well here again it's possible. I think I heard another witness react this way to the same question. I think to a certain extent it depends on how the board defines the position for these people. If the positions for these people put them in the classroom more in a teaching position or more in a relationship with the students, perhaps not, but if they are working with groups of teachers and carrying out certain kinds of programs, then you get into this aspect of signing, recommending, rewarding, disciplining, etc. I think to a certain degree it depends upon that kind of thing.

SENATOR KNOWLTON: You said before - or did you say before that Superintendents and the supervisory personnel, Principals, and so on should be a bargaining unit?

DR. RAMSAY: No, not the Superintendent. We accept the fact that the Superintendent as the Board's chief executive officer should not be in the bargaining unit.

SENATOR KNOWLTON: What about Principals?

DR. RAMSAY: We feel that Principals should have the right to form their own bargaining unit. We would rather see this than to have the Principals in a bargaining unit with non-administrative or supervisory personnel. We think their position is compromised when this happens, particularly if a grievance is developed in a building - this grievance could literally be against

the Principal, and if he is a member of that unit, at least in our minds, some question arises as to his effectiveness in dealing with this.

SENATOR KNOWLTON: I have a little difficulty with that answer because it would seem to me - and correct me if I'm wrong - that management should not be a part of the bargaining unit.

DR. RAMSAY: We might come to that. I'm saying that I recognize that being the board's chief executive officer, the Superintendent should not be in a bargaining unit as such but legally he is in a bargaining unit of his own in reality with the board, although in a highly vulnerable position albeit. We have supported the concept of the remainder of the management team being under 303. At present it does permit it and we are not saying that they should not have their own unit. It might - to carry your thought a little further, yes, at some point in time if the management team concept is more highly developed. We may find outselves excluding these people, or wanting to, from negotiating units. But at the moment, we are supporting their involvement in a unit of their own.

SENATOR KNOWLTON: Mr. Benjamin Halperin, a trustee of the Fair Lawn Board of Education, whom we just heard, observed that collective bargaining with respect to wages and fringe benefits should be on a regional, or an economic regional basis. Would you care to comment on his suggestion? In other words, you could take the counties of Bergen and Passaic and Newark - or in Essex County - and have the supra management team negotiate with a supra teachers group for wages and other economic benefits in that entire area.

DR. RAMSAY: I can see some practicalities but I don't know if I am ready yet to accept a move away from the local district unit as an autonomous unit being able to carry on its negotiations, and the State, I think, wisely has permitted local districts to be autonomous - I think, and he may have mentioned it - I thought I heard

something along these lines that if there are recommendations, for example, for teachers in New Jersey to carry various benefits across municipality lines like tenure, sick leave, etc., it may then be a natural prelude to have a State salary guide for all districts so that the first-grade teacher in the commercial township gets the same amount for her bachelor's degree as a first-grade teacher in Newark. I have indicated some people who are recommending the transfer of tenure and transfer of sick leave that they may not want it but they may project a situation into which we will find this kind of thing where they will say, "Fine, let's consider a teacher as a civil service person." It's like the Federal Government- anywhere she moves in the State she carries identical benefits.

I don't know that I am ready yet to see this because I still believe strongly in local initiative and I think the fact that certain communities can make supreme efforts encourages other districts to try to do the same thing. I don't know that I am ready yet to see the State system as such, even though I know constitutionally education is a State function. I'm not ready to accept the recommendation he made. I don't think I would want to see at this point regional negotiation setups. We may come to it, however.

SENATOR KNOWLTON: Because of the varying ratable picture amongst municipalities; for instance, one municipality might be residential for the most part, another might be industrial for the most part, such as Teterboro; in one community the median income may be low and in another community the median income might be high. Do you think that this problem of negotiating with teacher representatives might be better solved by attaching to the Office of the County Superintendent of Schools personnel who are trained and skilled in collective bargaining so they can help out the individual school district?

DR. RAMSAY: I think it makes sense. Right now you have child study teams attached to the county office and a number of other functions, and I think that it would not be impractical for a county containing a number of small districts, with little ratables, to share among them this kind of service. In fact, when we say that we would rather see boards hiring skilled negotiators responsible to the board, and so forth, we recognize some districts may not be able to afford this, but they may be able to share with three or four other districts a negotiator as they do a special ed person. Now if this were done at the county level, fine. I think it would be a worth while service for the county, particularly in counties like Cape May, etc.

SENATOR KNOWLTON: Do you have any opinion with regard to what should constitute collective bargaining outside of wages, of economic benefits? Do you think that a board or its representatives should engage in collective bargaining with teacher groups with respect to classroom size, curriculum content -

DR. RAMSAY: I will answer it this way, Senator. A year ago we made a recommendation that there should be some specificity of this kind of thing and we found out that some districts moved out in front of us, that they are already negotiating these things. We wanted to be realistic about this. I have talked with Superintendents, some on the very committee that helped us prepare this, who in their district with their boards are discussing, let us say on a negotiation basis, all items - almost the sky's the limit. We did not support this concept a year ago, and I still feel that the board should have some kind of backing in the act and state that it has responsibility to the public. It still doesn't mean that the board can't say no to our way of thinking and in the final analysis it's not so much a list - and I will agree with what we said yesterday, it may be very difficult to prescribe a list or to limit a list and to say that certain things don't affect teaching efficiency

and what have you. So some have moved out in front of us, so we have said, "All right, we will accept this but we want something in the law to support the board when it states, 'Look, we want a certain program in the schools to meet the needs of the public and the Education Association perhaps might not want that program!" We feel we o w e it to the people; we are the representatives of the people; we shall have the program. We feel there should be this kind of backing in the law.

SENATOR KNOWLTON: Let's take the case of a board of education that absolutely refuses to discuss anything whatsoever with teacher representatives. Do you feel that the law should provide that a teacher representative could go to court and obtain an injunction compelling the board to collectively bargain in good faith?

DR. RAMSAY: It sounds reasonable.

ASSEMBLYMAN SMITH: Dr. Ramsay, as I understood your initial statement, you recommended an impasse board which my understanding was would have no binding arbitration powers. Then in response to Senator Knowlton's question about a binding arbitration board you sort of agreed with that. Now my understanding was that the impasse board, which is the first I've heard of this, would be a non-binding board but some other avenue of relief prior to a strike. Is that correct?

DR. RAMSAY: Yes. I mention that there are mixed feelings among the group preparing this statement.

ASSEMBLYMAN SMITH: You may not be speaking for a majority of your -

DR. RAMSAY: When I say I would buy this kind of concept, I am speaking personally as a professional person, but in this particular report there was some feeling that there ought to be some kind of an impasse panel whereby PERC would have another crack at the situation. This is what it boils down to, but I say that among some of the membership there was a feeling that a threat of a third party outside of allthis binding arbitration may not be as unpalatable as a strike. I really can't say that our

association, this group for whom I'm speaking, would accept the binding arbitration feature.

ASSEMBLYMAN SMITH: Well, let me ask you this: You know, these contracts come up every year for teachers. Let's assume they go all the way through the rigmarole and they fix the binding contract some time in April or May or some time near the term of the year, then they start all over again. Don't you think there should be some limitation as to how far and how often they can go through this?

DR. RAMSAY: It would have to be a two-way street, no doubt about it.

ASSEMBLYMAN SMITH: Because this comes up every year. They could be in constant negotiation, and this isn't fair in my opinion.

DR. RAMSAY: I think part of it is a result of the newness of the whole thing and the lack of sophistication on the part of both groups.

ASSEMBLYMAN SMITH: Would you say that maybe one school district should have the right to go every two or three years or to limit it in some way, because what's the sense - you go all through this bit and then they get a second bite in two months or three months. This is the problem as I see it.

Also I am very much concerned about your suggestion as of December 31st when this can be put on the budget, because you can't put it on after that; I don't care what they agreed to.

DR. RAMSAY: We would expect that after that the settlement is made and the budget is presented to the public, assuming it contains the features that were discussed and negotiated, and what have you, that people should live up to the agreement.

ASSEMBLYMAN SMITH: Well nobody here - I wasn't here this morning but as far as I know, nobody here has made any suggestion as to a limitation as to how often they can do these things. Now I am talking about the teachers specifically.

DR. RAMSAY: Well, the board can agree with the Association on a contractual arrangement containing certain features over a period beyond a year I am sure.

ASSEMBLYMAN SMITH: Thank you. I have no further questions.

ASSEMBLYMAN CONWELL: Mr. Ramsay, if one were to follow the development of negotiations between teachers and their boards of education, do you agree that they usually start with polite conversation in the early stages?

DR. RAMSAY: They usually do, yes.

ASSEMBLYMAN CONWELL: I am trying to establish some relationship between your suggestion or recommendation about an impasse committee. They usually start with polite conversations and then they become a little bit more ardent one side to the other in regard to terms, and then they finally get to the place where they are calling names, and then they are finally saying, "Look, we are going to have to negotiate"or "we are no longer going to negotiate with you; we shall call in PERC."

Is that usually it? Doesn't some similar sequence as that usually develop? Would you not then say that PERC already exists, at least if not in name, in fact a glorified committee for impasses without the power to demand compulsory arbitration, that this does in fact become the port of last resort short of compulsory arbitration as it presently is?

DR. RAMSAY: I don't know how glorified but -

ASSEMBLYMAN CONWELL: Well, it can become just this . I am only disturbed about the continuing proposals to add other committees to an already-established committee whose function becomes in effect a court of last resort short of compulsory arbitration. Is there some other useful purpose to be served by the establishment of such an additional committee?

DR. RAMSAY: I merely mention that it is an impasse panel at some point just before they are ready - it's like a cooling off period. I might have to agree that without the baseball bat of binding arbitration it may not be as strong as we would like to see it. I am not arguing the point with you, Assemblyman Conwell.

ASSEMBLYMAN CONWELL: In fact, all of us are trying to cushion what we recognize must eventually be based on some alternate weapon of one sort or another, either compulsory arbitration or the right to withdraw services.

Would you then agree with this, that your second premise and concern seems to be the role of the Principal in negotiations and you believe, I understand from your statement, that Principals ought to have the right and do have the right to organize in separate units negotiating for themselves, and do you likewise believe in the establishment and the operation of a ratio system for salaries for Principals?

DR. RAMSAY: We have rejected as an organization the ratio salary tying a Superintendent to a ratio that would be borne, so to speak, with the teacher's salary guide. We are also recommending to this Council that there be consideration of a ratio salary guide for Principals but based upon the Superintendent's salary not on the teacher's salary, so we feel this is a continuation of this management team concept, that if the Principal is tied in, economically, etc., with the teachers, he is compromised to some degree. A lot depends upon the individuals; I realize that.

ASSEMBLYMAN CONWELL: Well, then are we really saying; in order to get the record straight, for the recommendations for any kind of usuable legislation, are we then saying on the one hand that insofar as salaries are concerned, administrators need to be linked to other administrators, from the chief of staff down, and stop at that point at the teacher level but move

over again to the teacher ranks when it comes to determining class sizes, number of specialists involved in classroom situations, the working hours for teachers, the available free periods for teachers - all of these so-called working conditions relating to teachers specially recommended by Principals. Is this then not playing a dual role in a double capacity, both administrator and teacher? And how can we arrange any series of legislation which will be truly effective in this area?

DR. RAMSAY: I don't necessarily see a conflict here; for example, if the Principal is part of a management team and gives advice during negotiations to the Board, to the Superintendent regarding programs and what have you, and not have his salary necessarily tied to the teachers' salary guide, I don't know where there is a conflict there. I still think that if his salary is tied ratio-wise to the teaching staff, there is a simplication and he is financially improved or disadvantaged based on this kind of thing.

I know what we are discussing is highly suggestive. I recognize that.

ASSEMBLYMAN CONWELL: Would you recommend then, in order to be helpful to this Committee, that administrators' salaries be related to the top rather than to the bottom as a matter of policy for the Principals Association of the State?

DR. RAMSAY: Yes. The Federated Boards has a salary Committee which involves representatives of the various administrative groups at this time discussing this kind of thing.

ASSEMBLYMAN CONWELL: One final area of concern: In regard to making ultimate decisions, since we both recognize apparently that impasse committees are just one more way of avoiding coming to grips with an alternate, does the Principals Association accept and adopt the concept that there is sometimes no avoidance of strikes?

DR. RAMSAY: I can't say; I don't know.

ASSEMBLYMAN CONWELL: They have formulated no such policy at the moment?

DR. RAMSAY: No. You see - excuse me - I mentioned that this council I am representing is something brand new. Each of the constituent organizations retains its identity as the Department of Elementary School Principals, Association of Secondaries, and our Association of School Administrators which is largely Superintendents, but we have decided to share ideas on certain issues and this really represents our first attempt at providing a position representing largely the three organizations.

ASSEMBLYMAN CONWELL: Well, since the Assembly has to deal chiefly with people with specific problems like administrators as a body, would you feel that the administrators group would not agree or would not recommend that the Assembly pay too g reat attention to the adoption of countywide control of salaries, etc. as a matter of policy, that there be few variances.

DR. RAMSAY: Just a guess - they probably would not recommend it at this time.

SENATOR KNOWLTON: One final question, Dr. Ramsay.

Professor Allen Weisenfeldt of the Graduate School of Education of Rutgers, who has had considerable experience in Mediation, especially in the New York State area, suggests that the mediation function of PERC be transferred to the State Mediation Board because of its long-established familiarity in dealing with labor disputes in the private sector and that disputes in the public sector are almost identical, if not identical, with the private sector. Do you have any comments to make on that suggestion ?

DR. RAMSAY: None, except that in the early stages, when the bill was being discussed which ultimately became P.L. 303, we had a strong feeling that we did not want to see the Mediation Panel in the labor complex, so to speak. There was sensitivity that this could develop

somewhat of a different kind of thinking toward the negotiation procedure than if it were handled either in the Department of Ed, which it ultimately was not, or a separate body like PERC. I can say "associationally" we did not approve of placing any of these controls in a Department of Labor or in a panel connected with the Department of Labor.

SENATOR KNOWLTON: Do you think that collective bargaining in the educational world should be handled by a division within the Department of Education, the State Department of Education?

DR. RAMSAY: I thought so earlier. I am not so sure now. I respect the concept of PERC. Originally one of our recommendations was that this be housed within the department of Education and then we came to realize that it calls for special expertise. We didn't necessarily want that expertise to be related to the Department of Labor. I don't know that we would recommend that it be placed back in the Department of Education at this time. The Department of Education, of course, has the function of making rulings under Title 18A and, as long as this bill does not modify any of the Board's positions under 18A, I don't think it is necessary that the Department of Ed contain this structure.

ASSEMBLYMAN CONWELL: Can you comment briefly on what you would do about the matter of local boards of education having to adopt budgets in February and the Board's fiscal year not beginning until July 1st - therefore, more frequently than we care to admit teachers are being held in violation of contract. It is merely because of the technicality of one date versus the other, one being in conflict with the other.

DR. RAMSAY: Well, I know I had a discussion with someone located in NJEA and I mentioned the fact that as long as the contractual year ran to June 30th there was a violation of contract, and the suggestion was made that perhaps we ought to change the year. We have a fiscal

year beginning July 1 and I think that should be the operational year also.

SENATOR KNOWLTON: Thank you very much, Dr. Ramsay.

I will call Mr. Frank Fiorito.

Mr. Fiorito, for the record will you please state your name in full and your affilitation and where you are employed.

F R A N K A. F I O R I T O: Gentlemen, I am Frank Fiorito, Legislative Representative of the New Jersey State Federation of Teachers. I am a full-time classroom teacher in the Newark School System.

When Chapter 303 of the lawsof 1968 was written into law the teachers and, to some extent, the school boards in this State breathed a sigh of relief. Here, for the first time in this State, was a forum in which could be heard the difficult problems of negotiations between teacher groups and school boards. Before Chapter 303, there was only confusion, lack of precedent and uncertainty. After Chapter 303, the broad outlines ofbargaining postures of teachers and school boards could be discerned.

The bargaining relationships between these two groups has become increasingly clarified as PERC has, on a case-by-case basis, made decisions concerning the kind and extent of bargaining units and probed the limits of the areas of negotiations. In the brief two years or less during which PERC has operated with a greatly curtailed budget, it has begun to bring order out of chaos.

We have come here to discuss a series of proposed amendments to Chapter 303 that, if enacted, would greatly change the nature of the Commission and the law under which it functions.

Many of the proposed changes would not be, I submit, salutary and would not create higher levels of equity and tranquility in the bargaining process.

Senate 564, if enacted, would destroy the very texture of Chapter 303 and would hurl us back into the

terra incognito that existed before 1968. Here is a bill that would define by statute the areas of negotiations; that would define by statute the bargaining unit; that would not allow one exclusive bargaining agent; that would allow employers to make vital rules concerning employees without negotiations with the employees; that would write into statute a prohibition against strikes by public employees.

A-498, its companion bill in the Assembly, would do the very same.

These bills, and others like them, would set back the course of fruitful negotiations at least a decade, for they rely on a hard and fast approach to all aspects of negotiations. Anyone, even the least bit sophisticated in this area, knows that hard and fast are the two words that least characterize any meaningful negotiations.

True bargaining can rarely be mandated by statute. Statute can create a place or, if you please, an attitude of mind that will promote bargaining; but statute will never compel bargaining to follow a narrowly-defined channel.

Graduality and evolution are characteristic of meaningful negotiations - not fiat and dictation.

In the New Jersey State Supreme Court case of Lullo vs. The Firefighters, decided in March 1970, the holding supports the concept of graduality in the evolution of rules regarding bargaining for public employees. The decision states that bargaining units and areas of negotiations should be resolved on a case-by-case basis rather than by hard and fast unyielding mandate. These areas can be probed by PERC rulings and by the rulings of the courts.

S-564 would eliminate the idea of one exclusive bargaining agent for all the teachers. This would strike at the very heart of collective bargaining. It would create a bargaining posture on the part of teachers like that of the teachers in Minnesota and in California, where fractional representation is allowed in bargaining. This concept creates a spurious kind of democracy under which the public employer can divide and conquer at will.

S-564 would allow employers, unilaterally, to make vital rules concerning employees without negotiations with the employee representative. Such an idea is the very negation of the concept of collective bargaining which is never unilateral and paternalistic.

Finally S-564 would write into statute a prohibition against strikes by public employees. This would be a great danger. Chapter 303 only refers to the New Jersey State Constitution on this matter but leaves the question of strikes by public employees largely moot. It is a wise position in my humble opinion. To spell out a severe prohibition against strikes by statute can only lead to more, not fewer, strikes.

Another bill, S-537, would place the cost of mediation on the parties involved in a dispute. This would work a great hardship on many struggling public employee unions, and the ultimate effect will be to discourage the use of mediation which in turn will create a greater number of impasse situations and, as a concommitant, a greater number of strikes.

Another intent of some of these bills is to create mammouth bargaining units by statute. In New York State a law that created six basic bargaining units for all public employees was repealed because it was found that such all-encompassing classifications are futile if the unit is not based on the identity of interests of those within the unit. Any attempt to do the same in this State will only bring on the same result. No statute is flexible enough to determine the true identity of interest within a unit. Only PERC, as now generally constitued, can make such determinations.

Some positive amendments to Chapter 303 would include the discretion of PERC to send in mediators to resolve a possible impasse situation. As the law now reads, only the parties involved in a dispute can request PERC's intercession. Giving to PERC itself the discretion to

send in mediators when it deemed it necessary would be a great improvement in the law.

Another positive amendment would realistically increase the funding of PERC. This body has had to operate under an austerity budget. No true gauge of its ability to do the job can be seen under those conditions. It has, in my opinion, operated admirably under very adverse conditions. If well funded, it could do a much better job. Teachers have suffered because PERC has not been able to handle large backlogs of its work.

I would support A-810, a bill which would allow public employees to strike. If revisions are to be made in Chapter 303, then let it be stated that public employees have the same right as private employees - a right that Chapter 303 clearly spells out for private employees - the right to strike.

I would support A-1049, a bill which would include an anti-injunction amendment that would place upon the public employer the burden of proof that he had indeed bargained in good faith and had complied with the specific provision of Chapter 303 which states that employers must bargain in good faith - before an injunction will be issued.

If the public employer wishes equity, then he must do equity; he must show that he bargained in demonstrable good faith before any thought of the use of the odious New Jersey ex parte injunction is entertained.

Teachers are punished beyond all sense of proportion for defying an injunction against a strike. Two hundred Newark teachers face jail sentences ranging from ten days to six months for defying an intolerable ex parte injunction, while the Newark Board of Education, which defied Chapter 303 by bargaining in the worst possible faith, has suffered no penalty whatsoever. We do not ask for penalties - we demand equity in bargaining relationships.

Public employers must do equity no less than public employees.

Gentlemen, I hope that this hearing will not become the funeral service of a noble idea. To amend Chapter 303 into impotence will not serve the interests of the State of New Jersey. To strengthen Chapter 303 into an equitable, viable tool for the solution of disputes will serve the ultimate interests of the teachers, the school boards, and the State of New Jersey.

SENATOR KNOWLTON: Mr. Fiorito, I am not going to go into a history of the prohibition of strikes by public employees. I think we all know it very well. We all know that in the public area the public must be served and certain services must be continued no matter what, but suppose we create a system of collective bargaining, giving to both the public employer and public employee certain tools, including adequate PERC staff, adequate numbers of mediators and fact finders, and suppose that both sides could be compelled by an injunction to bargain in good faith and an effort was made to keep the parties at the bargaining table until their differences were resolved, and suppose, despite that, however, one party or the other proved to be recalcitrant, unreasonable, in their refusal to modify their stand with respect to wages or economic benefits. Do you think that it would be then a fit subject for a fact finder to report his finding of facts to an arbitrator and that arbitrator make a decision which is binding on both parties? That's a euphemism for compulsory arbitration.

MR. FIORITO: Yes, I'm aware of that and I am compelled to give you the same answer that Dr. Weisenfeldt gave you - philosophically I am dead set against compulsory arbitration, and I think I would go even further - practically I'm set against it. I believe that if all those conditions existed that you outlined, Senator, there would be no need for compulsory arbitration. I believe if all of these things were fulfilled, disputes could be resolved.

SENATOR KNOWLTON: What would you do in this case:

Suppose a board of education agrees with the teachers group and will pay you X number of dollars over the next period of years and increase your salaries by five, six or seven per cent for the next three years, and then that question was put on the ballot and was defeated by the electorate, would you then go out on strike?

MR. FIORITO: Just let me go over this, sir. If an agreement had been reached with the board of education, a binding agreement arrived at a meeting of the minds, a memorandum of this agreement and then the electorate said they would not fund it, yes, I believe the agreement is binding on the two parties, the Board of Education is the representative and makes agreements for the community - yes, I believe that would be reason to strike.

SENATOR KNOWLTON: I asked Dr. Ramsay a question about the suggestion that Professor Weisenfeldt made. He suggested, and I think you remember it, that the mediation function of PERC- I am merely asking this question; I don't espouse it or anything else - I don't know whether to or not, but he suggested that the mediation function of PERC be transferred to the State Mediation Board because he felt there was a communality of environment, you might say, that manager-employee relations in the private sector were almost identical with those in the public sector. Would you care to comment on that suggestions?

MR. FIORITO: I was speaking to Dr. Weisenfeldt before he spoke. It was the first time I heard of this idea, and I haven't been able to give it enough thought really. At first blush, it seems as if it might be a good idea, yet I would not like to hurt the integrity of PERC - I would not like to hurt the integrity of this organization; I would like to see it develop in its own right, so I can't comment definitively on that. I'm not sure whether this would be a good thing or the better course. I would prefer, I think, that PERC should be adequately staffed and develop its own set of mediators or possibly use some of the

mediators from the State Mediation Board and still retain its own identity as far as mediation goes. I think PERC should be the organization that would do it.

SENATOR KNOWLTON: I have listened with a great deal of interest to your comments on the limitations of bargaining units. You know trustees of Boards of Education serve without pay for the most part.

MR. FIORITO: So do most Union officials, sir.

SENATOR KNOWLTON: I know in my own town that two members of the Board of Education refused to run again though asked, because they just couldn't put in the time, and it was difficult to find people to replace them - I mean really difficult. And we are a school district in Tenafly where relations between teachers and the administration, the Board of Education, are excellent. Don't you think on that basis alone, for that reason alone, that there should be some rational method to try to limit the number of bargaining units.

MR. FIORITO: I am not opposed to rationally and intelligently limiting bargaining units, but when I pointed out these mammouth units you've run into tremendous difficulty, because if you get people who have a divergence of interests, this would happen if you tried to mandate large units. You would have an extremely lot of difficulty. They would break down. They would inevitably break down. I am not for one more bargaining unit than is absolutely necessary, but we must determine that this group has its interest, sir,

there is an identity of interest and that you don't just lump them for the purpose of streamlining into a large unit.

ASSEMBLYMAN CONWELL: Mr. Fiorito, do you have any idea of the cost of negotiations for the Federation of Teachers in Newark in any given year, for the organization, let's say?

MR. FIORITO: For the Newark Teachers Union, sir? Yes, I'm an officer of the Newark Teachers Union and, when you come to cost of negotiations - of this last negotiation?

ASSEMBLYMAN CONWELL: Yes.

MR. FIORITO: Do you include in the cost fines, personal and levied by the county? As for other costs, I believe that this cost a quarter of a million dollars. I don't think I've included all the other costs.

ASSEMBLYMAN CONWELL: Do these costs come out of the pockets of teachers? They do, don't they?

MR. FIORITO: These costs come from teachers, from other elements of the Labor movement, hopefully, from other means by which we can raise funds, from people who are interested in our Union and are willing to fight to save it, from well wishers - it comes from everybody who will contribute.

ASSEMBLYMAN CONWELL: How about the teacher such as yourself who represents the Teachers Federation? Are you on Federation salary?

MR. FIORITO: No, sir.

ASSEMBLYMAN CONWELL: You are on the salary of the local Board of Education?

MR. FIORITO: Yes, sir.

ASSEMBLYMAN CONWELL: Do you still teach a class?

MR. FIORITO: Yes, sir, every day, except when occasionally I am released to come up to a hearing or for some other function by administrative groups.

ASSEMBLYMAN SMITH: Mr. Fiorito. I apologize - I don't know but I gather that the State Federation of

Teachers is associated with some Union organization?

MR. FIORITO: Well, I'll explain, sir. The State Federation of Teachers is the State arm of the American Federation of Teachers. This is the American Federation of Teachers in Washington, the State Federation of Teachers in New Jersey, and the Newark Teachers Union and other Locals are affiliated with both groups.

ASSEMBLYMAN SMITH: Are they associated with any National Union, CIO, or AF of L?

MR. FIORITO: Yes, the American Federation of Teachers is an affiliate of the AFL-CIO. We are part of organized Labor.

ASSEMBLYMAN SMITH: Well, let me ask you: Do you agree with the premise that the Legislature should leave the injunctive relief to the courts and the courts should decide as to whether these strikes would affect the public health, welfare and safety of the community and rule accordingly, or do you think the Legislature should enact restrictions or take jurisdiction over this?

MR. FIORITO: Well, I think the Legislature could pass legislation which would present to the court the picture that an injunction cannot be issued unless there is - well, there could be a couple of reasons for it. I pointed out one in my talk - that an injunction could not be issued unless the board of education in this instance could prove that it actually bargained in good faith, in one instance, and in another instance that the injunction could not be issued unless it could be proven there would be a danger to the safety and health of the community.

ASSEMBLYMAN SMITH: Well, you of course put in one negative form, and I am interested in the other. Suppose, say, a school district goes out on strike for several weeks, would you feel that that would endanger the public safety and welfare? Would you be willing to leave that decision to the court?

MR. FIORITO: Yes, I would be willing to leave that decision to the court. I believe in the integrity of

the courts and I believe in most instances, if you have a court of integrity - and you do have a court of integrity - they would decide that it doesn't endanger the safety and health of the community.

ASSEMBLYMAN SMITH: Well, some might and some might not.

MR. FIORITO: But I think, given the chance to present a case, I believe in most instances the court would decide it was not a danger to the health and safety of the community, because teachers' strikes are not dangerous, I think, by and large, to the health and safety-

ASSEMBLYMAN SMITH: It depends on how long they go on, doesn't it? If you deprive a six or seven year-old child of a half year of education, that in my opinion would certainly endanger the public safety and welfare of the community.

MR. FIORITO: If there were a six-month strike - there is no history of teachers' strikes where there has been a six-month strike, sir.

ASSEMBLYMAN SMITH: I know, but if you are going to be given the right to strike, you can assume there is going to be some.

MR. FIORITO: That there would be a six-month strike?

ASSEMBLYMAN SMITH: I think it is certainly reasonable to assume that. What does the community have to lose other than not educating their children if there is a strike? They are not losing money; they are saving money.

MR. FIORITO: I would predicate the injunction on the health and safety of the community, and this is why injunctions are generally given - on that predication, that there is a danger to the health and safety of the community. Now when you speak about the lost of education time, I don't believe that is a matter of health and safety. It is a very serious and important matter but

it doesn't fall in the purview of health and safety of the community.

ASSEMBLYMAN SMITH: You don't think a child's education would fall within that purview?

MR. FIORITO: I don't think so, no, sir. I say it's a serious matter -

ASSEMBLYMAN SMITH: A lot of people would disagree with you.

MR. FIORITO: They would disagree that this would be a danger to the health and safety of the community. Possibly this might be a ruling the court would make.

ASSEMBLYMAN SMITH: If you had children you would disagree.

MR. FIORITO: I do have children, sir.

ASSEMBLYMAN SMITH: I know, but you're in a different field; but I mean if you were just an ordinary citizen and your children were being deprived of their education -

MR. FIORITO: But the history of teachers' strikes has been that they have not been long. Dr. Wiesenfeldt pointed out that we give so much time off to kids, that in many instances this time can be made up. I don't advocate strikes as something we do - strikes are Hell; we've been through the Newark strike; it is a terrible searing experience, but it's a necessary one when the occasion warrants it, and it was warranted in Newark.

ASSEMBLYMAN SMITH: I won't go into that but you know we are not only talking of teachers - we are talking about all public employees. How do you feel about the police and firemen?

MR. FIORITO: Generally, when we speak of these areas in public employment, police and firemen are generally put into another category.

ASSEMBLYMAN SMITH: Would you put them into another category?

MR. FIORITO: Reluctantly, yes.

ASSEMBLYMAN SMITH: Then you agree that there are areas where strikes should not prevail?

MR. FIORITO: Until now my thinking has been that these are about the only areas where they shouldn't prevail.

ASSEMBLYMAN SMITH: So there is an area where you feel that it would be such a detriment to the community that you couldn't permit it?

MR. FIORITO: I don't feel that teachers' strikes come within that area.

ASSEMBLYMAN SMITH: I am not implying they do but we are talking -

MR. FIORITO: You ask are there areas in which we shouldn't have strikes, and I say -

ASSEMBLYMAN SMITH: Well, how do you think they should be handled with this legislation?

MR. FIORITO: First of all, it depends on the good faith of the people arguing with public employees. If you put policemen and firemen in an area in which they can't strike, then there is a concomitant pressure on those public officials who deal with them to be exceedingly fair with them and not to use this as a bludgeon over their heads. Public employers have done this. Now I spoke here a month or so ago, a couple of months ago, on Assembly 810 and I commented that if the Newark Board of Education did not have a readily available injunction in its hip pocket, there wouldn't have been a strike in Newark. I contend that and I have, right to this very moment. They were protected by that and they knew it.

ASSEMBLYMAN SMITH: There is one other area of your statement which disturbs me a little bit, and I gather from your initial statement that you would penalize a district or a municipality where the public officials or representatives did not bargain in good faith.

MR. FIORITO: I didn't say that, sir. I said that I did not ask for penalty but I asked for equity.

ASSEMBLYMAN SMITH: Well, you would put some kind

of a greater burden on them than you would on somebody who did bargain in good faith. Wasn't that the gist of your statement?

MR. FIORITO: Of course, sir, because they are mandated by Chapter 303 to bargain in good faith.

ASSEMBLYMAN SMITH: Now let me say, and this is what the court's primary consideration has always been: They represent people and you don't penalize the people in this area because their representatives may have been deficient or may not have performed their duties. The courts have always tried to guard against this, because you are penalizing people; you are not penalizing the School Board or the municipality; you are penalizing the people who live there.

MR. FIORITO: I don't view it that way. I don't feel that you are penalizing the people if the people chose representatives or appoint representatives to do a job.

ASSEMBLYMAN SMITH: Suppose they made a mistake.

MR. FIORITO: By the same token, if you have a body of teachers who are in a position in which the frustrations have mounted to a point where they have no recourse but to strike, they are being penalized too, and frequently the public employees subsidize a lot of the public because the public is not willing to grant the kind of salaries that we feel strongly they are entitled to. This is a subsidy on the part of public employees and the public in general is taking advantage of it.

ASSEMBLYMAN SMITH: Well, there is certainly some merit to that but there is merit to the other position too.

MR. FIORITO: I say that if a public body does not operate according to the law, they should not act with impunity - they have acted with impunity. Teachers couldn't do it; teachers have been penalized. I was figuring out the number of days that the Newark teachers have to be in jail. In the aggregate it is over 2,000; it's an aggregate of more than six years in jail.

ASSEMBLYMAN SMITH: Of course, the converse is true too. The negotiators for the teachers don't always represent the majority of what the teachers there are thinking.

MR. FIORITO: Yes, they do, sir. As closely as possible, they do. The negotiators for the Newark - and I speak for the Newark Teachers Union; I speak because I am the most familiar with it; I am Executive Vice President of the Newark Teachers Union - and the negotiating team reports to the Executive Board. The Executive Board is an elected body, elected by the membership of the Union, and then the Executive Board reports to the membership of the Union and there can be no strike -

ASSEMBLYMAN SMITH: I don't say that it's not a democratic way of deciding things, but I belong to Unions too, and you may have 5,000 membership and you get 50 people out to a meeting, and these are the people who elect them, and when you talk to a great majority of the membership they don't always agree with what their representative says.

MR. FIORITO: This is unfortunate, and of course on some of the things it does happen, but I can speak of our instance. We brought the question of a strike to the membership of the Newark Teachers Union and that membership was there almost in toto, and when we brought up the question of ratification to the Newark Teachers Union members, that membership was there again almost in toto. There were two or three thousand people there. So it was not something that was done by a small group, a negotiating team, or even an executive board without the will of the majority. What happened in Newark was the will of the majority, an overwhelming majority, of our Union and of the teachers.

ASSEMBLYMAN SMITH: Thank you, Mr. Fiorito.

SENATOR KNOWLTON: Thank you, Mr. Fiorito. I will call Mr. Howard Simonoff.

Mr. Simonoff, will you please give your name in full, your affilitation, and your employment or vocation?

H O W A R D S. S I M O N O F F: I am Howard S. Simonoff; I am an Attorney with the law firm of Plone, Tomar, Parks & Seliger; I am here in part representing Teamsters Local 676, Collingswood, New Jersey. I specialize in labor relations and our firm represents about 30 labor unions. The Teamsters Local represents employees of city government, non-teachers in boards of education, and employees of the State compact-created agency, the Delaware River Port Authority.

In connection with the Port Authority, I am here to discuss with the Committee the service performed by PERC in helping to resolve and to solve a critical dispute that potentially would have had a severe impact on the Philadelphia-South Jersey public.

I am also here to strongly and vigorously oppose Assembly Bill 1058 which would exclude from 303 coverage employees of compact-created agencies.

Let me tell you the agony we experienced concerning efforts to protect rights of employees of the Port Authority to select a negotiating agent of their own choosing. I think then you will understand why we were appalled that the bill was introduced to oust PERC from jurisdiction of compact-created agency employees.

Now the Delaware River Port Authority is a compact-created agency of the States of New Jersey and Pennsylvania. It operates and maintains various bridges crossing the Delaware River between Philadelphia and New Jersey. It decided to operate a rapid transit system through South Jersey and into center city Philadelphia. This was a subway and elevated system. It obtained various portions of the right-of-way in Philadelphia proper of an old subway line run by the Southeast Pennsylvania Transit Authority known as SEPTA in that community, and obtained an unused portion of the Pennsylvania Reading Seashore Line for its right-of-way in South Jersey. The reconstruction resulted in a modern, all-new transit line with elaborate automated switching and electrical gear and

signaling operations, vast parking facilities in New Jersey, a large repair shop and operational center in New Jersey, and a work force drawn from multiple sources including the Pennsylvania Railroad, SEPTA, Philadelphia Public Service, and the Public Service Bus Company and other transit lines.

The employees that were hired by PATCO, which is the Delaware River Port Authority's Corporation - the Port Authority Transportation Company - were told when they were hired that there was no Union on the scene, that the employees were free to join or refrain from joining any labor organization. Now in Philadelphia at the same time, the Transport Workers Union represented the SEPTA employees who were operating the Philadelphia subway system. They insisted that the Port Authority recognize the Transport Workers Union as the bargaining agent of the PATCO - that's the Delaware River Port Authority - agency's employees. The Port Authority refused. The TWU then in negotiations with SEPTA for the City of Philadelphia's subway system for a new contract threatened that it would not settle its contract and threatened to strike unless the PATCO employees of the Delaware River Port Authority were brought into the TWU Union and that PATCO deal with and negotiate with the TWU.

In short, the City of Philadelphia was put under pressure and they were told in effect to tell the Delaware River Port Authority that unless the TWU was named the bargaining agent for the employees -these are public employees - of PATCO, the City of Philadelphia's transit system would be brought to a halt.

Now, mind you, at this time SEPTA had nothing to do and still has nothing to do with the operation of PATCO; at this time not a single employee of PATCO - and there were 110 of them at the time - were members of the TWU or wished to be represented by the TWU.

What happened? The Port Authority Commissioners were literally called into the office of the Mayor of

the City of Philadelphia about three days after Christmas 1968, and after additional conversations with the Mayor, officials of SEPTA, and the TWU, the members of the Port Authority Commission recognized in a written agreement, the TWU as the bargaining agent of the PATCO employees, and this at a time when not a single one of these people desired to be represented by the TWU.

When the employees of PATCO learned that this occurred, they rallied together. Now many of these people were people who were not Union oriented. These were people who, when they got their jobs with the Port Authority, were in some cases trying to avoid Union affiliation in other locations, ironically enough. These were people who generally did not have affiliation on their mind. They were then presented with a fait accompli by their public employer PATCO that they were to be bargained for by the TWU, a Union that they did not even know about or care about.

These people then banded together and sought out a Union to represent them and they came to Teamster Local 676 and asked for their assistance. We then petitioned PERC. We asked for an election. Under the amendment proposed, A-1058, where would we have gone? Pennsylvania had no similar statute and still does not. How would these employees have been protected?

Now PERC was unsure of its jurisdiction over this compact-created agency because some rights were involved concerning the State of Pennsylvania. So a hearing was conducted concerning the jurisdiction of PERC and in a very vital decision, PERC decided, with the assistance of the Attorney General's Office in the State of New Jersey that it did indeed have jurisdiction over the employees of this public employer, this agency of the State, PATCO, albeit it was a compact-created agency.

In the meanwhile, TWU, who was not participating in New Jersey and was very careful not to come into our State here, had gone into a court in Philadelphia and

tried to obtain an injunction compelling PATCO to comply with the recognition agreement that it had signed with TWU. The teamsters intervened in that suit, urging that the Pennsylvania courts defer to New Jersey because New Jersey had structure 303 to resolve a dispute. The Attorney General of the State intervened on behalf of PERC to argue the same point.

Well, as you can see, the pressures were building up because in the meanwhile these employees were not represented and in the meanwhile also the TWU was trying to bring pressure on PATCO to negotiate for these employees who did not desire to be represented.

The Pennsylvania court issued an injunction restraining the parties from going forward before PERC. In the meanwhile we went to the New Jersey court and asked them to restrain PATCO from negotiating with TWU concerning the employees of PATCO. We received such an injunction by Judge Wick of Camden County. PERC decided they were going to go ahead to resolve the dispute. They were going to let the employees decide which Union they wished to have represent them.

Now I point out that if we did not have the structure, if we did not have PERC, we would have had disaster, because the Pennsylvania courts were not going to give us an election. We asked them to. We said please let these employees decide. If you do not have an agency as we do in New Jersey, you then, the court, structure or appoint a Master to conduct an election. There was a refusal. There was an attempt to restrain PERC from conducting an election. At that time the elections were conducted through the American Arbitration Association in Philadelphia for the South Jersey area. The injunction was received and served by the Pennsylvania Court on the American Arbitration Assocation restraining PERC from running the election. PERC then sent down their own agent, sent down their own man, and ran the election which was a 95 per cent vote in favor of the Teamsters; it was 93 to 2, the actual count. And PERC then proceeded

to certify the result.

This case went all the way to the Pennsylvania Supreme Court, because we still had the fight over there after it was certified by PERC. The Pennsylvania Supreme Court decided that PERC had jurisdiction and that because New Jersey had a vital interest in the operation of the line, New Jersey should govern this area and they deferred to the jurisdiction of New Jersey in the resolution of this dispute because of the close contacts that New Jersey had.

Now I am here because this is a unique case and because I'm worried that somehow or another this is going to be shuffled through and no real consequence paid to the idea that there is some legislation before you concerning PERC and its jurisdiction with regard to compact-created agencies. Our State has more compacts than any other State in the Union. These are unique documents; these are treaties between two sister States of equal sovereignty, and then they have to be approved by the Congress of the United States, but they are not acts of Congress. These are very unique things. Each State retains their own jurisdiction over the operation of the compact in its jurisdiction. To get resolution when there is a dispute, eventually if there is dispute between two sister States, it means that we go to the Supreme Court of the United States for resolution.

What I'm concerned about is that where we do have a problem like this one, we now have the machinery to handle it. I don't want to see that machinery taken away. I think it would be a disaster. What would have happened I can tell you, because I was there. We went to the brink of a strike on several occasions while awaiting PERC action and PERC determination and while awaiting Pennsylvania Supreme Court action. Indeed, after we had been certified as the bargaining agent, it was at that time that the Pennsylvania Supreme Court was considering it, the men could not understand why we were not negotiating; we had been proved to be the

certified agent, but the Pennsylvania court had not yet acted. And for one day they went out in protest, not against their employer but against the dilatory delay of the Supreme Court of Pennsylvania. It was the first time I had ever heard of a work stoppage to ask the court to make a decision, but that's exactly what happened in this rather unique circumstance.

Now it is significant and I think you should know that in both New Jersey and Pennsylvania the Delaware River Port Authority itself took the position that it was subject to New Jersey law, that it was subject to 303, and it wanted PERC to resolve the dispute. It cooperated in every way. If it were not for the PERC machinery, we would have had chaos.

Now I don't understand the proposed amendment. I don't think it makes sense. I don't understand why New Jersey should give up to her sister State -

SENATOR KNOWLTON: You are referring to what bill now?

MR. SIMONOFF: Assembly Bill 1058. I don't see why they should give up the jurisdiction and authority to see to it that citizens are properly protected. The law teaches us that Port Authorities are not super States, they are not greater than the sovereignty of the States that created them; our case law teaches us that they are subject to the laws of the States that created them - and so they should be. This is especially true in the area of labor relations which can be so volatile and sensitive.

SENATOR KNOWLTON: I might say that the New York Port Authority would not necessarily agree with you, sir.

MR. SIMONOFF: That may well be but where does the New York Port Authority go and what happens when there's a labor dispute with regard to their employees, and who will resolve that dispute? Is it going to be PERB? Does PERC have no say in it? I don't think it's a matter of looking at which Authority - the real impact is what's going to happen to the public when there is such a labor

dispute - what machinery will be employed to resolve that dispute? Now somewhere there is going to be a resolution of a dispute if there is a challenge. Who decides it? Are we prepared to say that New York, PERB, should be the one to decide a dispute involving the New York Port Authority?

Can you say there is any less of a consequence in the northern part of our State than there is in the southern part with regard to the Delaware River Port Authority? I am not so sure it's that facile a situation. It would be nice if we could get conformity and uniformity between the two agencies when it comes to that. It may be that that's the way it will be resolved, but I would not like to in advance oust PERC from jurisdiction before the dispute even arises and before New Jersey gets an opportunity to review it. It may be that in a given dispute New York has more contacts and more interests than New Jersey and PERC may say we will defer to New York, pending and seeing what the outcome is, to preserve our own interests and our own rights, and if New York acts accordingly, well then we will defer and give them the whole jurisdiction to resolve it. On the other hand, I don't see in advance, say, we won't have anything to do with any dispute involving compact-created agencies.

I think generally that is the point of view taken by the Delaware River Port Authority.

Now if I may - I am talking now as a member of a law firm and not as an attorney who represented the Teamsters Local 676. These are my own views, because I would like to turn to other aspects of the proposed legislation before the Committee. In this connection I think we should analyze this area of the law so as to deal with questions concerning representation, unfair labor practices, and negotiable items including the right to strike.

The area of questions concerning representations include determinations of what is an appropriate unit. There is an effort being made by some of the proposed

amendments to alter the term "appropriate unit" to mean in effect the appropriate unit as if there were just one such unit for any given situation. Anyone who has worked in the field of labor relations as I have must readily understand that there is really nonsense. Unit determinations are variable and depend upon multiple and changing factors. To say that only one unit is the correct one and that it exists magically and always as the appropriate unit will, it seems to me, lead to more litigation rather than less. It would also serve as an excuse by anti-labor organization forces to refuse to negotiate, since they will always be able to find that their unit is the appropriate unit, and the appropriate unit only, and none other.

To me, a very significant and important function of PERC in these early years of development is the resolving of the unit question. A case by case basis, in my mind, plus the prompt conducting of elections and the stablizing of labor relations through mediation services, is vital. In this regard I feel that fee charging for mediation would be disruptive of that function, the function of labor stability.

Lately we have been faced personally in our office with long waiting periods between the time of our hearing before PERC hearing officers - who are doing, by the way, I think, a magnificent job in general, considering the circumstances and the opportunities they have to work with and the money they have to work with - and there is this gap that we are faced with between the hearing and the election.

We received a hearing officer report early this year, in late January or February, and still we have not had determinative PERC action. In the meantime, employees are deprived of representation of their own choosing. I would urge that under these circumstances the Legislature approve additional funds for staff increases and other

needs so that PERC can function in a proper manner and perform its legislative mission. Now it moves along on an altogether too-meagre allowance, with a miniscule staff.

A word about legislating and limiting units by considering "The authority of the public employer to negotiate terms and conditions of employment for the employees concerned." This may present an artificial barrier; for example, a department of a municipality may for all purposes of community of interest be a single, separate, appropriate unit, but since the head or superintendent of a department is subordinate to the Mayor or some other official who actually approves the terms and conditions negotiated by the department superintendent, it may be said that a citywide unit only is appropriate. This to my mind would destroy realistic unit determination rather than encourage it. Furthermore, it would be quite simple for a city, county, a freeholder group, or any other such group, to provide that only one official is the one who will take care of this particular geographic or governmental agency and then argue that only the citywide, county-wide, or any stretch of the imagination-wide, unit is appropriate.

This, to me, would be a device to defeat and destroy collective negotiations. I think when we talk about units, we are really talking many times about the right of organization itself, because units are a device, since you do have to win an election, with a majority of the votes in the unit that is voting. The unit is, of course, a critical device as to whether or not you encourage or discourage organizations in a government-employing center.

Now with regard to A-498, there is an effort to limit what is negotiable. I, like Professor Weisenfeldt, Mr. Chairman, yesterday, and others believe that this should be left very general, it should be left at this stage of development to be encouraged, to be found in a

case-by-case approach and analysis just as it was in the Federal area under the Wagner and Taft-Hartley Acts. We don't know all the things that are going to come up in an employment relationship. We don't know where the itch is that the employees want to scratch in advance of that itch.

I have been dealing with public employees for some time, and the variety of things that they want to talk about is astounding, including in the last negotiations I had the question of how to take care of the monkeys in the Bridgeton zoo. Now I don't know if that is something that you want to legislate about, but I think it was a good idea that we could talk about it. I think it was a good idea that nobody said wait a second, the number of animals we have in cages in the zoo is a matter strictly for the zoo-keeper, because it bothered this fellow and it bothered some of the other fellow-employees. And the idea that you can express this at the table is a salutary, salubrious kind of an experience, and it's healthy, and maybe we don't get agreement - and many times we don't get agreement - but why cut it off with an arbitrary "it's not negotiable."

Now the fact that it's negotiable or not negotiable doesn't mean a thing in terms of the realities of the situation, because the fact that we can negotiate or discuss reasonably about the problems that are bothering our employees doesn't mean that the city, the school board, or whatever agency it is, is going to agree to it. Many times they don't agree to it but, boy, at least they get a point of view; they at least understand what's bothering us, and I think that's very helpful. I would hate to see restrictions placed on that, and these barriers some people hide behind and they refuse to come out from under that kind of shell, and I would not like to see an artificial barrier created.

SENATOR KNOWLTON: May I interrupt for just a minute, Mr. Simonoff? Let's go back to the case of the

monkeys in the zoo. I assume from what you say that you think this is a matter which should be collectively bargained between the administration of the zoo, which depends upon public funds, and the fellow who keeps the animals. Right?

MR. SIMONOFF: Right. And it was, by the way, and we didn't have difficulty. Nobody made a fuss about it.

SENATOR KNOWLTON: This sometimes happens: You have a real hard-nosed employee. Even his Union delegate hates him. And in this case, let's say that this monkey keeper said, "By golly, I want 10 monkeys in this cage, and that's all. And if I don't get my way, I'm going to go out on strike."

MR. SIMONOFF: Well, he probably would be the loneliest fellow in the picket line. That is not the kind of issue that people would strike about.

SENATOR KNOWLTON: Should he be inside or outside the cage?

MR. SIMONOFF: Well, I don't know, but I don't think that is going to be a strike issue realistically.

SENATOR KNOWLTON: There have been strikes that Union leaders have tried to quell over some very silly things, just because an employee just felt ornery enough to strike.

MR. SIMONOFF: Well, that may be, but usually these silly things are not always that silly, depending upon whose eyes you are looking through. Also sometimes they are symptoms of real things that are bothering them. Sometimes, you know, when you are in these negotiations you don't always find out right away what really is bothering them; the issues that are on the table may not always be the real issues that are happening in your committee. The monkey issue that I gave as an illustration was the question of relief time - of course, these were dangerous animals - giving some assistance to this man in going into the cage and cleaning the cages. He wanted to discuss that. We discussed it. There wasn't any real

problem about it. We worked out a procedure for him, and there is a contract provision for this. What I'm suggesting to you is: I would hate to see you statutorily limit what the term negotiation means, because I am trying to illustrate by the monkey example that there is such a wealth of variety of things that go on in these negotiations, and so many are successful that you don't hear about and that don't have to be mediated. This particular one was not - in Bridgeton.

ASSEMBLYMAN SMITH: Isn't it true you throw some of these things in; you lose this one, and you may gain a substantial salary increase. You can't lose them all. If you have enough complaints and enough to negotiate, you have to win some.

MR. SIMONOFF: That may be one aspect, but I don't -

ASSEMBLYMAN SMITH: Don't you throw those in for good negotiations or -

MR. SIMONOFF: I think what you are talking about now -

ASSEMBLYMAN SMITH: - things you don't even expect to win.

MR. SIMONOFF: What you are really suggesting to me now are the tactics and techniques of negotiation, and they vary from Union to Union and unit to unit.

ASSEMBLYMAN SMITH: The broader the scope, the more you have to throw in. Right?

MR. SIMONOFF: It doesn't always work that way. If I have, as we do have, a solidified, stable bargaining relationship with a township - and we have - where we know each other - in fact, we are on our third contract - there isn't going to be that much pot. Sure, there's going to be some, but it depends on what your relationship is and whom you're dealing with, and what the unit is.

ASSEMBLYMAN SMITH: I understand that but if you throw enough in you might even soften Commissioner Pease to give you a little more. He's not going to deny everything.

MR. SIMONOFF: No, but sometimes - and this has happened to - it has a way of antagonizing the other side so that you have to be careful about what your proposals are. I mean, if it's going to be frivolous you're not going to make very good friends in terms of working out problems, and I see this is working out problems. And that's what this is all about. That is what negotiations usually mean, because there are problems that these people want to talk about with the government, and if they go in there with nonsense then the serious stuff is going to -

ASSEMBLYMAN SMITH: You feel that there should be no limitation whatsoever on what they can throw in?

MR. SIMONOFF: That is correct. I think we should do this - evaluate it on each case basis. I think that each community should be able to make this evaluation.

Now a word about A-810, allowing to strike -

SENATOR KNOWLTON: Each community you say should be allowed to determine, as a public employer - the Mayor and Council should be allowed to determine the number of bargaining units. Is that it?

MR. SIMONOFF: No, I didn't say bargaining units. I am talking about negotiable areas. This is something I think they should be able to negotiate at the table themselves. They should be able to arrive at this themselves. Hopefully, they wiil. I wouldn't preclude discussions of any subject. That's my view, and I have, fortunately, not been involved in any negotiations - I haven't been involved in that many - I would say about half a dozen; but in all of them, we have always been free to discuss whatever was on the mind of the employee in question without being precluded by saying this is not negotiable. I don't think that's helpful at all. I don't think it works, because if something is on the mind of the employee and if the employees are bothered by it, it is going to come out some way. It seems to me that it will erupt in some form. If you can't discuss a particular subject, Senator, the employees will find

another subject that you can discuss to make the particular agency they are dealing with uncomfortable, because somewhere along the line they are going to get into the back room or in the men's room or wherever it's going to be and they are going to say, "What's really bothering us is this subject that you say isn't negotiable, and that's why we can't move on that subject." If you want to talk about the realities of bargaining, that's what will happen, because if there is that kind of disease that is bothering these people, that is going to come out somewhere.

I would like to pass to the question of A-810 -allowing for strikes. The Bureau of Labor Statistics Studies show that strikesby public employees have increased and the prognostication is that this will probably continue to be the case. Passing a law against the right to strike or passing a law against strike appears as useful as trying to repeal the law of gravity. It seems obvious to me that when you have a society of free men, they will expect, when faced with the refusal for change or with outright hostility by their superiors to review their economic and employment grievances, they will resort to the withholding of their services.

To say that there are no differences between public employment and private employment would be too facile. To say that the differences are substantial so that they alter the freedom in society of one class of employee as opposed to another is an equal distortion. The truth lies somewhere between. A total ban on all strikes by all public employees is unrealistic, unenforceable, and an over-reaction. A total consent to strike by all public employees may be equally impossible. There are two ends of the spectrum in this regard. The uniformed services of police and fire fighters probably, because of their apparent military, vital social, health, safety, and order roles, can clearly be forbidden from work stoppages, and for them we would have to construct something like compulsory arbitration setup or something that would resolve finally

for them.

At the other end of the spectrum, we have my zoo-keeper or the man raking leaves in the park who will hardly worry the public health and safety if he strikes. What must be considered also is that there is a wide range of services now undertaken by government, once and in some cases still performed privately. In some cases a bus service is privately operated, while in another city, the city runs the bus line. One bus driver can strike, the other cannot. One town has its own trash and garbage collection and disposal. In another town, they contract it out. One truck driver can strike, the other truck driver cannot strike. The impact on both towns is identical.

The teacher in a parochial school can strike. A teacher in a public school at the next corner cannot.

I would seek to formulate as much freedom for public employees as is possible without causing a dangerously harmful emergency to arise in a community. I believe in the long run that this freedom, as it has in the private sector, will result in more stability and not less in dealing with labor relations. I am not encouraging strikes. I think that the fact that there is this in the background will hasten agreement and deal more realistically at the bargaining table by certain recalcitrant employers.

If we are going to have new legislation, I would ask for legislation that would allow strikes and limit them only because they actually do threaten to imperil a community's health and safety, and I would leave that for a case-by-case judicial evaluation. If we go to a 90-day cooling off period, as one of the amendments proposes, I would hope that there would be some structure that something is happening during those 90 days; that is, that there is some effort made at bargaining.

Assemblyman Smith pointed out when he asked the last witness, didn't it depend on how long the strike went in a teachers situation as to whether it affected the health

and safety. I think implicit in the question is that there is a range where a strike can be permitted where it will not affect the health and safety of the community, and there is a point when it may. So that some strikes in the public sector may be tolerable for 30 days, 50 days, 60 days, 90 days - I don't know how many days, depending on who is out there striking, but I think, when you ask the question doesn'it it depend on how long they are out there, you implicitly are saying that perhaps the employees should have the right to engage in a work dispute so long as the government function of the health and safety of the society is not imperiled.

Now finally there is proposed by the Commission what I think they already authorized and have done through their rules, and that is an unfair labor practice section. I would endorse that being written into the act because it would be much more solidified in the law if it was in the statute. However, I don't think that it's really necessary legally. I think that the Commission has the authority, but I would for clarification urge its codification.

That concludes my remarks.

ASSEMBLYMAN SMITH: I would just like to point out that public employees -- and let's talk about the teachers even though you may not represent the teachers - I guess probably you do - but when we say "the right to strike" - now in industry they lose money, the industry loses money when they go out on strike. Right? You talk about teachers and school boards - they save money, and the only deterrent is the fact that the children aren't educated. Now if you were to put on a time limitation, they would always go to that time limitation, wouldn't they?

MR. SIMONOFF: I don't say if you put a time limitation -

ASSEMBLYMAN SMITH: - because there is no fire power. You don't have any fire power. You want the right

to strike because you want fire power, but on the converse side you have to lose money or you have to have something that is going to drive them to it. The only thing that is going to drive them to it is that the children aren't being educated. And this is an unfair test to put on somebody.

MR. SIMONOFF: Well, where is the fairness of the test? If you posit an example, which I have heard posited, where the school board is not undertaking its obligation, who is the one to pay the price? You are saying let the teachers pay the price.

ASSEMBLYMAN SMITH: I'm not saying one way or the other. I'm just pointing out the other side.

MR. SIMONOFF: What is the other side?

ASSEMBLYMAN SMITH: You don't take it out on the children.

MR. SIMONOFF: You take it out on the teachers.

ASSEMBLYMAN SMITH: I don't know that anything has been taken out on them.

MR. SIMONOFF: Well, that's where you have to make that evaluation. And that's what I say - if you go into a court, if you've gone the whole route, if you've gone to fact finding, if you've covered the whole statutory progress and you still find that -

ASSEMBLYMAN SMITH: But you're a lawyer; you leave it up to the courts; you're going to get one decision, say, two months - after two months it's going to affect the health -

MR. SIMONOFF: I am willing to posit that if a school board was faced with that and there was a public uproar and the court made a determination that these teachers could engage in this kind of work stoppage, that might hasten an agreement or give them a new point of view in evaluating their position. Right now, it's hard to stack very much against them. I mean, in terms of going to court, it's a laugh. I think that 1049, which is one of the bills proposed, makes sense. At

least, give the same kind of structure in a strike setting when you get into a court under the anti-injunction act in the public sector as you have in the private sector. Why should a wrong-doer have the benefit of a legal club when he is the wrong-doer? It doesn't make any sense. You are not going to solve problems in a community that way.

ASSEMBLYMAN SMITH: What you are saying is that in industry you lose money, which may be a fair exchange of bargaining power. Right. The employee loses on strike; the employer loses on strike. But here with public employees you have a different situation, especially with the children. The children are the ones that are losing and no one else.

MR. SIMONOFF: I really wonder how a school board will function with its faculty in this kind of a mental state, realistically. If you drag them back to the classrooms how are they going to be teaching these kids?

ASSEMBLYMAN SMITH: Well, that's a good point, but I presume you have dedicated teachers, the same as you have dedicated employees of all kinds.

MR. SIMONOFF: I remember the case of the Long Island police that were so dedicated that they were writing up tickets on everybody on the Long Island Expressway because they weren't being negotiated with, only they didn't strike, but they were dedicated.

ASSEMBLYMAN SMITH: I didn't mean that kind of dedication.

MR. SIMONOFF: Well, I'm saying - when you have this kind of burning issue or a question where employees feel it that strongly, where they are willing to stop working and go out and picket, especially professional employees I assume would be involved more in that kind of issue - then something's wrong and it's got to be settled.

I'm not saying to you that this right is going to be a panacea. I know that the ban hasn't been. I just don't think that there are easy answers to these kinds of

questions, Mr. Assemblyman.

SENATOR KNOWLTON: Thank you very much, Mr. Simonoff. I don't know whether the legislature will agree with your views. Maybe they will and maybe they won't, but you certainly have given us some penetrating insights and you've been very practical in your approach to this problem. And please give our regards to the monkeys. Sometimes we feel like monkeys down here too.

I think we'll break for five minutes.

AFTER RECESS

SENATOR KNOWLTON: Is Professor Doyg here? Is Mr. Oxfeld or Mr. Nagler here? (No response)

S I D N E Y R O S E N F E L D: My name is Rosenfeld and I am here representing the American Civil Liberties Union of New Jersey.

SENATOR KNOWLTON: I'm awfully sorry we are getting to you a little bit late, Mr. Rosenfeld, but you know how things go on. I would request that if you have a statement, would you give it to Miss Brown and would you just make your comments on the highlights of your statement.

MR. ROSENFELD: I could perhaps, but there are only a few pages to it and they are all double space and I don't think it will take that long.

I teach in Newark incidentally and I am Past President of the Newark Teachers Union, just to round it all out. I don't know whether I should start to answer one or two questions that Assemblyman Smith raised before first before my comments, but the question about the children's education suffering in the strike situation - it is true they may not be getting very much education during the time the strike is on, but I think the benefits that derive from the settlement that takes place eventually will far outweigh the losses that the children have experienced perhaps, during the time they have been out, and I think over the period of the child's schooling over

the many years that the child is in school, I think the benefits will far outweigh the losses they experience during the time the strike takes place.

There is one other item I felt I had to comment about and that is the question about injunctions. Of course, my feeling is that there should be no injunctions at all as far as injunctions are concerned anywhere.

Now I will get to the statement that the American Civil Liberties Union wants you to know about.

The repression of public employees in resolving problems with their employers in New Jersey has posed a number of civil liberties problems of major importance, none of which is solved by any of the proposed legislation under consideration here except perhaps Assembly Bill 810 which grants county and municipal employees "the right of collective bargaining and the right to joint or concerted economic action in support thereof."

None of the other bills (A-498 or S-564, A-862, S-537) does anything to alter and overcome the shortcomings of the present New Jersey Public Employee Negotiations Law. This law, along with the proposed legislation other than A-810, are only palliatives which will not solve the problems. The rash of public employee strikes since the Public Employees Relations Commission was established proves this. Education employees in many of the large New Jersey cities have been operating in a continuing state of crisis in spite of the establishment of the Public Employees Relations Commission.

The basic reason for the Commission's failure is that they do not have the power nor authority to (1) force the public agency to negotiate in good faith; (2) force the government agencies to abide by their contracts with their employees; (3) assess fault in the provocation of strikes.

Though public employees are oppressed, the courts have denied the employees the right to strike by its interpretation of Article I, Section 19 of the New Jersey Constitution. When fault for a strike is assessed by the public, it invariably falls on the employees. Why should this be? Public officials are not unlike their employees and are therefore just as capable of fault notwithstanding the present statutory presumption that the government (men) can do no wrong. Why is it that the burden of fault seems always to fall on those seeking to assert their rights? From the standpoint of fairness, which is what a democratic society is all about, is this just?

Let us consider the Newark teachers' strike of February 1970 as an example of the deterioration of employer-employee relations in the era of the Public Employees Relation Commission.

On January 31, 1970, the Newark Board of Education approved a budget for the school year 1970 and 1971, and thereafter refused to continue negotiations with the teachers. The Board obtained an ex parte restraining order against a strike which had not yet been voted.

On February 1st the Newark Teachers Union met at the Military Park Hotel and after hearing a report on the progress of negotiations, voted to strike on February 2nd.

On February 2nd, the strike started, with 90% of teaching personnel out of school. The Board obtained a second ex parte restraining order broadening the number of defendants named.

From that point on, a sort of court sanctioned chaos reigned. Teachers and sympathizers were arrested on the picket lines although the usual requirements of personal service and the opportunity to argue the legal merits had not been accorded them. Even the right to speak and assemble were enjoined. The court attempted to seize union funds. Jail sentences were generously meted out. But for the fact that defendants were public employees, there would have been no question that the pattern of repression to which they were subjected in the name of the law, would have universally been denounced as a denial of fundamental due process of law, freedom of speech, freedom of assembly, equal protection of the laws, and even restrictions against involuntary servitude. Collectively this pattern also amounted to the boldest form of union busting seen in this area since the days of Frank Hague in the 1930's. It highlighted the fact that the State's treatment of public employees generally is as primitive, repressive and atavistic as in days of old.

Compared to the problem that exists, none of the bills with the exception of A-810 would make a meaningful contribution to an improved atmosphere in the area of public employer-employee relationships.

Now is the time for a broad re-evaluation by the legislature of the rights of public employees. To start with, irrational distinctions between the right to strike of private and public employees must be erased.

The common law doctrine that no subject had rights as against the crown, has no place in the public labor relations law of a democratic society. Residual restrictions on the rights of public employees in a democratic society are as anachronistic as the court of star chamber and almost as repressive. Some say that restrictions on public employees may be justified in that their strikes create "inconvenience" and to single out public employees for special treatment is irrational. It may be that strikes in certain occupations create special problems for society. Among these are some classes of public employees such as policemen and firemen. But these cannot be mentioned without also including certain types of private employees such as telephone and other public utility workers. Again the distinction between public and private fails. Indeed, in the context of each of the teachers' strikes, were they employees of private rather than public schools, their right to strike would be unrestrained.

Second, measures must be taken to insure that recalcitrant governmental employers are brought to book. The present reliance on their paternalistic benevolence has been effectively demonstrated in the Newark context and elsewhere to be little more than a reliance on a form of not-so-benevolent despotism. It is astounding that in most cases injunctions against public employee strikes have been handed out with no consideration whatsoever given to the fact that the governmental employer by its recalcitrance provoked the strike by a refusal to bargain.

Third, the State must guarantee to public employees and their representatives and organizations that the contracts which they enter in good faith will be legally binding and enforceable. Too often, such contracts have been regarded under the present law as binding only on employees, while government, like the kings of old, may abridge contractual obligations at

its pleasure.

Unless the legislature resolves that it will make meaningful changes in the present law by extending legislative recognition to the rights of public employees, we predict that theState of New Jersey will continue to be plagued by severe disruptions of services. Attempts at repression have failed. It is time for justice.

SENATOR KNOWLTON: I personally could agree with much that you have to say but there is one thing that many of you witnesses who have given of your time, and we are very grateful for that, and have given us a lot of information which we didn't have before, but there is one thing that most of you - and I mean "you" editorially - lose sight of. We don't regard ourselves as king - that's Number 1, although some members of the General Assembly in unkind moments refer to the Senate as the House of Lords, but, you know, we sit down here and arbitrate as a kind of balance wheel in which we must bring into focus and balance the requirements and demands of competing groups of our citizens. This isn't a situation where management in the private sector sits down with Unions and they hammer out a contract and if they can't do that the Union goes out on strike. They have a right to do that. We are not the final word as far as what we are going to do about working conditions for public employees. The electorate is, in the last analysis, and I hope that some of you who have appeared here today to drag in wholesale the field of the private sector, labor-management relationships in the private sector, into the public sector will understand that. We have some peculiar and unusual problems. Now that doesn't mean that we are not going to try to answer them - we are. I just wanted to make that observation.

Incidentally, what benefits did the students of the Newark school system derive from the strike? And I mean this seriously. I don't mean this facetiously.

MR. ROSENFELD: In regard to the negotiations - I think I do have a copy if you want to take the time, I

could look that up and see. Part of the negotiations do involve conditions in the classroom, matters dealing with curriculum improvement - there are things in the area which will help the child directly, and even giving a teacher an increase in salary is going to help that child in the sense that you've got a satisfied teacher working there, in the sense that you might be able to attract better teachers than you now have there, because of the improved salary - there are a whole series of areas which will actually improve the situation for that child, and over many years the child will certainly benefit.

If I can go back to your remark on "kings," I made no reference, or my reference was not to individual legislators really, yourselves or any other legislators, but the concept I guess is a common law concept wherein the sovereign can do no wrong. The government still maintains this attitude, you know. I am not a lawyer so I can't go into the details of all this sort of thing but I do know that this is the general feeling, and the injunctions that were issued were issued kind of on this basis - those that were issued to the teachers anyway, in the Newark strike recently. So we tend to think that the governmental agency itself is free of all faults and it is only the employees who probably have to be knocked into line, and they were knocked into line, let me tell you, in that last strike.

ASSEMBLYMAN SMITH: Isn't the Civil Liberties interest in this primarily in the way the teachers' strike in Newark was handled?

MR. ROSENFELD: That goes for all employees, not just the teachers. If this can happen to teachers, it will happen to any other employees in the State.

ASSEMBLYMAN SMITH: But what does this have to do with this Commission that we are talking about now, other than the right to strike? Is that just a primary -

MR. ROSENFELD: I am supporting A-810 which includes the right to strike as an improvement in trying to grant

to public employees their civil rights, - speech, assembly, and all the other things.

ASSEMBLYMAN SMITH: You don't agree with the NJEA's position that it should be left to the courts for injunctive relief?

MR. ROSENFELD: Oh, never. I don't think any Labor Union person would ask for the courts to interfere or intervene in any way, and I think our experience - and certainly the NJEA's experience in Newark certainly has been that the courts have never been very helpful.

ASSEMBLYMAN SMITH: Well, as I understood the testimony - many have testified that they wanted the test left to the court rather than the Legislature taking the bull by the horns and spelling out what is good for the public safety, etc.

MR. ROSENFELD: I don't have a position with respect to whether the Legislature should dictate what is best or the court should dictate what's best. All I say is that there has been over the years the question as to the right to strike, which is part, I would say, of every worker's right granted to him under the Constitution. And because this has been taken up by the judicial department and interpreted by them as saying employees don't have the right to strike, A-810 would overcome this.

ASSEMBLYMAN SMITH: You would extend this to all public employees?

MR. ROSENFELD: Yes, with the exceptions that were mentioned in the statement that I gave you.

ASSEMBLYMAN SMITH: How would you handle those people?

MR. ROSENFELD: As I mentioned before, probably compulsory or binding arbitration in the various issues that they raise.

ASSEMBLYMAN SMITH: OK, thank you.

SENATOR KNOWLTON: I will call Mr. Kenneth Horning.

Will you please give your full name, your employment and your affiliation.

K E N N E T H H O R N I N G: My name is Kenneth Horning, Middle Township Education Association, Cape May County. Our Association is affiliated with the National Education Association, the New Jersey Education Association, and also Cape May County Educational Association.

I am a classroom Teacher. I would like to express brief testimony from a local viewpoint. We favor full collective bargaining rights for public employees, including teachers, with the right to strike. Chapter 303 has brightened the outlook for our organization. It has extended to us the right formerly denied us. The Public Employment Relations Commission has been effective in guaranteeing that negotiation procedures were carried on in good faith in our district. We favor adequate funds for the Commission so that any local employee groups such as we are may have the benefit of third-party assistance when needed.

We have confidence in a Commission that includes representatives of public employee and employer organizations. We favor the present two members from each group among the seven members of the Commission. Our organization has negotiated two contracts under Chapter 303. Negotiation in our situation has not been without difficulty but contracts have been signed. We know where we stand with our employer as regards working conditions.

We believe our board also will benefit by having a written contract with us. Limiting the scope of investigations may make the work involved very much less for both parties but it will surely not solve the underlying problems. Discussion must not become a pretended substitute for negotiations. Let the record show we favor a strong and unrestricted Chapter 303. Thank you.

SENATOR KNOWLTON: Thank you very much, sir.

Mr. Jack Merkel. Is he here? (No response)

Professor Doyg? Is he here?

Mr. Victor DeChico. I believe he took his wife home. Could you pinch hit for him?

B E R T R A M S H E FF: I'll hold the fort for him. This is just a short presentation.

SENATOR KNOWLTON: Thank you very much. We appreciate your effort to achieve brevity. Will you please state your name, your employment and your affiliation.

MR. SHEFF: I am Bertram M. Sheff of the Legislative Committee of the New Jersey State Employees Association.

PERC as presently constituted is apparently not achieving the aims that legislators had in mind when the law was enacted. If anything, it seemingly has created greater unrest among State employees.

Despite the many hearings conducted by PERC, not one decision has been rendered at the State level during its 20-month lifetime.

PERC was created to provide a vehicle for public employees to have meaningful negotiations between the employer and the employees' representatives. However, PERC is in fact more suited to the needs of the private industry sector where many units are necessary. The community of interest of the various units in the private sector are separate and distinct due to the various trades, skills, and crafts that make up their employment.

In the public sector of employment, the community of interest exists throughout all state employees to serve the needs of the residents of New Jersey. Furthermore, the community of interest of state employees is brought about under Title 11 with regard to all employment conditions.

Establishing numerous units under PERC will bring about fragmentation as the units compete to achieve greater benefits for their respective groups. This will tend to create greater tension and division between state employees. The established practice of the state employee representatives is to negotiate or consult with various

state officials including the Governor and the legislators for salary and other conditions of work. Unfortunately no effective commitment from these officials is made to employee representatives.

PERC on the other hand does not provide a ready identification as to who the employer may be for negotiating purposes. Are we to negotiate with the Governor, the Treasurer, the President of the Civil Service Commission, the legislators or department heads? Which employer or his representative will have the authority to negotiate salaries and working conditions effectively?

NJSEA believes that there should be but one unit consisting of all state employees covered under Title 11. We believe that one entity should be designated by law to have the authority to enter into binding employer negotiations on behalf of the State of New Jersey. We further believe that a separate agency other than PERC should be designated to resolve disputes between the State of New Jersey as an employer and the employee representative; this entity should provide for a state employee member. This agency may be a separate division placed in the Department of Civil Service or attached to the Governor's office.

SENATOR KNOWLTON: Sir, how many State employees are affiliated with your organization?

MR. SHEFF: Between six and nine thousand.

SENATOR KNOWLTON: Would you characterize them as mostly white collar, blue collar, or half and half?

MR. SHEFF: I would say half and half. We are among the old-line State organizations that took everybody in and it made no differentiation, operating under Title 11.

SENATOR KNOWLTON: I would like to ask you a few questions here merely for the purpose of inquiry because this is what this Committee is here for today - to inquire. Don't you think that the State employees, people who fit into many categories that prevail in the private sector,

such as mechanics, nurses, para-military types - they have their counterpart in the private sector, such as security guards and things of that sort - clerical help - wouldn't you say that the categories of employment in the public sector are pretty much the same as in the private sector?

MR. SHEFF: May I expound a bit on that comment, please, Senator?

The private sector and in most cases of public employment, that is quite correct, and you could attribute it to State employment too. In State employment there is one great difference that appears to be overlooked by many of the opponents of labor legislation. Boards of Education in dealing with the township, with the municipalities and counties, the employer and the employee are both relatively circumscribed. They are operating in a small area under the same conditions and everybody concerned is within easy reach. In the State sector, these various people are dispersed widely throughout the state, yet under Title 11 they are all identically treated. The employment conditions are not necessarily the same with regard to localities but the duties required are, the titles are, the salaries are, and the communality of interest is the State employee working under Title 11, not the fact that he's driving a tractor in Cumberland County or in Salem County or in Bergen County.

SENATOR KNOWLTON: Well, don't you think that the larger the political subdivision, the more there is, the greater differentiation in job categories exists?

MR. SHEFF: Please explain that.

SENATOR KNOWLTON: If you take a town of 10,000, you have a relatively small handful of municipal and school employees and their duties are fairly simple compared, say, with the duties of personnel, of public employees in a city such as Newark or Camden or Jersey City, where you have a greater differentiation of job categories. Wouldn't you say that?

MR. SHEFF: Yes, and I'll also say that in the large cities or the counties, the same as in a small municipality, the circumscribing of the locale of the workers and their employer still obtains. The conditions of employment in Newark, a large city, with many difficulties are the same in Newark but not necessarily the same in Camden. On the other hand, the conditions in New Jersey, in all counties and in all cities practically for State employees, are the same. Their employer is the same, the working conditions are basically the same, the salaries are the same, their duties are prescribed by regulation, and their communality of interest is the law under which they are hired and work, and they have one employer. But who, as my presentation indicates, is the employer? We say the State of New Jersey. We also are the State of New Jersey, the voters and taxpayers, even as you are.

SENATOR KNOWLTON: Am I correct in inferring from what you say that State employees should be treated differently from the treatment which is accorded by the county with respect to its employees or a municipality with respect to its employees?

MR. SHEFF: In a sense that is our position. We feel that we should be treated as a unit because of our wide dispersion. It's sort of a backward argument, but yet it's the only one which we feel fits. We are widely dispersed, yet we're all uniform, and we cannot point to a local employer, as you do in a county or municipality, and say we are working for the Burlington County Commissioner or the Freeholders.

SENATOR KNOWLTON: Would I be correct in again inferring that you think that 303 is not for State employees while it might be for county and municipal employees?

MR. SHEFF: We think that PERC in its present embodiment is not suitable for State employees under

Title 11.

SENATOR KNOWLTON: Do you think it's suitable for other types of public employees, other than State?

MR. SHEFF: Quite probably, but that would be a personal opinion rather than an official statement.

ASSEMBLYMAN SMITH: How can the Commission be made to be adaptable to State employees, or what changes would you suggest?

MR. SHEFF: We have suggested moving it out of the present structure and placing the Title 11 people in a parallel structure, one that will be dealing in the State public sector rather than in the private or the teacher, the school board sector. PERC in its 20 months of operation appears to be - well, I might say NLRB oriented - I hope Mr. Pease doesn't shoot me if he doesn't agree with me -

SENATOR KNOWLTON: No guns are allowed in these chambers.

MR. SHEFF: But we have had a singular lack of success in having the problems expounded. There is more unrest, more fragmentation, less results. Part of this is due to the fact that the employer is not a clear employer. It's a nebulous employer. It is the legislature who has the ultimate authority for appropriating funds to pay salaries and also the passing of statutes for working conditions such as hours, vacations, fringe benefits, etc. Is that the employer? - 120 men? Is the governor the employer? He doesn't have the ultimate authority.

ASSEMBLYMAN SMITH: How would you remedy that?

MR. SHEFF: Our position would be that a designated bargaining agent be appointed for the employer. You decide who the employer is and appoint the bargaining agent with authority to commit. The worker does just that. He designates the bargaining agent.

ASSEMBLYMAN SMITH: And then if you've got legislators that didn't agree, you wouldn't get the money

appropriated.

MR. SHEFF: Well, how are you going to solve that one?

ASSEMBLYMAN SMITH: I don't know.

MR. SHEFF: Do you think that can be done by law?

ASSEMBLYMAN SMITH: I don't think so.

MR. SHEFF: It still leaves the problem of who does the bargaining. PERC doesn't have the answer to that either.

ASSEMBLYMAN SMITH: Well, you do pretty well with the legislature.

MR. SHEFF: Yes, but it's a slow, laborious process. Any dentist would quit rather than pull teeth the way we pull funds, and yet we recognize some of the facts of life. So far we haven't resorted to violence and we are strict constitutional constructionists when it comes to strikes.

ASSEMBLYMAN SMITH: OK. Thank you very much.

SENATOR KNOWLTON: Thank you very much, sir.

Now, Mr. Pease. Will you please sit over here?

ASSEMBLYMAN SMITH: Is this known as rebuttal?

W A L T E R F. P E A S E: No, not at all.

One thing I think that we missed: When you are talking about terms and conditions of employment and negotiations, I think a lot of people miss the fact that they don't know what negotiation is. They feel they have got to reach an agreement, that the employer has got to give in - the employer always has the last say. He can say no as long as he stands on reason. He doesn't have to agree, and the amendment that we propose in the Act says this to make it clear. They can negotiate; it's just like settling a law suit.

I remember when I settled my first law suit back in 1926 or '27. I said, "I'm going to pay him $10,000 and not a cent more and that's what I'm going to say." But I didn't get anywhere. I have learned since that if I want to settle for $100,000, I start at $10,000 and let him start

at a million and I'm going to end up with $100,000. This is negotiation. This is the thing that a lot of people don't understand, and that's one reason why we want Rutgers to train people in negotiation and we want PERC enabled, a staff large enough to train.

Now in New York State, Dr. Helsby has a large training organization right in PERB itself holding workshops, and that is exactly the thing we want to do because if we could train these people to negotiate, a lot of these troubles would disappear and they wouldn't have any trouble about terms and conditions of employment at all. If they just understand it.

Now I have sat in on negotiations. For instance, in Newark this year, when I went into Newark the school board said these 10 items are not negotiable, we won't even talk about them. Now is that negotiation? I said "Submit them to PERC. Let PERC decide." "We aren't going to let PERC decide anything," they told me. This is the Newark Board of Education talking to me this year. They had to finally. But this is not negotiation. This is the thing that caused the strike in Newark. The Board sat there and they said they wouldn't even talk about these items. Now this is why the injunction is unfair. And the same thing happened when I went into Jersey City last year. I was in Jersey City for a whole week every night with Ted Kheel and there was the same trouble in Jersey City. Jersey City was the place where we went to negotiate and they were all down in the bar talking, the whole School Board. They wouldn't come up to the Holiday Inn to talk with us. They weren't going to talk at all.

ASSEMBLYMAN SMITH: Sometimes a lot of things are settled at a bar.

MR. PEASE: Yes, that's right. But this was their attitude. Now in another situation I was up in Ramapo, for instance, and the whole school board was trying to negotiate, and I said why don't you delegate this to one or two people and let them negotiate? They said we don't trust the rest of the Board; we won't do it. This just

doesn't make sense. None of this makes any sense to me. It's because they aren't educated and because they're stubborn. What they should do is appoint an expert to negotiate with them, and I wouldn't mind if you are talking about a county group if they had the same expert work for the whole county, use them for negotiating for the whole county. It's perfectly possible and it would save money. This is perfectly possible; they can do this; they don't have to come to anybody; they can do this themselves, but they need educating in these things. And to me it's a sad fact that they haven't done these things - perfectly possible.

Now you take the unit determination. They can determine the unit themselves. They don't have to come to PERC to determine the unit. As a matter of fact, in the Fair Lawn case they did agree upon a unit. They agreed upon five units. They didn't have to come to us. They can agree on all these things, I think, if they are educated and if given time to do it. This is new - 303 is new. They don't understand it. Give them time. I think they've done a wonderful job so far, I really do, and I think myself - I'm taking a lot of credit - PERC has done a wonderful job with what it has had to do with. Unfortunately we have been hit with many things. We were hit with no office space; we were hit with a wage freeze; we were hit with low salaries; we were hit with everything, but I think we've done a good job and I'm glad to hear everybody except the last speaker speak well of us. I think he's wrong in some things he has said and I'm not going to argue here but Mr. Aronin and I will talk with him and I think we will straighten him out on a few of them, but I do say that knowledge is a question of PERC - and putting us over in the State Mediation Section or putting us in the Department of Higher Education - To be worth its salt and to be respected throughout the State, PERC has to be an absolute independent agency, independent of everything, because we only have to determine units for the

Department of Education - we may have to go into the Attorney General's Office and determine unit negotiations. We've got to be independent. The minute you put us in with anything else, put PERC in with anything else, you are going to destroy it. It's as clear as that. There is no argument. I don't think anybody would argue that. And that's why we've tried to act independently.

I will say this, that we've got a wonderful staff; I think for what we've done and the way we have handled things, I have absolute confidence in every member of the staff we have. They are great, and I'm sorry to leave them, because I have enjoyed working with them, and the only reason I'm leaving is because I don't feel that I can do a good job with the situation I am working under. I'm not fighting with the Governor at all. The Governor is the boss. I'm not leaving in a huff; I'm just very sorry for the Governor. I think the Governor has been misinformed and misadvised on some things. I'm very sorry for him. I hope he will see the light before the fall, because if he doesn't he's going to have some of the worst strikes New Jersey has ever had or seen, I can tell you this. They are brewing and we hear about them - rumblings coming to us, and I think he will change. I think he will finally have to change, because otherwise there is going to be serious trouble, and I don't want to see it any more than you. I hate strikes. I hate strikes in the public sector. I don't think there is any need for strikes in the public sector. If the people know how to negotiate and negotiate in good faith on both sides and there is an equality of negotiation I think you will find over a period of two or three years they will negotiate in good faith and you will have peace, and in those cases that you don't, I don't care myself whether you've got mandatory arbitration, compulsion arbitration, or whether you send it to the courts and let the courts determine, but I do think you've got to

have some final determination of these matters. And that's the only way that I know of and the only way I have ever read of that that could be handled.

So I leave you with those and I hope that you will read very carefully the memorandum that we have submitted to you, because in that we have answered the questions on negotiation. We say if there is a debate on whether or not an item is negotiable, send it right up to PERC. We'll determine it and will have a hearing to determine it. Tom Parsonnet said this will take forever because it will go to court. There may be one per cent of the cases go to court. That's all, but the rest of them will be determined quickly. PERC can determine them very shortly, provided it has the proper staff. There is no problem about it - no problem. And I think that this is the way to do it.

Now I'm going to turn and ask Mr. Aronin if he wants to say a few things. I do say - I'm not an expert on this but I do know in talking with my Labor lawyers in New York that there is a great difference in negotiation in the private sector and in the public sector. They say there's a tremendous difference. I think you have seen that from the talks here today.

ASSEMBLYMAN SMITH: May I ask you a question, Mr. Pease. First let me say that you have been very generous with your time in attending these hearings, and we appreciate it. But the thing that disturbs me the most is you keep talking about everything being negotiable, but the public always has to give in and always has to -

MR. PEASE: They don't. That's the point. They think they do, but they don't.

ASSEMBLYMAN SMITH: There are always some benefits that come from negotiation to whomever is complaining; isn't that right?

MR. PEASE: Yes.

ASSEMBLYMAN SMITH: Now the thing that disturbs me is that, as I see it, there is no end to the negotiations. At least in the private sector you negotiate for six months or a year, or whatever you do, and then you get a contract for two or three years and that's the end of it.

MR. PEASE: The same thing with the public sector - you can get a contract for two or three years.

ASSEMBLYMAN SMITH: But that doesn't work that way because every time they keep coming up for another bite.

MR. PEASE: No, you don't. You can have a two or three year contract.

ASSEMBLYMAN SMITH: If they agree to it.

MR. PEASE: Some of them are doing it. It is perfectly possible to have a two or three year contract. All they have to do is negotiate it, just like the private sector. I'm glad you brought it up because I had a note here on this. This is perfectly possible and this is what they ought to do. This resolves it and in the various counties they ought to combine them and have the same expert to handle negotiations; then he is familiar with the whole county setup and he does it rapidly, and they ought to delegate him with authority to do it. We had trouble, for instance, in Passaic where they had this fellow negotiate and after he negotiated an agreement they reneged on it.

ASSEMBLYMAN SMITH: My second question would be as to the time. Now you understand budgets, etc., and if it's not in the budget you can't put it in. What is your suggestion on that?

MR. PEASE: I think this idea of negotiating contracts in December, January and February to start next fall is all nonsense. The date should be changed somehow; in other words, you shouldn't be negotiating in December and January for a contract that is going to take effect next July or the next school year in September.

ASSEMBLYMAN SMITH: Well, how can you remedy that?

MR. PEASE: The dates ought to be changed.

ASSEMBLYMAN SMITH: To what?

MR. PEASE: I don't know - legislation probably - I don't know but this ought not to be the system.

ASSEMBLYMAN SMITH: Well, if you don't know, how would you expect us to know?

MR. PEASE: Well, if you want me to give you a recommendation, I can probably have the staff work up something but I haven't given it a lot of thought and I really don't know. But you must admit, this doesn't seem to make sense, to negotiate in December and January for a contract that is going to take effect the next year. It doesn't make sense to me. It isn't done in the private sector.

ASSEMBLYMAN SMITH: But this is different -

MR. PEASE: This doesn't make sense, but this is due to the budget submission date. I am not an expert on the education law, but if you want me to, I can put some heads together and give you some ideas on it if you want. I will be very glad to. As a matter of fact, I'll tell you this, I am going back home to New Jersey, to Plainfield, New Jersey, and I may not be in Trenton again for a long, long time. However, if you want me to come to Trenton or to talk with me about anything, all you have to do is give me a ring on the telephone and I will come down.

ASSEMBLYMAN SMITH: That's very nice of you, and thank you.

SENATOR KNOWLTON: Thank you very much, sir.

MR. PEASE: Now I will ask you to hear Mr. Aronin just a minute. Mr. Aronin is my executive director and my brain.

L O U I S A R O N I N: You are too kind, Mr. Pease.

I am Louis Aronin, Executive Director, Public Employment Relations Commission. It is not my desire

to further complicate the job of this Committee but I merely want to try to set the record straight.

Assemblyman Smith you raised the question which you have been asking various speakers with reference to the problem of the date on which you have to achieve a wrap-up on your contract. This is a problem which we have considered, researched, and actually come up with no answer, unfortunately. But if it helps you, let me say that no other State has yet come up with an answer in this respect either. The only answer of which I am aware is a system utilized by the City of New York. They have one negotiator, Herbert Haber. He has an office of Director of Negotiations, City of New York, and he has a lump sum in his budget, which I understand he is able to utilize to make a contract effective or retroactive at any date he wants to, whereby he utilizes this sum of money to supplement the necessary funding for that contract until the next budget submission date of the agency for whom he is negotiating.

Now I don't know how this can be done in school boards or in counties or the State as a whole, but this is the only method I have heard of to meet the problem and then put this on the same footing as exists in the private sector where you needn't be concerned about a budget submission date and you are not faced with a common budget submission date in all schools. I think it was February 11 last year.

This poses a problem to PERC as well, because our demands for mediators all occur at one and the same time. So we wish we had an answer to that as well as the various employers.

There have been numerous references to fragmentizing of units. Mr. Pease has made reference to a fact, and I would like to emphasize the fact, that the law provides that the public employer and employee organization may voluntarily resolve a representation issue, in which

instance the Commission shall not intervene. We do not know how many cases have been resolved by public employers and employee organizations but a very substantial number of such cases have been resolved which have not come to the Commission's attention. Now whether these units are two people or two thousand people, I would not be able to say. I can only say that they have resolved it without coming to this Commission. Furthermore, the Commission, in its presentation, its written statement, indicates that there have been some 50 consent agreements. This is not a situation which the Commission makes any determination of what the unit shall be, rather the parties make this determination and the Commission, in accordance with the desires of the parties expressed on agreement, conducts an election in the unit that they determine to be appropriate, so that we are not intervening except where we have to intervene.

Reference has been made to the State cases which have been pending for some 18 or 21 months - whatever it happens to be. Yes, they have been pending a very long time and we are no happier about the situation than the parties who are involved in it. However, there are hearings that are still in progress, some of which have finished. We have two hearing officers' reports out of some six hearings. There are four more hearing officers' reports that are still due. These are on the question of what the unit shall be in State government. We are faced there with the matter of giving the parties due process, of developing a full and complete factual record upon which the Commission can make a determination after the hearing officer has first ruled on it. The parties will have a right to file exceptions to this hearing officer's report. There is full and complete due process. The problems faced in the State units have been one of differing positions taken by different organizations and by the State. The State has spoken in terms of nine separate units. The Civil Service

Association and the State Employees Association speak of one unit, the State, county and municipal employees of hospital-wide units, nurses are speaking of a nurses unit throughout institutions and agencies, and I could go on ad infinitum in this situation. These are the problems we are faced with, and the only way we know of receiving an answer when the parties have not resolved it themselves is through a hearing process wherein a full record is made and we can then make our decision based on that full record.

We regret the delay but there is no other device available to us.

Now I should point out that certainly the parties could have resolved these problems by themselves if an organization satisfied the State they had a majority representation in a unit which the parties could agree to. Voluntary recognition could have been given to any organization. This has not occurred. I am not saying it has to occur but I am saying that there are alternate avenues open to the parties in these matters. We are not looking for business. We don't want the business but if it goes to us, needless to say we have to deal with it.

There seems to be possible confusion as to how the Commission handles mediation requests. Early in this proceeding there was some question raised about the Commission sending in mediators prematurely, and we admit readily that this may be the case. However, I think that this Committee and everyone should be aware of certain facts of which we are aware.

Frequently the parties were in dispute as to whether or not there was an impasse, and the only way I can describe this is if there is an impasse over whether or not there is an impasse, then we will send a mediator in.

One says, well, we negotiated in good faith. Well, that's not the question of whether or not there's an

impasse. You can negotiate in good faith for 37 meetings and still be impassed over the failure to reach an agreement, and in that situation we must send a mediator in in accordance with the provisions of the Act, and that's just what we've done. And as indicated earlier yesterday, the mediator exercises persuasive ability; he doesn't have any authority to do anything. It's the parties who make the agreement. A mediator is only a catalyst. He's an aid to the parties to keep them talking, but he carries no power with him. In fact, the fact-finder carries no power either. He can make recommendations and it is up to the parties to accept or reject these recommendations.

Fortunately, in most instances, the fact-finder's recommendations have been accepted by both parties and have constituted the basis for agreement.

There has been some reference to a rash of strikes since 303. We think that the statistics which we have presented to you indicate that there has not been a rash of strikes. There have been no more strikes here than in other States that have no laws. We are not for one second condoning a strike. We don't want them; we are doing everything within our power to prevent them or, if they occur, to terminate them as soon as we possibly can. But this is for the parties to do. We don't have any guns and, as you said, there are no guns in the Assembly Chamber, and certainly there are no guns in PERC for this purpose. It's persuasiveness, it's up to the parties to recognize their obligations to the public, the employees, the children, or whoever it may be, but they've got to recognize responsibilities to meet those responsibilities. We're trying to meet our responsibilities of providing service to them.

There was mention earlier today of a problem with reference to probation officers and the role of the judges. Just to set the record straight, the Commission did not decide that the judges were the employers of the probation

officers. We went to the Attorney General. He decided this and we complied with his ruling.

There was also some question by Mr. Eastwood about the definition of professional employees. This case is currently pending before the Commission and a decision will be rendered in the near future. In the interim we have proposed a definition of professional employees which comports with the definition in A-498 and we support that definition.

Mr. Eastwood made some reference to litigation with reference to who are supervisors. Let me say that the question of who is a supervisor is a fact situation in which a case-by-case analysis must be made, and the addition of additional criteria proposed by Mr. Eastwood, proposed in A-498, I think will, if anything, lead to more litigation, not to less litigation as to these fact problems, because the more criteria the more fact you have in dispute.

Mr. Chamberlain made some reference to PERC setting aside a Hunterdon contract. To set the record straight, this Commission has had nothing to do with setting aside a Hunterdon County contract. The only thing we have had to do in Hunterdon County is to provide a mediator to assist the parties in achieving the contract.

There has been some suggestion that the mediation function of PERC be performed by the State Mediation Board. Let me say that, based upon my 20 odd years of experience in the private sector and about four years of experience in dealing in the public sector, I have concluded that there is a major difference between the public sector and the private sector. The skill of a mediator has some degree of carry-over because the skill of a mediator is one of persuasiveness, one of being able to listen, and to relate to parties. However, the problems that are faced in negotiations in the private sector and the public sector could not be further apart. Yes, you're dealing with employees and you're dealing

with an employer but, as the members of the Committee have said repeatedly, there are differences, and I am here to confirm the fact that there are major differences involved, and the expertise that PERC is developing in mediating such disputes should not really be put to waste. We think it's important and we think it is distinctly beneficial.

I would only want to make one further statement and that is to enforce the statement made by Mr. Pease that it is seemingly important that PERC remain completely independent of any State agency, whichever one it may be, because at the moment I think we have cases that involve about eight different State agencies and, if we are to be combined with any State agency or if the mediation function is to be combined with an existing State agency, there is a serious question in my mind at least as to the credibility to be given to PERC's staff and to PERC's activities, and questioning would then exist as to its impartiality and objectivity in such a situation.

I thank you very kindly. You have been most helpful.

SENATOR KNOWLTON: Mr. Aronin, may I just ask you a few questions. What role has PERC played in this labor dispute in the Department of Transportation about which we heard yesterday from Mr. Frank A.Forst who is President of Local 195, American Federation of Technical Engineers, AFL-CIO?

MR. ARONIN: I believe last April a notice of hearing issued to determine the unit question in the Department of Transportation. Sometime in April or May, that case was consolidated with some six other cases and has been at hearing since that time. I would speculate that there has been some 12 or 13 days of hearing devoted to those cases at this time. That's part of the State unit problem that I referred to earlier. The State takes the position that the Department of Transportation is not an appropriate unit in and of itself, that there should be nine units which cut across various departments. If you care to, I

would be happy to delineate what the State's position is or we can rest at this point, sir.

SENATOR KNOWLTON: Could you submit a memo to this Committee on that point?

MR. ARONIN: Can we?

SENATOR KNOWLTON: Yes.

MR. ARONIN: That would be a summary of the situation, yes, sir. It would not have any recommendations because the recommendations will depend upon - well, I should say it this way: that these cases are at hearing. When the Commission has the cases, has all of the facts, the Commission will then be able to make a decision and I don't believe it would be proper for us to make any judgments at this point, except to make a summary of what the facts are. I would be happy to do so, sir.

ASSEMBLYMAN SMITH: I have just a few. Can you tell me - I presume that the appeal from the Commission's decision is to the Appellate Division.

MR. ARONIN: That would be correct, sir.

ASSEMBLYMAN SMITH: Can you tell me how many cases were appealed to the Appellate Division?

MR. ARONIN: Well, I won't try to count - let me just enumerate them and I think that will be the same thing. West Orange Board of Education on a unit problem in which the Commission was sustained. That involved the question of custodians. The Cooper case which involved a finding of improper discharge under 303 which has gone to the Supreme Court and was heard 2 weeks ago and is pending at the Supreme Court level. LuLLO which the Supreme Court issued on in March, I guess. There is a case involving a director of elementary education which is at the court level right now and pending. The Elizabeth Board of Education is -

SENATOR KNOWLTON: That's the Wilton case.

MR. ARONIN: I'm sorry - the Elizabeth Firefighters. That I believe -

ASSEMBLYMAN SMITH: Would you say about half a dozen?

MR. ARONIN: Five or six, yes, sir. That's out of 42 decisions issued by the Commission.

ASSEMBLYMAN SMITH: Does the Commission have counsel to appear; in other words, do they participate in the Appellate decision or do they leave it to the parties?

MR. ARONIN: No, the Commission appears through the Deputy Attorney General. They are represented by the Deputy Attorney General - Mr. Winard who is -

ASSEMBLYMAN SMITH: And they defend the decision of the Commission?

MR. ARONIN: Yes, sir. I'm sorry - there was another case known as Gloucester County, which would make, I guess, six cases.

ASSEMBLYMAN SMITH: Now with respect to these mediators, fact-finders, the different types that you use - is that right? I mean, there are two different categories.

MR. ARONIN: Yes, mediation is currently carried on by staff; fact finding are outside people who are designated by the parties - well, it's a preference designation.

ASSEMBLYMAN SMITH: Well, in mediation you have your own staff for mediators. Is that right?

MR. ARONIN: We are doing that now. We started doing that about three months ago. Prior to that we had been using ad hoc personnel for mediators.

ASSEMBLYMAN SMITH: You still use outside people for fact-finders, is that right?

MR. ARONIN: Yes. The parties pay for fact-finders.

ASSEMBLYMAN SMITH: How much do you have to pay those people?

MR. ARONIN: The parties pay the fact-finders $150 per day, which is the going rate.

ASSEMBLYMAN SMITH: Where do you find them?

MR. ARONIN: They are people who are expert in arbitration, who have backgrounds of that; they are

people, or we try to find people who have done fact finding and mediating in the past; they really cover all segments, sir.

ASSEMBLYMAN SMITH: Are they people from within or without the State?

MR. ARONIN: To the extent possible, we use people within the State. I believe that, as of the moment, there are some 12 people who perform this service who are residents of New Jersey who are the only ones we could find who met the qualifications. This is based upon a list approved by the Commission.

MR. PEASE: We have kept a record of all of our mediators and of all of our fact-finders, and we have gotten reports back from the parties as to how they performed and, on the basis of that, we have what we call an approved list of mediators, ad hoc mediators, and ad hoc fact finders. If they are on that list, then they will be used. Now if we get a bad report on somebody, we investigate it and if we think it's sound we strike him off the list. But in this way we gradually develop a group of experts and qualified people in the field.

ASSEMBLYMAN SMITH: And how many of them do you have now, would you say?

MR. ARONIN: The list actually or probably numbers about 150 but that doesn't mean that all of the 150 are used. That's a list that has been approved by the Commission.

ASSEMBLYMAN SMITH: Would that be sufficient to handle the problem?

MR. ARONIN: Yes, sir, more than sufficient.

ASSEMBLYMAN SMITH: So there is no shortage of these people.

MR. ARONIN: No, there's no shortage. The only time we run into a shortage is when - well, we did run into a need in February when we used probably 80 mediators at one time because of the budget submission date, with reference to boards of education. We had about 150 requests

for mediators within a five-week period, and then the telephones were very, very busy because this one couldn't take it and we had to move on to the next one but we have been able to satisfy all of our needs - put in that way, sir.

ASSEMBLYMAN SMITH: And you haven't really decided anything for State employees, their salaries, or anything of that kind?

MR. ARONIN: Well, we would not be deciding the salaries of State employees. We do not do negotiations, and apropos of that let me just make one point that I skipped: Mr. Sheff made some comments about who the negotiator shall be for the State. Let me indicate to Mr. Sheff and to this Committee that the Governor has named a labor negotiator on behalf of the State - Frank Mason and, as far as we know, he is the one who does the negotiating on behalf of the State. Now I understand that he does so in consultation with the various department heads who are involved in such negotiations.

ASSEMBLYMAN SMITH: You are getting some rebuttal on that one. You better let that one go.

MR. ARONIN: This is according to the Governor's executive order 2 and 3.

ASSEMBLYMAN SMITH: Thank you very much.

SENATOR KNOWLTON: Is there a Mr. McNesby here? (Not present) Well, thank you all very much. Just a minute, I believe we have another gentlemen who wishes to be heard. Will you please give the stenographer your name in full, your affiliation, and employment. I believe you are from the Middletown Township Educational Association -

E D G A R V A N H O U T E N: My name is Edgar Van Houten, Middletown Township Education Association, Monmouth County -

ASSEMBLYMAN SMITH: That's not the same as the Middle Township in Cape May.

MR. VAN HOUTEN: Well, a little bit north of Cape May.

I had a number of comments but I'm sure you won't mind if I cut them quite short at this stage of the game. I appreciate your comment earlier about grass root views because that's what we are able to offer. We don't have any kind of prepared statement but we don't want you to think we haven't given this plenty of thought, because we have.

We were very much concerned over the idea of restricting 303 because we were very much aware of the benefits to be received from it. I have been negotiating and part of a negotiating team for quite a number of years. In fact, it doesn't seem too long ago that when we came in to "discuss"-they called it at that time-with the Board of Education, they didn't have to pay any attention at all to our recommendations and, as I say, I can recall times when we had turned down Board proposals and had PTA's show up at budget adoptions and have Boards completely ignore us and ignore the PTA.

Things have changed considerably with 303 and we are given a lot of recognition that we hadn't been offered before. We haven't used PERC in Middletown but we have a lever through PERC that we never had before. We are given a lot more consideration. There still are unilateral decisions that sometimes disturb us and there are a lot of things we would like to see done with 303 that are not of this restricting nature.

We appreciate all the work that Chairman Pease has done. We are very familiar with the very difficult task that he had in setting up the structure.

We were concerned about the appropriation cut for PERC because, as I say, we know how other areas have

benefited as much as we have in their decisions.

In addition to our concern over the cut-down in appropriations, we also in Middletown havebeen aware of this A-1049, a change in this injunction procedure, because again, as Chairman Pease has mentioned, we don't feel that you can have any kind of negotiations where you don't have two equal parties meeting at a negotiating table,that it's impossible to have meaningful negotiations under circumstances where one party has all the power. And we feel that this is still so, in spite of 303, the Board still has the predominance of power. They don't have to accept any decisions that are rendered by a mediator or a fact-finder. They know this and we know this, and it gives them an opportunity to make unilateral decisions that we are perfectly aware of. This has happened and is continuing to happen. It was just a few weeks ago where we met and the Board suddenly stood up because of a misinterpretation or the way we interpreted the negotiating agreement that had been reached and the way they interpreted it, and they said. "Well, if you're going to take that point of view, we won't stay here and listen to it any longer." And they could have gotten up and walked out and we could never have gotten away with that. We know it.

We feel that a review and a show-cause requirement on the part of the Board of Education will kind of balance this inequality that exists at the negotiating table.

We are also in favor of this A-810 for the reasons we have mentioned earlier, this idea of having Boards accept the decisions of the mediators. We would like to be able to withdraw services but we realize at the same time the kind of feeling that exists as soon as we mention strikes. But I think you're a little aware - well, it seems like a number of people are unaware of the responsibility that teachers know that they have, the responsibility of keeping a sound educational system, and I don't know that you are aware of how conservative

teachers are - conservative because of the many years of service and because of their training and because of the vested interest that they have in education. They are not likely to throw this aside because of matters like whether the monkeys are going to be inside or outside the zoo, or things that are equivalent to it, but they would take this responsibility very seriously and I am sure that you gentlemen know that they would. But sometimes when you talk about change it has all kinds of effects on people who are quite secure with the status quo. This is the way it is. Judges feel this way. Recently, for instance, people who were accustomed to this got almost hysterical when you talk about change.

I recall reading here a few weeks ago where there is another law you people are considering on divorce, and the Judge mentioned something about "Well, if we went through with this divorce, it would do away with the institution of marriage." Of course, some people feel almost as hysterical about the idea of giving teachers the right to strike. But it isn't true and, as you know, most people who get a divorce get married again, and most teachers are not in favor of going out on strike for any kind of trivial reason. But if they were forced into a position where they would have to do something like this, I am sure they would consider all of the effects and ramifications.

I don't think we can ignore any more the need to present the teacher to the public and to the student as a responsible individual, one that sets a worthy example for youth to emulate and not the apathetic kind of person that can be ignored by Boards or the public. I don't understand why we have this kind of power struggle going on in our schools and sometimes it looks like parents and pupils have much more of an effect upon the school system than the teachers, but lawyers are very much concerned and do have the responsibility of keeping the legal system in order and to preserve justice. Doctors do the same thing

in setting the standards for the medical profession and seeing that the hospital facilities are what they should be, and I think it follows just as night follows day that teachers should have the strongest influence in establishing a sound educational system.

Thank you.

ASSEMBLYMAN SMITH: By your last statement, you mean that they should participate in the curriculum?

MR. VAN HOUTEN: I think they should, yes.

ASSEMBLYMAN SMITH: You don't think the administrator is enough of a teacher that he should handle that?

MR. VAN HOUTEN: I think there are some areas that we can work together compatibly. This area of curriculum is one where I am sure teachers could have something to offer as well as administrators.

ASSEMBLYMAN SMITH: Isn't it true - I guess all administrators have been teachers at one time or another, haven't they?

MR. VAN HOUTEN: Yes. Sometimes they forget that.

SENATOR KNOWLTON: Thank you very much, sir, and thanks to our staff and our lovely ladies here who have been taking down everything that we said.

This hearing is adjourned.

[A D J O U R N E D]

POSITION OF THE COUNTY OF BERGEN

WITH REFERENCE TO AMENDMENT

TO P.L. 303

The County of Bergen and its legal staff has encountered several persistent difficulties with the interpretation and operation of P.L. 303 since it has been enacted. There have been approximately twenty-five applications for certification filed with the Public Employment Relations Commission. In all cases, Bergen County has objected to the proposed units as appropriate for reasons that are set forth below. Thus far there have been several hearings on the applications of the various proposed bargaining agents before P.E.R.C. and there have been two elections. In one case, the unit described appropriate by P.E.R.C. was voted in favor of the proposed bargaining agent, and in the other instance, the employees voted against it. Based on the applications presently on file with P.E.R.C., there is anticipated numerous additional hearings and elections within the next twelve months.

It is our opinion, based on rather extensive exposure and experience working within the confines of P.L. 303, that it was obviously hastily and inartistically drafted, and as a result thereof, has created some rather involved and unworkable situations for the Public Employer.

It would appear that the most obvious defects of P.L. 303 are as follows:

1. An extensive fragmentation of the Public Employer work force into numerous small bargaining units.

N.J.S. 34:13A5-3 provides in part:

> "The negotiating unit shall be defined with due regard for the community of interest among the employees concerned, but the Commission shall not intervene in matters of recognition and unit definition except in the event of a dispute." (Emphasis supplied)

As a result, P.E.R.C. has been given unlimited latitude in determining a "community of interest" sufficient to establish an appropriate unit. An examination of the cases decided by P.E.R.C. up to this time clearly indicates the attitude of P.E.R.C. to be one of favoring a multitude of small unworkable bargaining units as opposed to a smaller number of large bargaining units.

By way of example, P.E.R.C. has previously certified as an appropriate unit, a six man group employed within the Maintenance Department of Bergen Pines Hospital, mainly because all six work in the Heating Plant. As a result, a Public Employer in all probability will be faced with many small bargaining units within any one of its facilities, such as a hospital. It would appear from an examination of the decision that P.E.R.C. has placed emphasis with reference to "community of interests" on such trivia as whether the persons move from one place to another or are stationary. It is respectfully suggested that the above noted section be changed to read as follows:

(1) "The negotiating unit shall be defined with due regard for the community of interest among the employees of the employer concerned ---" (Emphasis supplied)

It is further suggested that the Legislature be advised that the interests of all concerned would be making appropriate bargaining agents as broad as could reasonably be justified, such as all blue collar workers, all white collar workers, all professionals, all licensed craftsmen, etc.

(2) In Sec. 34:13A3, the definition "Employer" is too broad and should be restricted by re-definition. In part, the present section of P.L. 303 reads:

> "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 sub-division 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."

The defects in the present definition are rather obvious when one considers that P.L. 303 obligates the Employer to bargain with unions in good faith although the Employer frequently does not have either the authority or the power to raise the funds necessary to honor the committments it has made in its good faith bargaining with the union. An interesting example of this was a recent ruling by former Attorney General Arthur Sills that Appointing Judges in the County Court are the Employer of record of the Probation Officers. However, the judges have neither the power nor the authority to allocate or raise the funds necessary to pay these Probation Officers. An additional question raised by the Attorney General's opinion is Constitutional in nature - "Does a Legislature have the right

to create an agency that can assume the jurisdiction in fact finding over the employees of a co-equal branch of the State Government?"

An interesting example of P.L. 303 separating the bargaining agents of the Public Employer from the authority to raise funds was in the observation made by P.E.R.C.'s representatives in the matter of the Newark Board of Education vs. Newark Teachers Association. He stated in part:

> "While we are not unmindful of the problem facing Newark and other urban centers, nevertheless, the duty and obligation of the Board is to maintain, operate and supervise an adequate public school system for some 74,000 children. The Board's concern for the financial condition of the City, while commendable, was beyond the scope and authority of the Board. The Board should not be concerned about the source of revenue, the allocation of funds by the City of the possible difficulty in levying taxes to meet the City's obligations. These are, and properly so, the role of the elected Legislative representatives of the citizenry charged with such responsibility." (Emphasis supplied)

It is respectfully suggested that the law be amended to define the Employer as that unit of government which is authorized and required to meet the financial obligation created by the collective bargaining. This suggested amendment will avoid the situation created in the matter of Jersey City Board of Education vs Jersey City Teachers Association in which the Mayor of that city characterized the agreement as "a worthless piece of paper" since it was impossible to raise the funds required to meet the obligation created by that collective bargaining agreement.

(3) <u>There has been substantial uncertainty created under P.L. 303 concerning the status of supervisors.</u> Under the present law, supervisors have a right to organize and negotiate with Public Employers although this right is not now available in the private sector of our economy or in Federal service except by Executive Order of the President and then only to form associations for discussion purposes.

As in the private sector of our economy, supervisors employed by Public Employers are legal agents of that employer and an integral part of the management structure of that employer. It is respectfully suggested that the amendment to the law eliminate the rights presently conferred on the supervisors to organize, and adopt the theories and practices of the Federal Government in private sectors of our economy. A continuation of the present practice will lead to a breakdown of the proper management among Public Employers.

If the Legislature deems it mandatory to confer this right on Supervisor, then it is respectfully suggested that they be limited to joining organizations that do not represent non-supervisory employees with the expressed written consent of the Public Employer. This solution, we submit, would still create a conflict of interest, but would somewhat modify the present untenable position of the employer in this matter.

It is respectfully suggested that the Legislature adopt the present principle with reference to supervisors that it now recognizes with respect to police officers.

An example of the strained reasoning some of the P.E.R.C. appointed hearings offer is the matter of the Middlesex Welfare Board v CWA-CIO-AFL wherein the Hearing Officer found that one (1) of ten (10) supervisors (all classified under the identical Civil Service job description) had the authority to hire, fire, or discipline employees or to effectively recommend such action. It is incredible that the Middlesex Board would delegate differing authority to supervisors of Case Workers. In this instance, the Commission usurped the administrative function of the Welfare Board in determining how effectively the supervisors discharged their assigned responsibilities.

The County of Bergen wishes to take this opportunity to thank this Board for allowing it time to present its position with reference to P.L. 303 and the proposed amendment thereto.

Submitted by Robert R. Luse

Phone 695-3469 (Area Code 609)

New Jersey
State Federation of District Boards of Education
407 West State Street, P. O. Box 909, Trenton, New Jersey 08605

MRS. RUTH H. PAGE
Executive Director

#1

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

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

1. Section three 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.

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(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 subject to the provisions of the Railway Labor Act. This term shall include public employee, i. e. any person holding a position, by appointment or contract, or employment in the service of a public employer, except elected officials, heads and deputy heads of departments and agencies, and members of boards and commissions, provided that in any school district this shall exclude only the superintendent of schools or other chief administrator of the district.

(e) The term "representative" is not limited to individuals but shall include labor organizations, and individual representatives need not themselves be employed by, and the labor organization serving as a representative need not be limited in membership to the employees of, the employer whose employees are represented. This term shall include any organization, agency or person authorized or designated by a public employer, public employee, group of public employees, or public employee association to act on its behalf and represent it or them.

(f) The phrase "terms and conditions of employment" as used in this act with respect to public employment shall mean compensation of every kind paid or furnished to the employee; length of work day and work week, rest periods and meal hours; physical conditions at the place of employment which affect the health or safety of employees; and fringe benefits as the term is commonly understood in public employment.

2. This Act shall take effect immediately.

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MRS. RUTH H. PAGE
Executive Director

#2

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

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

1. No public employee or organization of public employees shall engage in any strike, slowdown, sanction or any other concerted action which tends to disrupt or obstruct the proper functioning of a public employer. Any organization of public employees engaging in such unlawful activity or aiding or abetting the same shall forthwith lose its status and rights as an employee representative under this Act for a period of one year from the date it commences to engage in or aid and abet such unlawful activity. Any public employee engaging in or aiding or abetting such unlawful activity shall suffer the loss of his pay for every day he engages in such violation of this Act, in addition to any other penalty or forfeiture to which he may be liable under any other provision of law. It shall be unlawful for the public employer to waive or forego the penalties prescribed by this section; nor shall this section be construed to limit or restrict the right of the public employer to seek such judicial relief as it may be entitled to in law or in equity.

2. This Act shall take effect immediately.

70-377
5-8-70

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MRS. RUTH H. PAGE
Executive Director

#3

AN ACT concerning employer-employee relations, and amending P. L. 1968, c. 303.

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

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

7. Except as hereinafter provided, public employees shall have, and shall be protected in the exercise of, the right, freely and without fear of penalty or reprisal, to form, join and assist any employee organization or to refrain from any such activity; provided, however, that this right shall not extend to any managerial executive except in a school district the term managerial executive shall mean the superintendent of schools or his equivalent, nor /~, except where established practice, prior agreement or special circumstances, dictate the contrary,/ shall any supervisor /having the power to hire, discharge, discipline, or to effectively recommend the same,/ have the right to be represented in collective negotiations by an employee organization that admits non-supervisory 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 term "supervisor" or "supervisory employee" shall mean one having the authority, in the interest of the employer, to hire, transfer, suspend, promote, discharge, assign, reward or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not merely of a routine or clerical nature, but requires independent judgment. The negoti-

over

ating unit shall be defined with due regard for the community of interest among the employees concerned, but the commission shall not intervene in matters of recognition and unit definition except in the event of a dispute.

Representatives designated or selected by public employees for the purposes of collective negotiation by the majority of the employees in a unit appropriate for such purposes or by the majority of the employees voting in an election conducted by the commission as authorized by this act shall be the exclusive representatives for collective negotiation concerning the terms and conditions of employment of the employees in such unit. Nothing herein shall be construed to prevent any official from meeting with an employee organization for the purpose of hearing the views and requests of its members in such unit so long as (a) the majority representative is informed of the meeting; (b) any changes or modifications in terms and conditions of employment are made only through negotiation with the majority representative; and (c) a minority organization shall not present or process grievances. Nothing herein shall be construed to deny to any individual employee his rights under Civil Service laws or regulations. When no majority representative has been selected as the bargaining agent for the unit of which an individual employee is a part, he may present his own grievance either personally or through an appropriate representative or an organization of which he is a member and have such grievance adjusted.

A majority representative of public employees in an appropriate unit shall be entitled to act for and to negotiate agreements covering all employees in the unit and shall be responsible for representing the interests of all such employees without discrimination and without regard to employee organization membership. /Proposed new rules or modifications of existing rules governing working conditions shall be negotiated with the majority representative before they are established. In addition,/ The majority representative and designated representatives of the public employer shall meet at reasonable times and negotiate in good faith with respect to grievances and terms and conditions of employment.

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. Such agreement shall be made binding for a period of not less than twelve months and extending not beyond the end of the third full fiscal year of the employer subsequent to the date of such agreement.

Such agreement shall obligate both parties to comply in good faith with the terms thereof, except that it shall not prevent the public employer from taking unilateral action in derogation thereof where necessary to meet an emergency or to enable the employer to carry out its responsibilities under the law; but before taking such action the employer shall give the majority representative as much advance notice thereof as practicable.

Public employers shall negotiate written policies setting forth grievance procedures by means of which their employees or representatives of employees may appeal the interpretation, application or violation of policies, agreements, and administrative decisions affecting them, provided that the employer shall not be obligated to negotiate a grievance procedure with respect to any matter for which a method of review is otherwise prescribed by law; and provided further that the term "grievance" and the procedure relative thereto shall not apply to the failure or refusal of the employer to employ a person or to renew the contract of a probationary employee /~such~/ grievance procedures shall be included in any agreement entered into between the public employer and the representative organization. Such grievance procedures may provide for advisory or binding arbitration as a means for resolving disputes.

Nothing in this act shall be construed to diminish the duty of the employer to consider proposals advanced by employees or their representatives where such proposals may not be negotiable under the provisions of this act.

2. This Act shall take effect immediately.

BOARD OF EDUCATION
CITY OF LONG BRANCH

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June 9, 1970

Mr. Samuel Alito
c/o N. J. Federation of District
Boards of Education
407 West State Street
P. O. Box 909
Trenton, New Jersey

Dear Mr. Alito:

As General Counsel to the Long Branch Board of Education I recently reviewed a copy of the Legislation News for May 20, 1970, Page 2 of which refers to the proposed changes being considered to Chapter 303, Laws of 1968, at the public hearings on June 17th and 18th. I would just like to briefly sketch out some thoughts with reference to these proposed changes.

1. S-564, A-498: Although I do not know what significance the increase of the number of members of P.E.R.C. might have, if P.E.R.C. itself deems this change to be appropriate I would have no objection thereto.

2. A-810: I find the proposal to grant public employees the right to strike to be diametrically opposed to the expressed intention of Chapter 303 as originally enacted. Indeed, the expression of legislative intent accompanying that law clearly emphasized the intention of an amicable adjustment of public employment labor disputes without resort to strike. My experience with Chapter 303 leads me to believe that the full intent of that law has never been fully experienced or implemented in that the proper administration of the law has been sorely lacking during the last two years. However, even were one to assume that Chapter 303 needed revision in this regard, there are obviously other alternatives before granting the right to strike to public employees in areas in which the public interest would be greatly prejudiced. Until such time as procedures such as binding arbitration have been fully implemented and experienced, I can conceive of no justification to adopt such a provision, which can only lead to greater public chaos and strife.

3. S-537: I do not conceive of any benefit that can be derived from requiring that the parties share the costs of mediation equally other than a possible balancing of an inadequate budget of P.E.R.C. If the latter be the case, I would probably favor the provision. However, it should be borne in mind that in the heat of negotiations, mediation is oft-times an appropriate vehicle for resolution of most, if not, all disputes, and even assuming that mediation fails to fully resolve the labor disputes, if it has narrowed down the open issues for fact-finding, the effort will have been well spent. I therefore tend to favor mediation at no cost to either party but with the costs of fact-finding to be borne equally by both.

4. A-462: I have mixed emotions concerning the proposal to make P.E.R.C. "an all public board". If this truly could be accomplished, I would most certainly be in favor of an impartial body administering Chapter 303. However, most people along the line have either been an employer or an employee, and the prejudices or inclinations which may result from that relationship can never be permanently expunged. As I view the present make-up of P.E.R.C., I think it is better to have an acknowledged representation of both interests on the Commission than to run the risk of appointing a "public board" which is comprised of persons whose prejudices may be more deepseated and less discernible to those who must deal with this administrative body.

Very truly yours,

JOHN R. HALLERAN

JRH:gf

cc: Mr. William H. Meskill,
Superintendent of Schools