PUBLIC HEARING

before

SENATE LABOR, INDUSTRY AND PROFESSIONS COMMITTEE

SENATE BILL NO. 266

(Establishes certain mandatory subjects for collective bargaining under the "New Jersey Employer-Employee Relations Act")

SENATE BILL NO. 606

(Revises laws concerning collective negotiations for public employees)

SENATE BILL NO. 855

(Clarifies the law with respect to the kinds of matters which are proper subjects of negotiations in public sector employment)

SENATE BILL NO. 3567

(Expands the scope of negotiations for public school employees)

June 19, 1989
State House Annex
Room 334
Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Senator Raymond Lesniak, Chairman
Senator Christopher J. Jackman, Vice Chairman
Senator Edward T. O'Connor, Jr.

ALSO PRESENT:

Dale C. Davis, Jr.
Office of Legislative Services
Aide, Senate Labor, Industry and
Professions Committee

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Hearing Recorded and Transcribed by
Office of Legislative Services
Public Information Office
Hearing Unit
State House Annex
CN 068
Trenton, New Jersey 08625

RAYMOND LESNIAK
Chairman
CHRISTOPHER J. JACKMAN
Vice-Chairman
EDWARD T. O'CONNOR, JR.
GERALD CARDINALE
DONALD T. DiFRANCESCO

New Jersey State Legislature
SENATE LABOR, INDUSTRY
AND PROFESSIONS COMMITTEE
STATE HOUSE ANNEX, CN-068
TRENTON, NEW JERSEY 08625
TELEPHONE: (609) 984-0445

June 5, 1989

NOTICE OF PUBLIC HEARING

The Senate Labor, Industry and Professions Committee will continue its public hearing of May 22nd on **Monday, June 19, 1989** at **9:30 A.M.** in **Room 334, State House Annex,** on the following bills:

S-266 Dumont	Establishes certain mandatory subjects for collective bargaining under the "New Jersey Employer-Employee Relations Act."
S-606 Cowan	Revises laws concerning collective negotiations for public employees.
S-855 Jackman	Clarifies the law with respect to the kinds of matters which are proper subjects of negotiations in public sector employment.
S-3567 Russo	Expands the scope of negotiations for public school employees.

Anyone wishing to testify should contact Dale Davis, Committee Staff, at (609) 984-0445.

Please provide 12 copies of any written testimony to be submitted to the committee.

SENATE, No. 266

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1988 SESSION

By Senator DUMONT

AN ACT concerning collective negotiations and amending P.L. 1941, c. 100 and P.L. 1968, c. 303.

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

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

2. It is hereby declared as the public policy of this State that the best interests of the people of the State are served by the prevention or prompt settlement of labor disputes, both in the private and public sectors; that strikes, lockouts, work stoppages and other forms of employer and employee strife, regardless where the merits of the controversy lie, are forces productive ultimately of economic and public waste; that the interests and rights of the consumers and the people of the State, while not direct parties thereto, should always be considered, respected and protected; that the constitutional mandate that public employees be given the right to organize and present grievances to their employers will be implemented and promoted by the establishment of an expansive system of collective negotiations concerning terms and condition of employment; and that the voluntary mediation of such public and private employer employee disputes under the guidance and supervision of a governmental agency will tend to promote permanent, public and private employer-employee peace and the health, welfare, comfort and safety of the people of the State. To carry out such policy, the necessity for the enactment of the provisions of this act is hereby declared as a matter of legislative determination.

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

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

Matter underlined thus is new matter.

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 elected officials, members of boards and commissions, managerial executives, or confidential employees, except in a school district the term managerial executive shall mean the superintendent of schools or his equivalent, nor, except where established practice, prior agreement or special circumstances, dictate the contrary, shall any supervisor having the power to hire, discharge, discipline, or to effectively recommend the same, have the right to be represented in collective negotiations by an employee organization that admits nonsupervisory personnel to membership, and the fact that any organization has such supervisory employees as members shall not deny the right of that organization to represent the appropriate unit in collective negotiations; and provided further, that, except where established practive, prior agreement, or special circumstances dictate the contrary, no policeman shall have the right to join an employee organization that admits employees other than policemen to membership. The negotiating unit shall be defined with due regard for the community of interest among the employees concerned, 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 interest 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 food faith with respect to grievances, disciplinary disputes, and other terms and conditions of employment. [Nothing herein shall be construed as permitting negotiation of the standards or criteria for employee performance.] The following matters relating to terms and conditions of employment are mandatory subjects of collective negotiations for public employees:

a. Assignment of extracurricular and co-curricular activities including but not limited to supervising homeroom, cafeteria; coaching a sport; sponsoring a school club; supervising a school publication; directing school dramatic productions, school assembly programs, or a school band, orchestra or chorus; and advising student councils;

b. Absenteeism or tardiness work rules and policies or both as they pertain to employees;

c. Involuntary transfers of employees within school districts;

d. Employee disciplinary procedures, including areas of compensation;

e. Subcontracting of unit-defined work;

f. Evaluation criteria as well as procedures and their implementation and application.

The aforementioned subjects are mandatorily negotiable and supplement those subject matters now existing and determined to be mandatory subjects of bargaining.

When an agreement is reached on the terms and conditions of employment, it shall be embodied in writing and signed by the authorized representatives of the public employer and the majority representative.

Public employers shall negotiate written policies setting forth grievance and disciplinary review procedures by means of which their employees or representatives of employees may appeal the interpretation, application or violation of policies, agreements, and administrative decisions, including disciplinary determinations, affecting them, provided that such grievance and disciplinary review procedures shall be included in any agreement entered into between the public employer and the representative organization. Such grievance and disciplinary review procedures may provide for binding arbitration as a means for resolving disputes. The procedures agreed to by the parties may not replace or be inconsistent with any alternate statutory appeal procedure nor may they provided for binding arbitration of disputes involving the discipline of employees with statutory protection under tenure or Civil Service laws. Grievance and disciplinary review procedures established by agreement between the public employer and the representative organization shall be utilized for any dispute covered by the terms of such agreement.

3. This act shall take effect immediately.

STATEMENT

This bill would add the above-enumerated subjects of bargaining to the mandatory category enabling the "New Jersey Employer-Employees Relations Act," P.L. 1941, c. 100 (C.34:13A-1 et seq.) as amended and supplemented to be fully implemented and to carry out its original intent and purpose.

This bill will act as a catalyst to resolving disputes while affording all parties the opportunity to negotiate mutually and to agree upon matters of substance under each subject.

By the addition of these mandatory subjects of bargaining, the avoidance of much litigation that presently exists will occur, and the result will be in the interst of peace and harmony and ultimately of the public.

LABOR AND EMPLOYMENT
Public Employees

Establishes certain mandatory subjects for collective bargaining under the "New Jersey Employer-Employee Relations Act."

SENATE, No. 606

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1988 SESSION

By Senator COWAN

AN ACT concerning collective negotiations, amending P.L. 1968, c. 303 and P.L. 1974, c. 123 and amending and supplementing P.L. 1941, c. 100.

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

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

2. It is hereby declared as the public policy of this State that the best interests of the people of the State are served by the prevention or prompt settlement of labor disputes, both in the private and public sectors; that strikes, lockouts, work stoppages and other forms of employer and employee strife, regardless where the merits of the controversy lie, are forces productive ultimately of economic and public waste; that the interests and rights of the consumers and the people of the State, while not direct parties thereto, should always be considered, respected and protected; that the constitutional mandate that public employees be given the right to organize and present grievances to their employer will be implemented and promoted by the establishment of an expansive system of collective negotiations between public employers and appropriate units of employees concerning terms and conditions of employment and other matters mutually agreed upon; that it is therefore the policy of this State to encourage the practices and procedures of collective negotiations and that although collective negotiations may involve matters lying within the managerial discretion of public employers, collective negotiations constitute the most appropriate manner of exercising that discretion concerning terms and conditions of employment and other matters mutually agreed upon where no

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

Matter underlined thus is new matter.

statute specifically precludes such negotiations; that since public employers are presumed to consider the public interest when reaching agreements, where the public employer and the representative of public employees agree upon permissive subjects of collective negotiations, it is in the best interest of sound labor relations in the public sector, and ultimately in the public interest as well, not to interfere with these voluntary agreements or, for that matter, any lawful agreement entered into by the parties and that the Legislature recognizes that an effective balancing of the interests of employees and employers, and the public interest in the democratic process are and can be best achieved by the provisions hereinafter set forth, including negotiations on permissive subjects; and that the voluntary mediation of such public and private employer-employee disputes under the guidance and supervision of a governmental agency will tend to promote permanent, public and private employer-employee peace and the health, welfare, comfort and safety of the people of the State. To carry out such policy, the necessity for the enactment of the provisions of this act is hereby declared as a matter of legislative determination.

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

3. When used in this act:

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

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

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

(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 any public employee, i.e., any person holding a position, by appointment or contract, or employment in the service of a public employer, except elected officials, members of boards and commissions managerial executives and confidential employees.

(e) The term "representative" is not limited to individuals but shall include Labor organizations, and individual representatives need not themselves be employed by, and the Labor organization serving as a representative need not be limited in membership to the employees of, the employer whose employees are represented. This term shall include any organization, agency or person authorized or designated by a public employer, public employee, group of public employees, or public employee association to act on its behalf and represent it or them.

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

(g) "Confidential employees" of a public employer means employees whose regular, ordinary and continuing functional responsibilities [or knowledge] in connection with the issues

involved in the collective negotiations process would make their membership in any appropriate negotiating unit incompatible with their official duties.

(h) Mandatory subjects for collective negotiations in public employment are all matters concerning wages, hours, discipline and other terms and conditions of employment, not specifically prohibited by statute, including the impact of management decisions which are not mandatorily negotiable on the wages, hours, discipline and other terms and conditions of employment.

(i) Permissive subjects for collective negotiations in public employment are all matters which are neither mandatory nor illegal subjects for negotiations.

(j) Illegal subjects for negotiations in public employment are those matters which are specifically prohibited by statutory language. Administrative rules or regulations shall not prevent collective negotiations required or permitted by this act nor supersede the provisions of any negotiated agreement.

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

7. Except as hereinafter provided, public employees shall have, and shall be protected in the exercise of, their right, freely and without fear of penalty or reprisal, to form, join and assist any employee organization or to refrain from any such activity; provided, however, that this right shall not extend to elected officials, members of boards and commissions, managerial excecutives, or confidential employees, except in a school district the term managerial executive shall mean the superintendent of schools or his equivalent, nor, except where established practice, prior agreement or special circumstances, dictate the contrary, shall any supervisor having the power to hire, discharge, discipline, or to effectively recommend the same, have the right to be represented in collective negotiations by an employee organization that admits nonsupervisory personnel to membership, and the fact that any organization has such supervisory employees as members shall not deny the right of that organization to represent the appropriate unit in collecte negotiations; and provided further, that, except where established practice, prior agreement, or special circumstances

dictate the contrary, no policeman shall have the right to join an employee organization that admits employees other than policemen to membership. The negotiating unit shall be defined with due regard for the community of interest among the employees concerned, but the commission shall not entervene 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 exclusive representatives for collective negotiation [concerning the terms and conditions of employment of] <u>for</u> 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 veiws 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 <u>wages, hours, discipline and other</u> terms and conditions of employment <u>and other matters mutually agreed upon</u> are made only through negotiation with the majority representative; and (c) a minority organization shall not present or process grievances. Nothing herein shall be construed to deny to any individual employee his rights under Civil Service laws or regulations. When no majority representative has been selected as the bargaining agent for the unit of which an individual employee is a part, he may present his own grievance either personally or through an appropriate representative or an organization of which he is a member and have such grievance adjusted.

A majority representative of public employees in an appropriate unit shall be entitled to act for and to negotiate agreements covering all employees in the unit and shall be responsible for representing the interest of all such employees without discrimination and without regard to employee organization membership. 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, disciplinary disputes, and [other terms and conditions of employement] those matters which are mandatory subjects for collective negotiations and may negotiate and agree upon those matters which are permissive subjects for collective negotiations. [Nothing herein shall be construed as permitting negotiation of the standards or criteria for employee performance.]

When an agreement is reached on [the terms and conditions of employment] those matters which are mandatory and permissive subjects for collective negotiation, it shall be embodied in writing and signed by the authorized representatives of the public employer and the majority representative.

Public employers shall negotiate written policies setting forth grievance and disciplinary review procedures by means of which their employees or representatives of employees may appeal the interpretation, application or violation of policies, agreements, and administrative decidision, including disciplinary determinations, affecting them, provided that such grievance and disciplinary review procedures shall be included in any agreement entered into between the public employer and the representative organization. Such grievance and disciplinary review procedures may provide for binding arbitration as a means for resolving disputes. [The procedures agreed to by the parties may not replace or be inconsistent with any alternate statutory appeal procedure nor may they provide for binding arbitration of disputes involving the discpline of employees with statutory protection under tenure or civil service laws. Grievance] Notwithstanding any procedures for the resolution of disputes, controversies or grievances established by any other law, grievance and disciplinary review procedures established by agreement between the public employer and the representative organization shall be utilized for any dispute covered by the terms of such agreement.

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

1. a. Public employers, their representatives or agents are prohibited from:

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

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

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

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

(5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning [terms and conditions of employment of] <u>those matters which are mandatory subjects for negotiations concerning</u> employees in that unit, or refusing to process grievances presented by the majority representative.

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

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

b. Employee organizations, their representatives or agents are prohibited from:

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

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

(3) Refusing to negotiate in good faith with a public employer, if they are the majority representative of employees in an appropriate unit concerning [terms of conditions of employment of] <u>those matters which are mandatory subjects for negotiations concerning</u> employees in that unit.

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

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

c. The commission shall have exclusive power as hereinafter provided to prevent anyone from engaging in any unfair practice listed in subsection a. and b. above. Whenever it is charged that anyone has engaged or is engaging in any such unfair practice, the commission, or any designated agent thereof, shall have the authority to issue and cause to be served upon such party a complaint stating the specific unfair practice charged and including a notice of hearing containing the date and place of hearing before the commission of any designated agent thereof; provided that no complaint shall issue based upon any unfair practice occurring more than six months prior to the filing of the charge unless the person aggrieved thereby was prevented from filing such charge in which event the six-month period shall be computed from the day he was no longer so prevented.

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

d. The commission shall at all times have the power and duty, upon the request of any public employer or majority representative, to make a determination as to whether a matter in dispute is within the scope of <u>mandatory or permissive</u> collective negotiations, <u>and upon the further request of either party shall determine whether the matter in dispute is arbitrable under the contract</u>. The commission shall serve the parties with its findings of fact and conclusions of law. Any determination made by the commission pursuant to this subsection may be appealed to the Appellate Division of the Superior Court.

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

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

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

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

(b) Whenever negotiations between a public employer and an exclusive representative concerning [the terms and conditions of employement] those matters which are mandatory subjects for negotiations shall reach an impasse, the commission, through the Division of Public Employment Relations, shall upon the request of either party, take such steps as it may deem expedient to effect a voluntary resolution of the impasse. In the event of a failure to resolve the impasse by mediation the Division of Public Employment Relations is enpowered to recommend or invoke fact-finding with recommendation for settlement, the cost of which shall be borne by the commission.

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

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

(e) For the purposes of this section the Division of Public Employment Relations shall have the authority and power to hold hearings, subpena witnesses, compel their attendance, administer oaths, take the testimony or deposition of any person under oath, and in connection therewith, to issue subpenas duces tecum, and to require the production and examination of any governmental or other books or papers relating to any matter described above.

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

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

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

6. (New section) Nothing contained in this amendatory and supplementary act shall require:

a. Any party to negotiate concerning any, permissive category of negotiations;

b. Any party to reach agreement upon any subject of permissive negotiations;

c. Any arbitration of any permissive subject which has not been reduced to a written agreement as part of negotiations.

7. This act shall take effect immediately.

STATEMENT

This bill, amending the "Public Employee Relations Act", clarifies the law with respect to the kinds of matters which are proper subjects of negotiations in public employee labor contracts.

Under the bill, the mandatory category of public-sector negotiations is expanded from matters concerning wages, hours and other terms and conditions of employment to include matters concerning discipline and the impact of nonnegotiable decisions on employees' wages, hours, discipline and other terms and conditions of employment.

The permissive category of public-sector negotiations is reinstated. Before the New Jersey Supreme Court's Ridgefield Park decision, PERC (Public Employment Relations Commission) was of the opinion that negotiation and arbitration of permissive subjects were acceptable; the court overruled this opinion and held that a permissive category of public-sector negotiations did not exist at that time under the statutes for these employees. Permissive subjects are all matters which are neither mandatory nor illegal subjects for negotiation and which are agreed upon by all parties.

The illegal category of public-sector negotiations is defined as those subjects "which are specifically prohibited by statutory language," but negotiated agreements would supersede rules and regulations promulgated by State agencies pursuant to these statutes.

The definition of "confidential employee" in this bill is changed from those public employees who have "functional responsibilities or knowledge" in regard to negotiable issues that would make their membership in a negotiating unit incompatible with their official duties, to those whose "regular, ordinary and continuing functional responsibilities" constitute such an incompatibility. This provision would allow an employee negotiation representative to represent some heretofore unrepresented supervisory employees.

Under this bill, grievance and disciplinary review procedures established by agreement of the parties in public-sector negotiations must be used for any dispute covered by the agreement and such agreement would supersede any grievance and disciplinary review procedures established by law.

The bill also provides that PERC has the power and duty upon request of one of the parties, to determine whether a subject is within the scope of mandatory or permissive collective negotiations, and, upon further request of either party, to determine whether the subject in dispute is arbitrable under the contract.

LABOR AND EMPLOYMENT

Public Employees and Personnel

Revises laws concerning collective negotiations for public employees.

SENATE, No. 855

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1988 SESSION

By Senator JACKMAN

AN ACT concerning collective negotiations, amending P.L. 1968, c. 303 and P.L. 1974, c. 123 and amending and supplementing P.L. 1941, c. 100.

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

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

2. It is hereby declared as the public policy of this State that the best interests of the people of the State are served by the prevention or prompt settlement of labor disputes, both in the private and public sectors; that strikes, lockouts, work stoppages and other forms of employer and employee strife, regardless where the merits of the controversey lie, are forces productive ultimately of economic and public waste; that the interests and rights of the consumers and the people of the State, while not direct parties thereto, should always be considered, respected and protected; that the constitutional mandate that public employees be given the right to organize and present grievances to their employers will be implemented and promoted by the recognition of an expansive system of collective negotiations concerning terms and conditions of employment where no statute specifically precludes such negotiations and other matters mutually agreed upon; that it is the policy of this State to encourage the process of collective negotiations; that where matters concern both the terms and conditions of employment for public employees and the legitimate interest of public employers, collective negotiations constitute the most appropriate context for resolving such interests provided no statute specifically precludes such negotiations; that where the public employer and the representative of the public employees

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

Matter underlined thus is new matter.

agree upon mandatory subjects, it is in the best interest of sound labor relations in the public sector, and ultimately in the public interest as well, not to interfere with these voluntary agreements or any lawful agreement entered into by the parties and that the Legislature recognizes that an effective balancing of the interest of employees and employers, and the public interest in the democratic process are and can be best achieved by the provisions hereinafter set forth, including negotiations on permissive subjects; and that the voluntary mediation of such public and private employer-employee disputes under the guidance and supervision of a governmental agency will tend to promote permanent, public and private employer-employee peace and the health, welfare, comfort and safety of the people of the State. To carry out such policy, the necessity for the enactment of the provisions of this act is hereby declared as a matter of legislative determination.

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

3. When used in this act:

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

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

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

(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 any public employee, i.e., any person holding a position, by appointment or contract, or employment in the service of a public employer, except elected officials, members of boards and commissions, managerial executives and confidential employees.

(e) The term "representative" is not limited to individuals but shall include labor organizations, and individual representatives need not themselves be employed by, and the labor organization serving as a representative need not be limited in membership to the employees of, the employer whose employees are represented. This term shall include any organization, agency or person authorized or designated by a public employer, public employee, group of public employees, or public employee association to act on its behalf and represent it or them.

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

(g) "Confidential employees" of a public employer means employees whose regular, ordinary and continuing functional responsibilities [or knowledge] in connection with the issues involved in the collective negotiations process would make their membership in any appropriate negotiations unit incompatible with their official duties.

(h) Mandatory subjects for collective negotiations in public employment shall include all matters concerning wages, hours, grievance procedures, disciplinary disputes and all other terms and conditions of employment not specifically prohibited by

statute. Public employers shall also be required to negotiate the impact of managerial policies which are, themselves, not mandatorily negotiable, on wages, hours, grievance procedures, disciplinary disputes and all other terms and conditions of employment not specifically prohibited by statute.

(i) Permissive subjects for collective negotiations in public employment shall include all matters which are neither mandatory subjects for negotiations nor illegal subjects for negotiations.

(j) Illegal subjects for negotiations in public employment shall include those matters which are specifically prohibited by statute. Administrative rules or regulations shall not present collective negotiations required or permitted by this act nor supersede the provisions of any negotiated agreement.

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

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

policemen to membership. The negotiating 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 purpose 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] <u>mandatory subjects for collective negotiations or permissive subjects mutually agreed upon by the parties</u> 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 any individual employee his rights under Civil Service laws or regulations. When no majority representative has been selected as the bargaining agent for the unit of which an individual employee is a part, he may present his own grievance either personally or through an appropriate representative or an organization of which he is a member and have such grievance adjusted.

A majority representative of public employees in an appropriate unit shall be entitled to act for, and to negotiate agreements covering all employees in the unit and shall be responsible for representing the interest of all such employees without discrimination and without regard to employee organization or 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[, disciplinary disputes, and other terms and conditions of employment] and those matters defined as mandatory subjects for collective negotiations and may negotiate and agree upon those matters defined as permissive subjects for collective negotiations. Nothing herein shall be construed as permitting negotiation of the standards or criteria for employee performance.

When an agreement is reached on [the terms and conditions of employment] those matters defined as either mandatory or permissive subjects for collective negotiations, it shall be embodied in writing and signed by the authorized representatives of the public employer and the majority representative.

Public employers shall negotiate written policies setting forth grievance and disciplinary review procedures by means of which their employees or representatives of employees may appeal the interpretation, application or violation of policies, agreements, and administrative decisions, including disciplinary determinations, affecting them, provided that such grievance and disciplinary review procedures shall be included in any agreement entered into between the public employer and the representative organization. Such grievance and disciplinary review procedures may provide for binding arbitration as a means for resolving disputes. The procedures agreed to by the parties may not replace [or be inconsistent with] any alternate statutory appeal procedure regarding the certification of tenure charges in education matters nor may they provide for binding, arbitration of disputes [involving the discipline of employees with statutory protection under tenure or] regarding the termination of employees covered by the civil service laws. [Grievance and disciplinary review procedures established by agreement between the public employer and the representative organization shall be utilized for any dispute covered by the terms of such agreement.]

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

1. a. Public employers, their representatives or agents are prohibited from:

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

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

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

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

(5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning [terms and conditions of employment of] <u>those matters defined as mandatory subjects for collective negotiations concerning</u> employees in that unit, or refusing to process grievances presented by the majority representative.

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

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

b. Employee organizations, their representatives or agents are prohibited from:

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

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

(3) Refusing to negotiate in good faith with a public employer, if they are the majority representative of employees in an appropriate unit concerning [terms and conditions of employment of] <u>those matters defined as mandatory subjects for collective negotiations concerning</u> employees in that unit.

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

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

c. The commission shall have exclusive power as hereinafter provided to prevent anyone from engaging in any unfair practice listed in subsections a. and b. above. Whenever it is charged that anyone has engaged or is engaging in any such unfair

practice, the commission, or any designated agent thereof, shall have authority to issue and cause to be served upon such party a complaint stating the specific unfair practice charged and including a notice of hearing containing the date and place of hearing before the commission or any designated agent thereof; provided that no complaint shall issue based upon any unfair practice occurring more than six months prior to the filing of the charge unless the person aggrieved thereby was prevented from filing such charge in which event the six months period shall be computed from the day he was no longer so prevented.

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

d. The commission shall at all times have the power and duty, upon the request of any public employer or majority representative, to make a determination as to whether a matter in dispute is within the scope of mandatory or permissive collective negotiations. The commission shall serve the parties with its findings of fact and conclusions of law. Any determination made by the commission pursuant to this subsection may be appealed to the Appellate Division of the Superior Court.

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

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

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

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

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

(c) The board in private employment, through the Division of Private Employment Dispute Settlement, and the commission in public employment, through the Division of Public Employment Relations, shall take the following steps to avoid or terminate labor disputes: (1) to arrange for, hold, adjourn or reconvene a conference or conferences between the disputants or one or more of their representatives or any of them; (2) to invite the

disputants or their representatives or any of them to attend such conference and submit, either orally or in writing, the grievances of and differences between the disputants; (3) to discuss such grievances and differences with the disputants and their representatives; and (4) to assist in negotiating and drafting agreements for the adjustment in settlement of such grievances and differences and for the termination or avoidance, as the case may be, of the existing or threatened labor dispute.

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

(e) For the purposes of this section the Division of Public Employment Relations shall have the authority and power to hold hearings, [subpena] subpoena witnesses, compel their attendance, administer oaths, take the testimony or deposition of any person under oath, and in connection therewith, to issue [subpenas] subpoenas duces tecum, and to require the production

and examination of any governmental or other books or papers relating to any matter described above.

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

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

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

6. (New section) Nothing contained in this 1988 amendatory and supplementary act shall require:

a. Any party to negotiate concerning any permissive subject for collective negotiations;

b. Any party to reach agreement upon any permissive subject for collective negotiations; or

c. Any arbitration of any permissive subject which has not been reduced to a written agreement as part of negotiations.

7. This act shall take effect immediately.

STATEMENT

This bill makes various changes in the current law concerning collective negotiations in public employment. First, it establishes, as state policy, a collective negotiations system which permits public employees to negotiate on any issue that is not specifically precluded by statute. Second, it allows public employers and employees to negotiate issues on a "permissive" basis, if the employer and employees agree that negotiations on these issues are justifiable. Third, it includes as part of mandatory subjects for negotiations all matters involving wages, hours, grievance procedures, disciplinary disputes, and other conditions of employment not specifically removed from negotiation by statute. Finally, it limits illegal subjects for negotiation in public employment to matters which are specifically prohibited by statute.

LABOR AND EMPLOYMENT
Public Employees and Personnel

Clarifies the law with respect to the kinds of matters which are proper subjects of negotiations in public sector employment.

SENATE, No. 3567

STATE OF NEW JERSEY

INTRODUCED MAY 8, 1989

By Senator RUSSO

AN ACT concerning collective bargaining and public school employees and supplementing P.L.1941, c.100 (C.34:13A-1 et seq.).

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

1. As used in this act:

"Commission" means the New Jersey Public Employment Relations Commission.

"Commissioner" means the Commissioner of Education.

"Discipline" includes all forms of discipline, except tenure charges filed pursuant to the provisions of subsubarticle 2 of subarticle B of Article 2 of chapter 6 of Subtitle 3 of Title 18A of the New Jersey Statutes (C.18A:6-10 et al.), or the withholding of increments pursuant to N.J.S.18A:29-14.

"Employees" means employees of an employer as defined by this act.

"Employer" means any local or regional school district, educational services commission, jointure commission, county special services school district, or board or commission under the authority of the commissioner or the state board of education.

"Extracurricular activities" include those activities or assignments not specified as part of the teaching and duty assignments scheduled in the regular work day, work week, or work year.

"Minor discipline" includes, but is not limited to, various forms of reprimands, fines and suspensions, but does not include tenure charges filed pursuant to the provisions of subsubarticle 2 of subarticle B of Article 2 of chapter 6 of Subtitle 3 of Title 18A of the New Jersey Statutes (C.18A:6-10 et al.), or the withholding of increments pursuant to N.J.S.18A:29-14.

"Regular work day, work week, or work year" means that period of time that all members of the bargaining unit are required to be present and at work.

"Teaching staff member" means a member of the professional

staff of any employer holding office, position or employment of such character that the qualifications, for the office, position or employment, require him to hold a valid and effective standard, provisional or emergency certificate, appropriate to that office, position or employment, issued by the State Board of Examiners. "Teaching staff member" includes a school nurse.

2. All aspects of assignment to and employment in extracurricular activities shall be deemed mandatory subjects for collective negotiations between an employer and majority representative of the employees in a collective bargaining unit, except that the establishment of qualifications for such positions shall not constitute a mandatory subject for negotiations. If the negotiated selection procedures fail to produce a qualified candidate from within the district the employer may employ from outside the district any qualified person who holds an appropriate New Jersey teaching certificate.

3. a. Notwithstanding any other law to the contrary, and if negotiated with the majority representative of the employees in the appropriate collective bargaining unit, an employer shall have the authority to impose minor discipline on employees.

b. The scope of such negotiations shall include a schedule setting forth the acts and omissions for which minor discipline may be imposed, and also the penalty to be imposed for any act or omission warranting imposition of minor discipline.

c. Fines and suspensions for minor discipline shall not constitute a reduction in compensation pursuant to the provisions of N.J.S.18A:6-10.

4. Transfers of employees by employers between work sites shall not be mandatorily negotiable except that no employer shall transfer an employee for disciplinary reasons.

5. Disputes involving the withholding of an employee's increment by an employer for predominately disciplinary reasons shall be subject to the grievance procedures established pursuant to law and shall be subject to the provisions of section 8 of this act.

6. a. If there is a dispute as to whether a transfer of an employee between work sites or withholding of an increment of a teaching staff member is disciplinary, the commission shall determine whether the basis for the transfer or withholding is

predominately disciplinary.

b. If the commission determines that the basis for a transfer is predominately disciplinary, the commission shall have the authority to take reasonable action to effectuate the purposes of this act.

c. If the commission determines that the basis for an increment withholding is predominately disciplinary, the dispute shall be resolved through the grievance procedures established pursuant to law and shall be subject to the provisions of section 8 of this act.

d. If a dispute involving the reason for the withholding of a teaching staff member's increment is submitted to the commission pursuant to subsection a. of this section, and the commission determines that the reason for the increment withholding relates predominately to the evaluation of a teaching staff member's teaching performance, the teaching staff member may file a petition of appeal pursuant to N.J.S.18A:6-9 and N.J.S.18A:29-14, and the petition shall be deemed to be timely if filed within 90 days of notice of the commission's decision, or of the final judicial decision in any appeal from the decision of the commission, whichever date is later.

7. Nothing in this act shall be deemed to restrict or limit any right established or provided by section 7 of P.L.1968, c.303 (C.34:13A-5.3); this act shall be construed as providing additional rights in addition to and supplementing the rights provided by that section.

8. a. The grievance procedures that employers covered by this act are required to negotiate pursuant to section 7 of P.L.1968, c.303 (C.34:13A-5.3) shall be deemed to require binding arbitration as the terminal step with respect to disputes concerning imposition of discipline as that term is defined in this act.

b. In any grievance procedure negotiated pursuant to this act, the burden of proof shall be on the employer covered by this act seeking to impose discipline as that term is defined in this act.

9. This act shall take effect immediately and nothing in this act shall require the reopening of any negotiated agreement in existence at the time of enactment.

STATEMENT

This bill expands the scope of negotiations for public school employees in matters relating to extra curricular activities and discipline, including increment withholding.

The bill provides public school employees with the right to negotiate all aspects of extracurricular employment, except the qualifications for the position. It reserves the right of the employer to hire from outside the district if no qualified candidate can be found under the negotiated procedures.

The bill provides for the establishment of a schedule of reprimands, fines and suspensions for certain acts or omissions, provided that such a schedule is first negotiated between the employer and the employee's representative. Neither reprimands, fines nor suspensions are required to be negotiated by the parties. The form of such penalties is totally within the control of the parties. In addition, the bill provides that all discipline up to and including the withholding of increments for disciplinary reasons may be appealed through the locally negotiated grievance procedures which must provide for binding arbitration as the final step in the procedure. The withholding of a teaching staff member's increment based on the actual teaching performance would still be appealable to the Commissioner of Education.

The bill also forbids transfers of employees between sites for disciplinary reasons. If there is a dispute as to whether the reason for a transfer or increment withholding is predominately disciplinary, the New Jersey Public Employment Relations Commission will make the determination as it previously did in Holland Township Board of Education and Holland Township Education Association, PERC No. 87-43, 12 NJPER 17316, affirmed N.J. Superior Ct., Appellate Division, October 23, 1987.

The rights granted in this bill are in addition to those rights that public school employees already enjoy. This bill should not be construed as detracting from the rights of those covered or as detracting from the rights of other employees not covered by this bill.

LABOR AND EMPLOYMENT

Teachers

Expands the scope of negotiations for public school employees.

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SENATOR RAYMOND LESNIAK (Chairman): I would like to have everyone's attention. We are going to begin the public hearing. Before we begin the public hearing, however, as soon as we get a quorum here, we may either suspend the public hearing or continue the public hearing, and vote on some legislation that is on our agenda. We'll just have to wait to see to determine how we are going to proceed.

At this time, we are going to continue the public hearing to assure that everyone who wants to be heard on the scope of the negotiation bills has an opportunity to be heard, and so that your comments will have an opportunity to be recorded in the record for the legislators to consider if and when these bills are voted on, either in this Committee or on the floor.

The first witnesses this morning will be Mr. Jon Moran from the New Jersey League of Municipalities and Mr. Gerald Dorf, Labor Relations Counsel for the New Jersey League of Municipalities.

W I L L I A M G. D R E S S E L, J R.: Mr. Chairman, my name is Bill Dressel. I am the Assistant Executive Director of the League of Municipalities. Mr. Moran was unable to make the hearing.

Thank you, Mr. Chairman. As I said, my name is Bill Dressel. I am Assistant Executive Director of the League of Municipalities. I am substituting for Jon Moran, the League's Legislative Analyst, who is unable to be here today.

I thank you for the opportunity to present the League's thinking on the legislation before you. The League's Labor Relations Counsel, Gerald Dorf, joins me. I will present a general policy statement, to be followed by Mr. Dorf, who will deal with the legal implications of the specific legislative proposals.

The League is unalterably opposed to this legislation, which would enlarge the scope of negotiable items under which

public employee groups could bargain collectively, and it is in direct contravention with the Supreme Court decision in Ridgefield Park Education Association v. Ridgefield Park Board of Education, 1978.

The Court, at least partially, based its decision on the fact that expanding the subject of negotiations might create serious problems by permitting public employee labor organizations to negotiate regarding items which would severely infringe upon management's ability to carry out its statutory mission.

Although there has been considerable dialogue on the impact some of these bills have on educational issues, the bills would have an equal impact on management decisions made by other public employers, such as counties and municipalities. The League believes that effective control of management policy issues relating to the provision of public services should remain in the hands of elected officials who, in turn, are politically responsible for their decisions to the electorate. The management of public policy must be kept in the hands of those who are responsible to the public.

We are particularly upset with the political decision to advance this legislation at this time. All of you must be aware of the fact that local governments are in the middle of a fiscal crisis of unprecedented proportions. I can assure you that the recent layoffs and service curtailments in Elizabeth will be repeated in other urban and suburban communities throughout the State, if additional State aid is not forthcoming shortly.

Our ability to manage personnel and allocate scarce resources in an effective manner will be dramatically impaired if this kind of legislation is enacted at this time.

SENATOR LESNIAK: Excuse me.

MR. DRESSEL: Yes?

SENATOR LESNIAK: I am a little confused by your statement, Mr. Dressel. You say: "The management of public policy must be kept in the hands of those who are responsible to the public."

MR. DRESSEL: Yes?

SENATOR LESNIAK: What do you call this Committee?

MR. DRESSEL: I'm saying that the scope of negotiations would impair the elected officials' ability to manage effectively at the local level.

SENATOR LESNIAK: Well, let me just take strong exception to your comment with regard to that, because this Committee certainly is responsible to the public, as well. Okay?

MR. DRESSEL: I understand.

SENATOR LESNIAK: Okay.

MR. DRESSEL: I think you might be taking that out of context. I am speaking specifically with regard to the management ability at the local level.

SENATOR LESNIAK: Okay.

MR. DRESSEL: Advocates of these proposals contend that it would merely permit the negotiation of management policy issues at the discretion of the negotiating parties at the bargaining table. It is clearly recognized, however, by anyone familiar with the dynamics of the bargaining process, that these permissive areas would soon be bargained away in the give-and-take atmosphere. We fear, in fact, negotiations would soon coerce management to agree to negotiate management areas. We predict, if this legislation becomes law, that in five years, all management prerogative areas will have been eroded away at the bargaining table.

We also oppose any attempt to mandate that binding arbitration be part of the grievance procedure. We believe that this question should be solved through collective bargaining and not be mandated by State law.

We strongly urge that you vote against these measures.

At this time, Mr. Chairman, I would like to defer to our Labor Relations Counsel, Mr. Dorf, who will speak on the specific bills.

G E R A L D L. D O R F, E S Q.: Mr. Chairman, thank you very much for the opportunity to appear here. I would like to make some general statements, and then specifically deal with the pieces of legislation before this Committee.

I have had in excess of 25 years of labor relations experience representing managment interests in both the private and public sectors, including municipalities, counties, and school boards. I am Labor Relations Counsel to the New Jersey League of Municipalities, and I have held that position since 1973. In the interest of your rather full agenda, I will make some general comments about scope of negotiations per se, and then deal specifically with the bills at hand.

The League of Municipalities, as the Committee probably knows, represents 561 of the 567 municipalities in the State. All of these municipalities, as public employers, are, of course, subject to the New Jersey Employer-Employee Relations Act, commonly known as the PERC law, and the taxpayers must bear the costs of agreements which are negotiated thereunder, or which would be negotiated under the provisions of the four bills before this Committee, namely Senate Bills Nos. 266, 606, 855, and 3567.

Since the original enactment of the PERC law in 1968, the law has been amended on several occasions. The proposed legislation before your Committee today is to make additional changes in the law, many of which the League feels are either unwise, unwarranted, or both. The balance of my statement will deal with that.

The bills under consideration seek to introduce into non-fire and police negotiations the category of permissive negotiations, as well as to expand the mandatory category of

subjects, while limiting or totally eliminating those subjects which have been heretofore considered as managerial prerogatives. A number of other amendments would:

1) Narrow the scope of confidential employees. There are really very few employees under our existing PERC law who are not subject to unionization, which is in severe contrast with the private sector, which is much more strict in terms of which employees may be unionized. The definition of a confidential employee would be expanded -- I'm sorry, would be narrowed by the pending bills, and that would make even fewer people who would not be subject to being unionized.

2) Permit negotiated grievance procedures to supersede statutory procedures for the resolution of disputes, controversies, or grievances, such as those procedures under the Department of Personnel and also under the Commissioner of Labor -- sorry, the Commissioner of Education.

3) Include as part of mandatory subjects for negotiations all -- and here is the key -- all conditions of employment not specifically removed from negotiations by statute. In other words, unless the employer could point to a specific law, or portion thereof which says that this subject is not negotiable, it is negotiable. Everything, therefore, is negotiable, unless there is a specific enumeration somewhere in some statute that it is not negotiable.

4) Limit illegal subjects for negotiations only, again, to matters which are specifically found in statute to be illegal.

On the whole, the legislation, if enacted, would diminish the authority of a municipality over its day-to-day operation, while at the same time increase the union's role in those operations. That, I think, is what Mr. Dressel was referring to -- with all deference to this Committee -- the local employer that is seeking to manage the enterprise. As more of the areas become subject to negotiations, there is a

sharing of control, if you will, with the union. Unions are not responsible to the public; they are responsible to the membership. The local officials are responsible to the public. The League's concern is that as more and more areas become negotiable, the people who have no responsibility to the public will get some degree of control over those areas.

When the law was originally enacted in 1968, it provided for only two areas of negotiable subjects: mandatory and illegal. In 1974, the Act was amended -- that's Chapter 123 of the Laws of 1974. Again it contained no establishment of a permissive category. Such a category was developed, however, by PERC, which read the amendments to allow a permissive category.

However, in 1978, in the Ridgefield Park case, the Court held, very clearly, that there were only two areas of negotiable subjects: mandatory and illegal. There was no "permissive" category, in accordance with Ridgefield Park. A major rationale for this decision was the Court's belief that the creation of a permissive category of negotiations would permit public employee unions to negotiate items which would severely impinge upon management's right to effectively govern a municipality.

The next major case occurred in 1982. All of this is in my paper with citations. This is the Local 195 case. Here the Court went further to limit the scope of mandatorily negotiable items by holding that a term and condition of employment is negotiable only if:

1) It intimately and directly affects the work and welfare of public employees.

2) It has not been preempted by statute or negotiation.

3) It is a matter on which a negotiated agreement would not significantly interfere with the exercise of inherent management prerogatives pertaining to the determination of

governmental policies. That, I think, is really the key to the subject matter before your Committee.

Failure to meet all three criteria of this test results in determining such a subject to be nonnegotiable. The Court went so far as to hold that: "When the dominant concern is the government's managerial prerogative to determine policy, a subject may not be included in collective negotiations, even though it may intimately affect employees' working conditions." Subsequent case law also maintained these decisions.

With respect to fire and police negotiations, permissive subjects of negotiation are mentioned and included in the so-called Interest Arbitration Law enacted in 1977 as an amendment to the PERC Law. So, permissive areas of negotiability have existed in police and fire since 1977, with the amendment of the PERC Act to include interest arbitration.

Now, the crux of the matter in terms of these various bills: The basic premises which many unions supporting this legislation have made for the enactment of these bills are, I believe, as follows:

1) Public sector employees should be treated the same as their private sector counterparts; and 2) this legislation would swing the pendulum back from complete management control to a more balanced position. Neither premise is supportable by the legislation or by the present law governing public employees in New Jersey.

The proposed legislation would replace and amend present statutory language and thereby broaden the scope of negotiations potentially along the lines of the private sector, thereby creating a compatibility between the implementation and interpretation of contract language between the sectors, again this being the argument. Unfortunately, there is a fatal flaw, and here is the fatal flaw: The fatal flaw has to do with the fact that the two sectors operate in different fashions. In

the private sector, there is a profit motive; in the public sector, hopefully, there is no profit motive. There is a tax rate stability motive; that is, putting as little burden as possible on the public.

SENATOR LESNIAK: Let's hope there is also an educational motive.

MR. DORF: That, too; that, too. Now, with both sectors so diverse in the fundamental goal which drives each, it would be financially impractical and unrealistic to attempt to adopt the private sector collective negotiations scheme in the public sector. Mr. Dressel has already alluded to the financial bind the State is in. I'm sure this Committee is much more aware of the details of that than I. We think that broadening the scope of bargaining will have a cost impact, and we will deal with that in a moment.

Now, the specific bills themselves: S-266, S-606, and S-855 all refer to "the interest and rights of the consumers and people of the State" as being "considered, respected, and protected," and their sponsors state that an "expansive system" of collective negotiations will implement and promote the constitutional mandate that public employees be given the right to organize and present grievances to their employers. These two statements are neither wholly accurate nor, indeed, compatible. In fact, it is only the public employer -- borrowing the lead from Mr. Dressel again -- who takes into account the interests or rights of the consumers and the people of the State, since public employees are driven solely, or predominantly by the motive of enhancing their own economic and work conditions.

Secondly, it does not appear to me that any fair reading of the New Jersey Constitution leads to the belief that the rights of employees can, or should, be promoted by an "expansive" collective negotiations system whereby there is an never-ending number of items or subjects over which to negotiate.

The sponsor's statement in Senate Bill No. 266 includes a notation that the bill would: "act as a catalyst to resolving disputes," and that the addition of the mandatory subjects of bargaining would avoid much litigation. I would take issue with both of these statements. In my view, the catalyst to further bargaining would only lead to further dispute, and such dispute would undoubtedly result in further litigation until these so-called new areas of bargaining are finely honed by PERC and the courts.

With respect to Senate Bill No. 266, the thrust of the subjects to be included as mandatory subjects of collective negotiations appear primarily to deal with school boards. (Senator Jackman arrives at this point; greetings exchanged)

SENATOR LESNIAK: Please continue, Gerry. You will be on the record.

MR. DORF: I would love to have Senator Jackman hear me, however.

SENATOR JACKMAN: Don't worry about it. It's all right, we're listening to you. Anything you say, it's okay.

MR. DORF: May I quote you on that?

SENATOR JACKMAN: How have you been, Gerry, all right?

MR. DORF: I'm fine, Senator. Good morning.

SENATOR JACKMAN: Good.

MR. DORF: With respect to Senate Bill No. 266, it deals primarily with school boards and such subjects as extra and cocurricular activities and involuntary transfer of employees within school districts. However, additional subjects concern themselves with absenteeism or tardiness, disciplinary problems, evaluation criteria, as well as procedures and subcontracting. The latter subject -- subcontracting -- has already been dealt with by the New Jersey Supreme Court, and has been found to be substantially a managerial prerogative with respect to the decision, although the impact of subcontracting must be negotiated. This would

appear to be a fair resolution of the problem, since the employer is then able to subcontract for the purpose of improved service and/or economic reasons, while the affected employees may negotiate over the impact, including potential severance. The bill would interfere with what has already become established practice in the State in the area of subcontracting, and would further inhibit employers from establishing absenteeism or tardiness work rules, as is virtually done by every private sector employer, and also proscribing the ability of transferring employees.

Furthermore, since the employer is charged with running the enterprise, evaluation criteria would appear to be uniquely and properly within the purview of such employer, as has heretofore been the case, with appropriate procedural safeguards for the employee.

Finally, it is unclear from the bill -- that is Senate Bill No. 266 -- as to whether or not present disciplinary procedures, i.e., the Commissioner of Education in the case of school boards, and the Department of Personnel in the case of Civil Service employees, would be ignored, circumscribed, or added to.

With respect to Senate Bill No. 606, included within this bill are several proposed what I believe are troublesome areas. First, the introduction states as follows: "Although collective negotiations may involve matters lying within the managerial discretion of public employers" -- I'm glad to see that the sponsor recognizes that -- "collective negotiations is the most appropriate manner for exercising that discretion." I certainly disagree with that premise. Furthermore, the introduction notes that since public employers are presumed to consider the public interest -- note specifically by its absence any reference to public employees being concerned about the public interest -- that where those public employers agree upon permissive subjects of negotiations, it is in the public

interest as well, not to interfere with those voluntary agreements. In my view, many so-called voluntary agreements may not be so voluntary under the hammer of a militant union and a potential strike.

In the public sector, as contrasted with the private sector -- I think as I have mentioned earlier -- management is "very thin." While in the private sector only non-supervisory employees are permitted to organize for the purpose of collective negotiations, in the public sector, supervisory employees are likewise given the ability to organize, thereby leaving the ranks of management very thin for the purpose of running the enterprise on behalf of the citizens and taxpayers of the State. To further erode this limited management by narrowing the category of confidential employees makes an already intolerable situation even worse.

The bill later defines mandatory subjects for collective negotiations essentially as being those, "Not specifically prohibited by statute." Permissive subjects are defined as those which are, "neither mandatory nor illegal subjects for negotiations." And finally, illegal subjects for negotiations are those which are, "specifically prohibited by statutory language."

Query: Is there really a permissive subject area within the confines of this bill? If a mandatory subject is simply one which is not prohibited by statute, then unless the employer can find such a prohibition, all subjects become mandatory unless they are specifically found to be illegal. So really, although the bill talks in terms of a category of permissive negotiations -- S-606 -- there really isn't any, at least as I read the bill.

Finally, the bill proposes that, "Notwithstanding any procedures for the resolution of disputes, controversies, or grievances established by any other law--" Language like that in a law always disturbs me. Theoretically, you have to read

every law in the State of New Jersey to find out if there is any such.

SENATOR LESNIAK: Well, you're capable of doing that, I'm sure.

MR. DORF: With Lexis and Westlow, it's a little bit easier these days. But, notwithstanding any procedures for the resolution of disputes, controversies, or agreements as established by any other law, grievance and disciplinary review procedures established by the collective bargaining agreement shall be utilized. Thus, with one fell swoop, the Commissioner of Education in school board matters, and the Department of Personnel in Civil Service type matters, are now effectively removed from the discipline procedure. While some public employers might well welcome such a process, I wonder whether school board employees would willingly abandon tenure proceedings before the Commissioner of Education in return for an arbitration procedure. I wonder if anyone has asked that of the school board representatives -- or rather, the school association representatives.

Senate Bill No. 855: Many of the comments noted above would apply as well, including the introductory discussion with respect to the interest of taxpayers and citizens, the narrowing of the definition of confidential employees, and the query with respect to whether or not a permissive category would exist if we were only dealing with mandatory and illegal subjects.

Finally, we turn to Senate Bill No. 3567. This bill is solely devoted to collective bargaining and public sector employees -- school board employees. The primary concerns of the bill deal with extracurricular activities and discipline, including increment withholding. The bill presents a number of problems. These are the ones I have found:

The school board is prohibited from assigning an employee to extracurricular activities, since such an

assignment would be deemed a mandatory subject for negotiations. However, the employer is permitted to establish the qualifications for such positions, and if negotiations fail, is able to employ, from outside the bargaining unit, any qualified person who holds an appropriate New Jersey teaching certificate.

The difficulty, however, is the ability to hire such a person from outside the district with the time and travel which undoubtedly would be involved in terms of extracurricular activities. Clearly, as was done in the past, volunteers should be encouraged and appropriate compensation should be negotiated for employees from within the district. However, failing to determine a volunteer, it would appear to be desirable and, indeed, even necessary, for the school board to be able to make an assignment, if need be, in the reverse order of seniority from qualified employees within the district.

The bill then raises a literal hornet's nest by noting that the transfer of employees between work sites should not be mandatorily negotiable -- should not be mandatorily negotiable -- except that the employer should not transfer an employee for disciplinary reasons, and where it is determined that the transfer was predominantly for disciplinary reasons, such transfer shall be subject to the grievance procedure.

In the event of dispute concerning the predominant nature of the transfer -- query, what about the mixed motive, where there could be more than one motive, if you will? -- then PERC shall make a determination as to whether or not discipline was the predominant reason. In the event it is not the predominant reason, the matter would proceed in accordance with school law.

The employer is granted the authority to impose minor discipline on employees provided, and not withstanding any other law to the contrary, such right is negotiated with the majority representative.

Employers are required to negotiate procedures for employees to file grievances on matters involving the imposition of discipline, and such procedure shall be required to go to binding arbitration. Furthermore, it is clearly spelled out that the burden of proof in such discipline cases is upon the employer, which it is in any event.

Thus, the employees are given a grievance procedure with binding arbitration, and the employer may only negotiate over the right to impose discipline. I would just like to repeat that: Thus, the employees are given a grievance procedure with binding arbitration, and the employer may negotiate only over the right to impose discipline. This would hardly appear to be an even-handed arrangement.

In conclusion, the League strongly urges this Committee to consider its views with respect to the impropriety of enlarging the already broad scope of negotiations, which at this juncture literally numbers dozens of subjects. The needs of the citizens and taxpayers of New Jersey can better be met by no further enlargement of the scope of negotiations and permitting the public employer the limited managerial prerogatives which still exist without further potential encroachment by unions.

On behalf of the League, I would like to thank this Committee very much for hearing our comments and statements. I would be happy to response, either orally or in writing, to any questions the Committee may have. Mr. Dressel will distribute our statement.

SENATOR JACKMAN: I missed something. What about my bill? You didn't like that one either?

MR. DORF: Which one is that, Senator?

SENATOR LESNIAK: That's correct. The answer is in the affirmative, Senator.

MR. DAVIS: (Committee Aide) Senate Bill No. 855.

MR. DORF: S-855, yes.

SENATOR JACKMAN: You didn't like that either?

MR. DORF: That's true. Senator, when you have the opportunity--

SENATOR JACKMAN: Gerry, it's all right. You don't have to go into a long dissertation.

MR. DORF: No, no, I just want to refer to a page. On page 11 of my statement I indicate my comments on that. In a word, the answer is, "Yes." I did not like the bill.

SENATOR JACKMAN: You did not? Well, you know--

SENATOR LESNIAK: Gerry, under Senator Russo's bill, the employer would certainly have the right to negotiate what discipline is, what type of discipline, what the findings are, and the penalties. Isn't that correct?

MR. DORF: Yes.

SENATOR LESNIAK: Okay. I thought your statement said that they would only have the right to negotiate whether you can have discipline or not, which is quite an overstatement, it would appear to me.

MR. DORF: Well, I think this: In Senator Russo's bill, it deals with education. Let me see here. In 8 a. -- notwithstanding the provisions of it, it cites the PERC Act to the contrary-- The grievance procedures that employers covered by this Act are required to negotiate pursuant to that section shall include procedures by which employees may file grievances of matters involving imposition of discipline, and those grievances shall be determined to require binding arbitration.

So, what is really being said here, is that you must agree by law in advance that the terminal step is going to be binding arbitration. In perfect candor, having done this work for 25 years, virtually every grievance procedure ends in binding arbitration, but at least the employer has that as a chip to play, if you will, in negotiations. The statute would take that away. It says the procedure must end in binding arbitration. Now what you are dealing with is what, in fact, ought to be the discipline.

SENATOR LESNIAK: Would you say it is fair to add to your statement qualifying language on page 13, item 5: "The employer may only negotiate over the right to impose discipline and its terms and conditions"?

MR. DORF: Yes, that would be accurate.

SENATOR LESNIAK: Okay. Any other questions from the Committee members? (no response) Hearing none, thank you for your testimony.

MR. DORF: Thank you.

SENATOR LESNIAK: I would like to call at this time, Mr. Charles Marciante, President of the New Jersey AFL-CIO, and also Mr. Robert Yackel. (Mr. Marciante, Mr. Yackel, and Mr. Francis Forst come to witness table together) Charlie, you've lost a lot of weight.

C H A R L E S H. M A R C I A N T E: Thank you.

SENATOR JACKMAN: How big is your statement? You aren't going to read it, are you?

MR. MARCIANTE: It's three pages, double spaced. You just heard a speech 11 pages long.

R O B E R T Y A C K E L: Well, we're going to shoot from the hip. Here, Francis. (handing copy of statement to Mr. Forst)

SENATOR JACKMAN: You're not going to read it, are you?

MR. MARCIANTE: Not if you don't want us to, Chris.

SENATOR LESNIAK: I want to hear you, Frank.

SENATOR JACKMAN: Who's speaking for Charlie?

MR. YACKEL: Me, I'm closest to his weight.

SENATOR JACKMAN: All right.

MR. YACKEL: Good morning. Thank you for the opportunity to address this Committee. We are here to address S-855, which is the only piece of legislation before us today that will provide any benefit for the majority of public employees -- State, county, municipal, and school. This bill, sponsored by Senator Jackman, reinstates permissive areas of negotiations. This is one of the most important items to

public workers in this State. Collective bargaining means just that: Management and labor hammering out an agreement that both sides can live with. We in public employment only want the same rights that our counterparts in the private sector enjoy.

In areas of discipline, the law now says that an arbitrator's decision may be binding. We feel it should be made final and binding, so as not to tip the scale towards management by giving them two bites of the apple. Example: If the employer is the prosecutor and takes it to an arbitrator and then doesn't like the outcome, he can disregard the decision. So really, there is no justice.

In the area of staffing, it is now illegal to negotiate staffing, even though it is a tremendous safety and health issue for public employees. For example, in the field of public health nursing. Nurses are, in many cases, stretched beyond human limits by attending to 18 or 19 patients in convalescent care. In most cases, no account is taken of the State-mandated paperwork that nurses are required to fill out in addition to their regular nursing duties. In some cases, registered nurses and licensed practical nurses are required to cover more than one building, leaving some buildings unstaffed by licensed personnel. This also includes school nurses, who are required to cover more than one school, leaving schools unattended by a nurse.

To underscore the travesties of the Ridgefield Park decision, let me list for you what rights public workers have lost by a union which was formerly a private sector union that was thrusted into the public sector by legislative action which created the New Jersey Transit Corporation. They have lost the following rights to bargain: a) subcontracting; b) vacancies and promotions; c) transfers; d) part-time employees replacing full-time workers; e) scheduling; f) provisions relating to the criteria for public employee performance dicipline; g)

staffing; h) union security; i) sick leave policy; and j), work assignments.

It is for these reasons that we respectfully urge this Committee to favorably consider Senator Jackman's bill, S-855, to restore to the public employees the right and dignity they deserve in collective bargaining.

Thank you. With me today, I have Francis Forst, a former PERC Commissioner, who is Business Manager for the New Jersey Turnpike Authority, who would like to give you a little history as to what has happened to public employee bargaining.

F R A N C I S A. F O R S T: Thank you. Senator Lesniak, gentlemen: Needless to say, I appreciate the opportunity to appear today to speak on behalf of the need to improve the situation involving the scope of negotiations of public employees in the State of New Jersey.

For those of you who may be unaware, I have been involved in the question of public employee legislation on behalf of members of the IFPTE for 25 years -- prior to enactment of the first PERC law in 1968 -- and was appointed a PERC Commissioner by Governor Cahill for three years and reappointed for another term by Governor Byrne, serving in the early 1970s. I was present for the enactment and veto override of the original PERC bill and for the enactment of all subsequent amendments.

Historically, the Governors, supported by the courts, have opposed and sought to diminish the negotiations rights of public employees, while the Legislature -- Republicans and Democrats -- have worked to provide a fair and equitable atmosphere for a serious exchange of viewpoints and positions which would culminate in a written agreement protecting both the mission of the public employer and the rights of the public employee.

These legislative efforts have frequently been opposed and eroded by public employers and the courts. Upon its

original enactment in May 1968, the Governor vetoed the first PERC law. After the override, the administration delayed appointing Commissioners and its controlled Commissioners delayed adopting rules and regulations far beyond any reasonable time. Once representation rights and negotiations began, efforts were made to limit stringently the scope of negotiations. Public employers were joined by private employer organizations to thwart and frustrate the law and even overturn it.

Following several nefarious court decisions which rendered rights of the employees almost useless, the law was amended to reenforce those rights originally intended in the 1968 law. I would just like to interject here that it is surprising to hear the League of Municipalities' representative testify as to how their rights are being infringed upon when, in fact, the last 10 to 15 years of the exercise of the PERC law they just constantly came down on the side of the employer by misinterpretations of the law. At the heart of the first major amendment was this sentence included in the law: "Nothing contained herein shall annul or modify any statute or statutes of this State."

Now, when that was in the original law, it was intended that the PERC law could not affect the establishment of the counties, the municipalities, the cities, the setting up of authorities, the setting up of commissions, and so on and so forth, which they were charged to do under the law. But in every one of those charges, each employer was empowered by those laws to hire, fire, establish wages, benefits, etc. They would interpret that to mean that they had a statutory right which could neither be annulled nor modified by the PERC law. Therefore, they could not be compelled to negotiate in the very areas intended by the law.

Efforts were made to correct this injustice, but were impeded by public employers. I would like to call your

attention to the 1974 change. In 1974, there was sufficient support in the Legislature to reverse the courts and reestablish the original intentions of the PERC law. When we had 20 votes assured in the Senate -- not counting any Hudson County votes -- there was a meeting attended by Mayor Jordan of Jersey City. Do you remember Mayor Jordan? I was there, and all of the Senate leadership was there. It appeared that at least one, or perhaps more of the Hudson County Senators were going to vote to delete the cited sentence. This sentence says: "Nothing contained herein shall annul or modify any statute or statutes." The employers were leaning on this to say: "We don't have to negotiate this; we don't have to negotiate that." Now we had enough votes in the Legislature to repeal that sentence.

Well, Mayor Jordan pleaded. He pleaded, and he said that his greatest concern was that if we repealed that sentence, we would have problems with pensions; that Jersey City could not withstand the financial impact of upward cost escalations if pensions were subject to negotiations. So, in 1974 the law was amended. Instead of repealing the sentence that says, "Nothing contained herein shall annul or modify any statute or statutes of this State," the word "pension" was inserted, and it was intended to read, "Nothing contained herein shall annul or modify any pension statute or statutes." The whole purpose was that everything else would be bargainable except pensions.

Well, what happened, and I don't know how to explain it-- In the current copies of the law, they have the word, "or," so that sentence, instead of just limiting negotiations on pensions-- They put in there, "Nothing contained herein shall annul or modify any pension or statute or statutes," which retained the intent of the original sentence which was going to be deleted. I don't even know how this happened. So, subsequently, the employers have had a heyday. Now they don't

have to negotiate pensions. Now they still don't have to negotiate in some of these areas.

Now, you have heard Bob testify on some of the limitations you have, and I am not going to get into all of that. But the whole trend is, many employers go through all the contrived notions of negotiations, and end up in one of these take it or leave it positions. This atmosphere has to be reversed.

Let me just give you a quick example, and then I am going to wrap up this testimony. I am on the last page. Take transfers; let me just talk about transfers. When I first started organizing workers in the early '60s, before we had a PERC law, the State Highway Department would have somebody working up in High Point, or maybe they would have somebody working over in Clifton. They would tell people, "If you don't do it this way, if you don't do it that way, we are going to transfer you down to Cape May." It was funny when we got to the late '60s and I was organizing on the Parkway, I heard the same thing. I heard it on the Turnpike. "If you don't do this, or if you don't do that, we are going to put you on the night shift," or, "We are going to put you on the graveyard shift." These were constant threats. So we came in and we got a PERC law that gave us the right to negotiate a fair and equitable method of transfers, promotions, and work rules.

I read an editorial yesterday in The Star-Ledger, which said: "Public employees have a right to negotiate wages and benefits," and then they stopped. No working conditions. No working conditions in the editorial. That is what is falling apart in this area.

Now, I hear the problems you're having in the teacher section, and I hear all these arguments about the educational atmosphere and so forth, which was what was used in the editorial in The Star-Ledger yesterday. But is it really right that people cannot negotiate their working conditions? How can we be 20 years later back arguing the same thing?

I would like to just throw in a point about the permissive subject of negotiations. When I was one of the first Commissioners on PERC and sitting there for six years, we created, in PERC, the concept of permissive negotiations. The employers went bonkers over it, you know, because they didn't want to negotiate. They wanted to have the divine right of kings, which they had for 200 years before 1969. They told you what they wanted; they told you when we were going to get paid. They told you-- They sent you home when it rained, or it snowed, and you didn't get paid for that day. You know, they had all the rights, and the workers had no rights until 1969.

But, on this one point, this part of permissive negotiations, if the PERC Commission, during the early 1970s, had followed the National Labor Relations Act, which we had the tendency to do, we would have had the same bargaining rules and regulations in New Jersey that they have on the national level. But it was the wisdom of the PERC Commission -- and I was an advocate, but I was not totally in favor of what they did-- They said, "Look, sure this is negotiable in private employment. Yes, they have a right to do this. But is it fair to do in public employment?" Well, in some situations, it may be; in some situations, maybe it shouldn't be.

So, they created this whole thing of permissive. Every item that was permissibly negotiable on the PERC decisions was an item of negotiation that was right in private employment, which was already permitted to be negotiated under the National Labor Relations Act. So, this category-- In the early years of the PERC Commission-- If we had any idea that the employers were going to go out and strike out these permissive subjects of negotiations-- I suggested every one of them would have been mandatory subjects of negotiations, because these were where we were trying to make the difference between what the public responsibility of an employer is to the

public -- to the taxpayer -- and what the responsibility of individuals and corporations, or profit-motivated corporations is.

So, PERC created the permissive subjects of negotiation to see if in New Jersey -- in the '70s -- there were some areas where we could create a narrow path, where some employers like the New Jersey Turnpike, where I negotiated for 20 years, said, "You're right, Frank. It's not right that that stupid supervisor up there, every time he gets cranky, wants to transfer somebody down south, or where every time somebody gets cranky they want to put them on the night shift." You're right. Maybe jobs, as long as everybody is a good toll collector, everybody is a good truck driver, then we should set up a procedure by which they can maybe, when we have a job opening, let's say, in the Meadowlands area, and the person comes from Union County, maybe after he works up there for a while and an opening comes in Union County, that individual can transfer down to Union County voluntarily. Then if somebody from Burlington County -- which happens most frequently -- goes to work up at 15E, or 15W, up in the harder sections of the north where all the traffic is-- Maybe that person, after a couple of years, won't have to drive 60 miles to work and 60 miles home from work, but we can make an arrangement whereby he can maybe get a job closer to home, as jobs open up and as opportunities occur, so he finally winds up getting back down to Bordentown or Burlington through a system.

Now we have a situation where all of that has been-- The courts said that we can't do that. That is a basic working condition, as Bob just read here. Concerning New Jersey Transit, it's scandalous that the same system works with the bus systems where, you know, we are all familiar with-- Anybody who knows anything about the bus companies knows that they bid their jobs, where they would work would be subject to bidding, and so on and so forth. After all, they were all bus

drivers, so the question was: Where do you get your best people who do the best work?

This thing has gotten so bad. I think this is the first opportunity we have had to seriously consider some changes. The bill introduced by Senator Jackman -- S-855 -- which is the one we are supporting, if it becomes law, would go a long way toward restoring the relationships originally intended by the Legislature. It would restore a modicum of fairness and justice urgently needed to carry out the harmonious relations foreseen by the Legislature.

I just bring to your attention in closing that that is what this is all about -- harmonious relations. The whole law starts out by saying, you know, "The purpose of this Act is to maintain harmonious relations." If we keep permitting the employer to have a heavy-handed situation in these relations, we are going to get back into trouble again. I don't mind telling you that the Turnpike right now is in negotiations over some of these very issues. We have never had a strike on the Turnpike. We have always settled them because we are able to sit down, if we have harmonious relations, and we can work these things out.

I will be happy to answer any questions. Thank you.

SENATOR LESNIAK: Thanks Frank; thanks Bob.

Our next witness will be Mr. Archer Cole, President, Industrial Union Council, AFL-CIO.

A R C H E R C O L E: As President of the New Jersey Industrial Union Council, AFL-CIO, representing 200,000 workers in the public and private sectors, I am here to testify in favor of S-855, known as the Scope of Bargaining Bill.

I want to thank Chairman Ray Lesniak for scheduling this hearing, because legislation to restore collective bargaining rights to unions representing State, county, and municipal workers, and teachers and education employees is long overdue.

A couple of months ago, I testified before a representative of the New Jersey Civil Service Commission in opposition to a proposed regulation which would seriously limit the seniority rights of State workers. I must say in all candor that this public hearing was one of the strangest experiences of my life.

There I was on the platform with this hearing officer who, after calling on me to testify, uttered not a single comment, asked not a single question, and repeated the same procedure for the many others who preceded me, as well as those who followed.

There were over 500 State, county, and municipal workers in the audience, members of several public employee unions, cheering, applauding, and whistling approvingly as we testified. The room was filled with banners, placards, signs, and leaflets calling for the defeat of the proposed regulation.

The testimony was taped, and along with similar tapes from two other hearings, presumably is being reviewed by the Commission before the regulation is finally promulgated unilaterally by the Commission. What a poor substitute for collective bargaining, in which give and take negotiations and creative solutions are encouraged and obtained.

Over 50 years ago, the Wagner Act became the law of the land and established collective bargaining as the most effective means of solving problems which arise in labor relations. The bill sponsored by Senator Jackman in effect restores the scope of bargaining to public sector unions and affirms that State, county, and municipal workers and teachers' unions should have the same right to negotiate concerning the conditions of employment which private sector unions enjoy.

Issues such as layoffs, transfers, promotions, demotions, subcontracting of work, disciplinary standards, etc., clearly come under the collective bargaining process and must no longer be left to the unilateral dictates of a

Commission which in its ivory tower is out of touch with urgent job-related issues which affect employment security, working conditions, and employee morale.

In this connection, I would like to cite the experiences in the Dade County school system of Florida, where an innovative, cooperative approach by labor and management is helping to make the county a showpiece, both in educational achievement and the professionalism of teaching.

In Dade County, union and management representatives sought ways to improve the quality of education and Miami area schools by giving teachers more control and accountability in the classroom -- for example, in their choice of textbooks and curriculum -- and a voice in the decision-making. That experiment has moved the Dade County school system to the head of the class in education reform.

Now in the second year of a four-year pilot project, participating educators and principals are making joint decisions on how their school budget will be spent, on class time and size of class, on books and curriculum, and even on the hiring of new principals and teachers.

The pilot project -- to be evaluated over the next three years through student achievement tests and other measures -- also includes a community report card to aid parents, the business community, and interested citizens in assessing the changes in their schools. I notice that the guy from the League of Municipaliies says that we have no concern about the consumers, about the community. Certainly there is Dade County and a thousand other situations where we are concerned. Union people are consumers. We are citizens of our communities, and we pay the taxes. He is so concerned that in this tax crunch we are in that this will affect them. We're taxpayers; we're paying through the nose right now. I resent that it would be said that we are a special interest only interested in how our people fare in these circumstances, when

in effect union people pride ourselves -- our unions -- on being community oriented.

I might say that while we cite the Dade school experience, in the private sector, top management such as GM and Ford and General Electric and many other companies are going to the idea of consulting the people for the first time. They are changing the workplace. They are breaking down the assembly line into small groups, and you have seen it on television, where the unions and the people both play a key role. How shall the product be put together? How many people shall work on it? What should be the rules governing the conduct of employees in the group? In the private sector, they see the need to consult the people on the job. Here they say, "The only thing you can talk about are wages or benefits." I maintain this, and I always have in 45 years of doing this work, it is not the contract raise you get every three years, or every two years; it's the day-to-day working of the union and management that determines a person's morale and happiness and ability to do a better job.

You expect the union to negotiate decent wages or benefits; but when a union is able, on the job, such as Frank Forst said, to prevent the person from being discriminatorily transferred from one part of the State to another, or you settle a grievance promotion, that is where unionism is at its best -- employee satisfaction -- and with it higher morale and, of course, better performance for the employer, whether it is a private sector employer or an agency employer.

In closing, I would like to make this observation: If employers in the private sector were to attempt to remove the issues noted above -- in the public sector -- from the scope of collective bargaining, there would be strike action taken in company after company to prevent such a usurpation of basic labor rights. In other words, in management in the private sector, the rights of people as human beings is clearly

recognized, and that is what we are talking about. We maintain that this bill of Senator Jackman's could go a long way toward restoring the basic American trade union rights that we are entitled to.

Thank you.

SENATOR LESNIAK: Chris, any questions of Mr. Cole?

SENATOR JACKMAN: No, thank you.

SENATOR LESNIAK: Thank you, Archer. Ms. Linda Spalinski, New Jersey Association of Counties, along with Mr. Angelo Genova, Labor and Employment Counsel for the New Jersey Association of Counties.

S T E P H E N E. T R I M B O L I, E S Q.: Mr. Chairman, Mr. Genova cannot be here today. My name is Stephen Trimboli. I am Senior Labor Associate from Genova, Burns & Schott, and I will speak on his behalf.

L I N D A S P A L I N S K I: Good morning, Mr. Chairman. My name is Linda Spalinski. I am the Executive Director of the New Jersey Association of Counties. As Mr. Trimboli mentioned, Angelo could not be with us this morning, so he has sent Mr. Trimboli on his behalf.

The legislation you have before you this morning raises some very serious questions for county government, and is firmly opposed by the New Jersey Association of Counties. These bills present a grave threat to the rights and responsibilities of county and local officials, and undermine their accountability to the public they serve.

Mr. Trimboli is here to elaborate on those concerns, and with your permission I would like to ask him to present his statement at this time.

MR. TRIMBOLI: Thank you. Mr. Chairman, members of the Committee: The New Jersey Association of Counties is opposed to any expansion in the current state of the law with respect to the scope of negotiations. The proposed legislation before you would effect sweeping changes in the existing law,

permit public employers to abdicate their special responsibility to the public, and exclude the public from participation in the political process.

Focusing primarily at this point on Senate Bill No. 606, the proposed legislation would amend the PERC Act in the following ways: The scope of negotiations for all public employees would be expanded to include a permissive category. This may not sound extreme because a permissive category currently exists for police and fire fighters. However, even more significant than that, is a proposed definition of permissive subjects to include any matter upon which negotiation is not specifically prohibited by statute, even matters that would not be considered "terms and conditions of employment." That would include any subject, even those only touching tangentially on unions and their members. The current definition of the permissive cagegory, under the existing law, was articulated by the Supreme Court of New Jersey in Paterson Police PBA v. City of Paterson. In that case, the Court narrowly defined the permissive category to include only those matters that do not "substantially limit governmental policy-making powers." Senate Bill No. 606 would repeal this definition and allow public sector unions to substantially limit government policy-making powers through (indiscernible) negotiations.

SENATOR LESNIAK: Would you be in favor of the bill if it were amended to include that definition of permissive categories?

MR. TRIMBOLI: Well, we are not prepared to make a statement on that at this time. We would have to study that.

SENATOR LESNIAK: That's a good answer from a lawyer, right? (laughter)

SENATOR JACKMAN: The usual answer.

MR. TRIMBOLI: I was trained well.

In addition, administrative regulations would no longer have preemptive effect under the proposed legislation. Under the current law, administrative regulations preempt negotiation over the subjects they address. Senate Bill No. 606 would allow public employers and unions unlimited authority to, in effect, repeal regulations through negotiated agreement. For example, Civil Service regulations concerning such subjects as vacations and sick leave could be displaced by contract. Ironically, the proposed legislation does not repeal current statutory language guaranteeing employees all rights they enjoy under Civil Service regulations. As a practical matter, while the bargaining representative is free to bargain "up" from the floor set by the Civil Service regulations, the local and county governments are barred from bargaining "down." The Committee should note in that regard that of the 21 counties in this State, 20 are subject to Civil Service laws.

The definition of "confidential employee" would be narrowed by the proposed legislation. Currently, employees who have knowledge of, or access to, confidential information relevant to collective bargaining, such as proposals, strategy, etc., are barred from participating in union activities for the sensible reason that to permit them to participate would allow a breach of confidentiality critical to the public employer's ability to bargain effectively. The proposed legislation would compromise the ability of a public employer to protect his bargaining strategy from the risk of disclosure.

Senate Bill No. 606 would also, for the first time, mandate negotiations over standards and criteria for employee performance. In an era in which accountability in government is a matter of public concern, such a mandate would seriously handicap the efforts of local and county governments to provide efficient and effective services. Local and county governments must remain free to establish performance standards without restriction.

Under the proposed legislation, Civil Service and tenure disputes currently heard by the Merit System Board and the Commissioner of Education, respectively, could now be delegated to binding arbitration before a private arbitrator having no public accountability whatsoever. It should be remembered that a similar proposal was vetoed by Governor Kean in 1982.

Senate Bill No. 606 defines as a mandatory subject of collective negotiations the impact of otherwise nonnegotiable management decisions. For example, a managerial decision to lay off employees has the inevitable consequence of increasing the work load of those who remain. Under the current law, this issue would not be negotiable. However, labeled as an "impact of a management decision," the issue becomes subject to collective negotiations under the proposed law. However, because this so-called impact is an inevitable consequence of the decision to lay off personnel, bargaining over the "impact" is tantamount to bargaining the layoff decision itself.

In addition to providing for the undesirable expansion of the scope of negotiations, the bill does make what the Association considers one constructive change in the existing law. The bill would allow in scope proceedings for PERC to also determine whether an item is substantively arbitrable under the party's contract. This determination is now made in arbitration or before the courts. The bill, in this regard, would further judicial economy by allowing all negotiability and arbitrability determinations to be made in a single forum.

Senate Bill No. 855 is substantially similar to Senate Bill No. 606. Senate Bill No. 266 would make mandatorily negotiable certain policy areas that are now considered nonnegotiable, and properly so, as would Senate Bill No. 3567. The Association opposes all of these bills.

The overriding flaw of all of these bills is that they violate the constitutional principles set down by the Supreme

Court in Paterson and in the Ridgefield Park decision, which was alluded to earlier. For example, Senate Bill No. 606 states: "Collective negotiations constitute the most appropriate manner of exercising the managerial discretion of public employers concerning terms and conditions of employment and other matters mutually agreed upon." That is directly contrary to the holding of Paterson. In that case, the Court found it inappropriate to import into the public sector the broad concept of permissive negotiations existing in the private sector. While private employers may elect to share managerial prerogatives with the employees to whatever extent they deem proper or appropriate, public employers possess governmental powers which they are not free to surrender.

The Court's constitutional concerns were also expressed at length in Ridgefield Park, where the Court cautioned against bargaining over significant matters of governmental policy where citizen participation is precluded and where a special interest group has a disproportionate voice in the decision-making process. Clearly, and rightly so, public employee unions have as their primary responsibility the promotion of the interests of their members. However -- and equally properly -- county and local governments are primarily responsible to the public, and are accountable to the public. On issues pertaining to governmental policy, the public has the right to be the final arbiter, and the right to expect that decisions will be made solely in the public interest, free from restriction by agreements reached in private.

The Court also cautioned in Ridgefield Park as a matter of constitutional law: "Both State and Federal doctrines of substantive due process prohibit delegations of governmental policy-making power to private groups where a serious potential for self-serving action is created." This State's highest Court has constitutionally defined the parameters of negotiation, and this pronouncement should be deemed controlling in this area.

SENATOR LESNIAK: So it is your opinion, therefore, that the Jackman bill is unconstitutional?

MR. TRIMBOLI: Yes, it is. In addition, the prospect of governmental policy being decided privately in collective bargaining is contrary to this State's policy of open government. In the Open Public Meetings Act of 1973, this Legislature found and declared the right of the public: "To witness in full detail all phases of policy formation to be vital to the enhancement and proper functioning of the democratic process." The Legislature also declared: "Secrecy in public affairs undermines the faith of the public in government and the public's effectiveness in fulfilling its role in a democratic society." These principles of open government are incompatible with the private bargaining over governmental policy these bills would allow.

As an illustration of the true impact of the proposed legislation, consider our county officials struggling with the difficult question of siting county facilities. County government must deal with such politically sensitive issues as siting drug treatment centers, for example. Under the current state of the law, counties are free to resolve these difficult questions in the public interest, free from contractual restriction. Under the proposed legislation, the selection of the best site for a treatment facility could be blocked by the existence of language restricting the county's ability to create new work locations or to place facilities in areas employees consider "remote." In such a case, the public good would fall second to the interests of the few.

The present state of the law with respect to the scope of negotiations properly recognizes that public employers are governmental bodies and, unlike private employers, must retain their accountability to the general public. This has been the rule for over a decade. The parties are familiar with their roles in collective bargaining, and are now behaving

accordingly at the bargaining table. Decisions which implicate significant governmental policy belong not in collective negotiations where the public good may give way to the concerns of a few, but within the political process where the public's right to participate is not precluded.

Thank you.

SENATOR LESNIAK: Any questions from the Committee? (no response) Let me just say that I believe your interpretation of the Jackman bill is quite expansive and, in some respects, is taken to the absurd.

SENATOR JACKMAN: I didn't want to elaborate because I thought maybe too many people might want to speak, but you and I will have a chance sometime to sit down and talk about it. I've got suits older than you. I have been down here for 22 years, so I know a little bit about the process. But, let that be as it may.

SENATOR LESNIAK: Don't feel bad. He's got suits older than me, too. (laughter)

Ray Peterson, from the New Jersey State Federation of Teachers, and Vincent Altiere, President of the New Jersey State Federation of Teachers. Are you by yourself, Ray?

R A Y M O N D A. P E T E R S O N: Yes. Mr. Altiere has been detained today.

Good morning, Mr. Chairman and members of the Committee. I am Raymond A. Peterson. I am here on behalf of approximately 12,000 public employees who are represented by locals of the American Federation of Teachers in New Jersey. I have been involved in collective bargaining for more than 20 years, and I was involved in some of the activities that precipitated--

SENATOR LESNIAK: Excuse me. May we please have some quiet in the back of the room? If you want to speak, please leave the room. That applies to the people in the corner over there also. Thank you.

MR. PETERSON: Thank you, Mr. Chairman. I was involved in some of the activities that precipitated the enactment of the Public Employee Relations Act in 1968.

After that law was passed, public employee groups of all descriptions and job titles began to negotiate on a host of issues that concerned their members. It has become common practice for unions to survey their members to find out which issues the members wish to be negotiated with their employers. Obviously, wages, hours, and fringe benefits were always mentioned, and so were a myriad of other items that members considered to be terms and conditions of employment.

From 1968 to 1978, a large variety of issues were resolved through negotiations, and included in written agreements with public employers. You will recall that in that decade when questions of negotiability arose, their propriety was determined on a case-by-case basis by the Public Employment Relations Commission, which would examine nearly 40 years of case law and precedents settled under the National Labor Relations Act. With the Ridgefield Park decision, as you know, a significant number of these contract provisions were rendered unenforceable, since the Court ruled that there was no such thing as the "permissive" category of topics.

Senate Bills Nos. 855 and 606 have been introduced to clarify the intent of the original PERC law, which we believe was enacted to provide an expansive vehicle for resolving nearly all of the concerns that employees and employers might wish to bring up for discussion. We believe that it is not in the public interest for one party to refuse to discuss a topic that is of great concern to the other party.

We strongly support the enactment of S-855, the language of which is preferable to that of S-606, on page 10, where bargaining unit consolidations would be subject to the approval of both the professional and the nonprofessional units involved. There are situations where the nonprofessional unit

might not wish to be absorbed, or swallowed by the professional unit.

We also believe that justice would be better served if the language in S-855 were changed, on page 6, lines 23 and 27, to require binding arbitration on disciplinary matters. The use of advisory arbitration in discipline cases merely allows the employer to wear the dual mantles of prosecutor and final arbiter. We believe that an impartial arbitrator should have the last word in cases of contract interpretation, and in cases involving unfair dismissals or other disciplinary matters.

We were disappointed by the narrow scopes envisioned by the authors of S-266 and S-3567. The addition of a few topics to the short list of mandatory topics does little to overcome the sweeping changes that Ridgefield Park has visited on teachers, and they would do even less for thousands of non-teachers who are public employees.

What is wrong with negotiating contract language that restricts the ability of an employer to transfer an employee for frivolous reasons, or for reasons based on cronyism, nepotism, politics, race, or gender? What is wrong with contract language that says that seniority shall be given some weight when transfers are being considered? A transfer is one of the most traumatic events that can happen to an employee, and under current law, we cannot even discuss proposals designed to ensure decency and fairness when such decisions are being made.

What is wrong with creating a climate for negotiations in which the people who are closest to the problems have some say about the solutions to the problem? Have our factory-model schools with their supervisors and their clipboards been so successful that we should not even consider mechanisms that could provide for peer assistance programs and for such initiatives as school-based management?

It seemed ironic to hear the President of the New Jersey School Boards Association and the Department of Education representative testifying against broad scope negotiations, while these same organizations have invited representatives of teacher organizations from other states to come here and describe the innovative contract agreements that have resulted in peer assistance programs, school-based decision-making, and other noteworthy pilot programs.

As a result of New Jersey court decisions, we cannot even begin to discuss such programs here. Topics such as class size, transfers, the school calendar, and a host of other issues that are of great concern to our members are not negotiable, and employers are quick to tell us so.

Some of the most enlightened and successful employers in the private sector have been advocating the decentralization of decision-making, and we believe that they are right. We believe that public employers in New Jersey, and the public, would benefit greatly from discussing any and all topics that concern their employees. The school boards of New Jersey have developed an infinite variety of ways to say no to their employees. I have heard them in a variety of settings. But their refusal to even discuss certain topics because of some court decisions more than a decade ago makes little sense in the light of present-day realities.

We urge you to release S-855 favorably, and to help make New Jersey a leader in employee relations by its enactment.

Thank you for your attention. I would be happy to answer any questions you may have regarding my testimony.

SENATOR LESNIAK: Thank you, Ray. Our next speaker will be Mr. James A. Moran, Executive Director of the New Jersey Association of School Administrators.

J A M E S A. M O R A N: With your indulgence, I have the President of our Association with me. He is not listed, but he had intended to be here the last time. And also, the

Superintendent of Matawan. He is listed nineteenth on your list.

SENATOR LESNIAK: Do you all three want to come up at the same time then?

MR. MORAN: We would like to come up at the same time.

SENATOR LESNIAK: As long as you consolidate your presentations.

MR. MORAN: Sure -- economy of time.

SENATOR LESNIAK: Sure. Go right ahead.

MR. MORAN: Thank you, Senator. First of all, I am James A. Moran, Executive Director of the New Jersey Association of School Administrators. In addition, I have had over 20 years of experience as a teacher and consultant in the field of employee relations. I have represented municipalities, cities, and school boards throughout the country.

My purpose in appearing before you today is to oppose strongly any and all attempts to expand the scope of negotiations, in particular S-3567, S-606, S-266, and S-855. I would like to stop and pick this up a little bit later on, and I would like to turn it over, at this point, to Jim Murphy, who is the President of the Association, and also the Superintendent of the City of Bayonne. Jim?

J A M E S H. M U R P H Y: Thank you, Senator, for the time this morning. I am Jim Murphy, President of the New Jersey Association of School Administrators and Superintendent of Schools from Bayonne. During the 1980s, New Jersey and the entire nation have espoused the educational reform movement, and dozens of initiatives have been enacted to assist educational opportunity for the children in our care. The key word to the reform movement has been "accountability." Boards of education, school administrators, and the professional staffs are called to account for the progress or lack of progress in achieving educational goals. The public is

demanding to see substantial progress. The taxpayer is in revolt at the spiraling costs. The State has not provided the formula aid required under the T&E law. An array of new mandates and overregulation have school boards and school administrators reeling to keep pace with the rapid changes.

The scope of negotiations legislation under consideration are bad bills for education and contribute nothing to New Jersey's quest for quality in educational programing and instructional improvement.

In my opinion, these bills will increase costs, decrease the quality of education, increase the number of strikes, increase litigation, and decrease accountability. This situation is not in the public interest, and may very well be unconstitutional.

First and foremost, S-3567, by Senator Russo, represents an attempt to transfer power from the school board to the union by severely limiting the responsibility of school boards in determining educational policy.

Given the predictions of continuing reductions in revenue, the current inability of the State to meet its fiscal obligations for full funding, and the potential ramifications of Abbott v. Burke, it is ludicrous to consider siphoning off sorely needed resources for extended negotiations, arbitration, and other conflict resolution episodes which this bill will most certainly generate.

The determination of professional standards of performance should be made on the basis of relevant research and professional data; not in a climate of compromise and trade-offs, which is the accepted norm in bargaining and conflict resolution. In such a climate, the kids become the real losers, because the interests of unions as employee interest groups, and the interests of students and the community do not always coincide.

Requiring binding arbitration on matters which relate to the assignment of personnel to situations that meet the programmatic needs of youngsters, or to personnel standards of performance, neutralizes the authority of the board as it seeks to meet its responsibilities.

New Jersey school employees are already protected by the toughest "tenure for life" laws in the nation. New legal provisions which "hamstring" legitimate attempts to maintain standards are an exercise in overkill.

Senators, I ask that you not handcuff the school boards and school administrators as we strive very hard to cope with all the new responsibilities given to public education today. If we are to be successful in improving our school systems, we must continue to have the decision-making power to act in the public's interest. Don't surrender public rights to the arbitrators, mediators, and fact-finders, who are untrained in educational policy matters. Don't pass legislation which will divert additional dollars away from instruction. If you do both, the public and the children lose.

I thank you for your time and consideration today.

SENATOR LESNIAK: Jim, we have heard testimony here today that the system of negotiations and the limited amount of negotiations in educational matters has actually hampered the development of innovative programs developed through both the teachers' representatives and the school administrators. In effect, we are handcuffing development of cooperation in good educational programs to our restrictive bargaining procedures.

How do other states fare with much greater bargaining ability than New Jersey?

MR. MURPHY: I don't think-- I could be wrong, Senator, but I think the bargaining rights of New Jersey teachers, for example, are much stronger than--

SENATOR LESNIAK: Do you know that for a fact, or are you just saying that off the top of your head?

MR. MURPHY: That is my impression.

SENATOR LESNIAK: You have no idea specifically in that regard? I mean, can you tell me right now any other state that has less or more restrictive negotiability?

MR. MURPHY: I defer to Mr. Moran, who has a nationwide reputation.

SENATOR LESNIAK: So, you don't know?

MR. MURPHY: No. I defer to Mr. Moran.

SENATOR LESNIAK: Okay. So, your impression is just a guess?

MR. MURPHY: That is my perception.

MR. MORAN: Yes, I would categorically state, because collective bargaining is a two-pronged process, not simply law, as you well know. It is a process of highly trained organizations, dealing with those highly trained organizations across the country. There are states equal to New Jersey.

SENATOR JACKMAN: Some better?

MR. MORAN: Pardon?

SENATOR JACKMAN: Some better?

MR. MORAN: Some. It is a question of a--

SENATOR JACKMAN: Would you say Florida is better?

MR. MORAN: Would I say Florida is better? No.

SENATOR LESNIAK: Better meaning there are more items of negotiability allowed between--

MR. MORAN: There may be more items covered by the Florida law, but it is a question of how those items are handled in bargaining. It is a question-- As you all know, bargaining is done in the sunshine in Florida. It is a totally open process. It is not done privately between parties. There is grand mastering in Florida. There is a whole host of things in Florida that do not exist at this point in New Jersey.

The problem with the legislation you have before you-- I am going to deal with Senator Russo's bill, because in the interpretation we have, that is the bill that is scheduled

to move. If a bill moves at all, that is the bill with the highest probability of movement because of the gubernatorial support and so forth. That bill is probably, from a public standpoint, the worst bill of all of the bills up for bargaining now. Of all of the bills before this Committee, that bill is a bill which is mandating binding arbitration. There is nothing wrong with binding arbitration of grievances -- rights arbitration. There is a great deal wrong when you mandate that it must occur in the law.

When people who are bargained over the years and either have it or don't have it have had the opportunity overall to negotiate no strike clauses, to negotiate zipper clauses, to negotiate management rights clauses -- retaining rights-- When those have been the chips that have been on the table together, and when the trade-offs have occurred-- I have negotiated binding arbitration of grievances -- I am not talking interest arbitration; I am talking grievance arbitration -- in many contracts. We are getting into very complex areas here, and I am not going to read this whole testimony to you. We are getting into areas dealing with the transfer and assignment of personnel -- voluntary and involuntary. We are getting into disciplinary areas. And the question is, is it discipline, or is it educational, or is it a combination of both, and does it belong to the Commissioner? I think everything in education belongs to the Commissioner's Office. It doesn't belong over in PERC.

Discipline, in combination-- We need to deal with that discipline in a very open, up-front way. If you believe the war stories you may have heard, and you believe employees across the State are being treated as shabbily as some people would indicate--

SENATOR LESNIAK: I believe it happens.

MR. MORAN: If you believe the cure is collective bargaining, I think that is an incorrect cure. Wrong forum.

If you want to see that the proper transfers occur, then have the Legislature sit with management and labor and pass a law specific across this entire State. Don't delegate it to the cerated edge of collective bargaining. Pass a law for the good of all employees across this State dealing with bargaining, in conjunction with management and labor. If you want to deal with cocurriculur activities in schools and you feel that some physicist may have been assigned to coach when he wanted to go become a physicist -- Mike Cole gave me that example, by the way-- But, if you feel that can happen, and you don't want that to happen, then pass a law which says, "People pursuing a degree in physics will not be assigned to cocurriculur activities."

SENATOR LESNIAK: You're confusing me, because--

MR. MORAN: I'm kidding a little bit, obviously.

SENATOR LESNIAK: Sure, but--

SENATOR JACKMAN: Are you a lawyer?

MR. MORAN: No, I am just Director of the Association, Chris. A simple guy like yourself.

SENATOR LESNIAK: You're confusing me, but lawyers are simple guys, too, sometimes.

SENATOR JACKMAN: No, no, because he confused me on that one question. You know, you went into physics, and then you went back and forth.

Would you agree in principle that there are people politically who are given the business -- teachers? Would you or wouldn't you?

MR. MORAN: Managers.

SENATOR JACKMAN: Do they or don't they?

MR. MORAN: Managers even, superintendents.

SENATOR JACKMAN: No, no, no, no, no. I'm asking you a specific-- You know, don't double-talk me, because I speak right from the old -- right out.

MR. MORAN: So do I; so do I.

SENATOR JACKMAN: I'm saying to you: Do you know, and don't you believe that teachers are sometimes castrated? Do you know what I am talking about? Okay? Do you know what I mean?

MR. MORAN: Chris, do I believe that sometimes people are unfairly disciplined? Sure. Do I believe collective bargaining is the solution for it? No.

SENATOR JACKMAN: You don't? Then where would the recourse be?

MR. MORAN: We pass a law -- the Legislature -- as to how to handle this. Do not leave it to collective bargaining.

SENATOR JACKMAN: Okay.

MR. MORAN: Pass a law that creates equity in this arena.

SENATOR LESNIAK: What I was about to ask-- Because of your nationwide experiences, you state you have seen negotiations being very successful, and yet you seem to take the position that limiting negotiations on the ability to bargain is better than expanding it.

MR. MORAN: First of all, I was taught a long ago that amateurs teach amateurs to be amateurs. What I mean by that, is that when you take the inordinate financing of the normal labor union and pit it against volunteer school board members, it is a mismatch, at best. Where they are professionally represented, it is a much better situation, but when pressure goes--

SENATOR LESNIAK: We just heard Gerry Dorf speak. I mean, we heard Angelo Genova's representative speak.

MR. MORAN: But, when pressure goes in--

SENATOR LESNIAK: There are very competent people to represent those--

MR. MORAN: But, that is not the point. When pressure goes in on the volunteer layperson to either spend more money-- Remember, the demands in the model agreements are

designed also to create a base for leveraging money. They are not necessarily designed to be accomplished. If all 609 in the master agreement were accomplished, it would be difficult to leverage money with them.

So, you use them to leverage money in bargaining. And, when it comes down to a choice in poor districts between giving more money or giving language, you will see the language occur in the poorer districts. It will not be occurring in the districts that are guided and where they are a little more invulnerable to the pressure. It won't occur. And it will be the wrong kind of language. If you want to cure a problem, I have no objection. I don't want to see teachers mistreated. I don't want to see employees mistreated. If you want to cure the problem, cure it with a law. Don't cure it with the cerated edge of bargainings. That is all I'm saying to you. It is not the place for the type of things you are talking about.

I would like to turn it over to Dr. Kenneth Hall.

D R. K E N N E T H D. H A L L: I am just going to be brief. I am the Superintendent of the Matawan-Aberdeen Regional School District. Over the last two years, we have spent over a quarter of a million dollars in collective bargaining and labor-related matters. There is no question but what there is an uneven situation when it comes to the power of boards of education and the power of unions. There is just no question about it.

I am not going to read all of this testimony, but I do deal with some specific situations in our school district. There is recourse for most of the matters that presently come before boards of education now and teachers unions with the present law. So I believe we are fixing something that is really not broken. There is recourse; there is arbitration. There is recourse to the courts; there is recourse to PERC. The grievance procedure does work. Jim is very right. When it

comes to this whole matter of expanding negotiations, there is no question about it. Those districts that do not have the resources and the wherewithal to take strong positions will certainly be on the losing end. It is going to hurt our children. We just don't have the resources necessary to fight these kinds of battles.

SENATOR LESNIAK: I just wonder whether changes in language, for instance in Elizabeth, could have -- which were precluded under current law -- could have avoided a devastating strike that really set back one of the finest educational programs in the State; and whether our laws restrict the ability to do that when there isn't any money available; and whether our laws are actually harming the educational process, rather than helping it?

MR. MORAN: If you are asking an opinion, my opinion would be this: No amount of language -- no amount of language, the whole 609 demands of the model agreement -- no amount of language would have solved the Elizabeth strike. But I will give you an example of the type of things you can have happen:

Recently, we had a district, after a year-and-a-half in abeyance under contract, with an offer of 10% a year for the next three years -- the year-and-a-half back and the year-and-a-half forward -- and, to the best of my knowledge, the major issue, if not the only issue on the table, was whether or not they would continue the current four report card conferences in the evening, or whether that would be reduced to two, and what additional payment would be made or compensation for that situation.

That is a war strike. It doesn't happen very often. It is a mistake. I think in Mr. Murphy's case, where he had to put into place the contract after a year-and-a-half-- That is something we would not like to see throughout the State. They are not good situations. They happen, but we would like to see settlements. Bargaining was designed for that. I am all

for bargaining. We are putting into the process, though, things that really don't belong in there. They don't belong in bargaining. If there are problems, these should be worked out. Remember, the Legislature said, when they first passed the law years ago-- Right before it was passed, they struck out the words, "matters of mutual concern." That meant that in these areas of inherent managerial prerogative and mandatory bargaining, that there is an area in there which everybody is interested in, and we want everybody working together on.

But, the important thing is that they are not in the bargaining arena. They don't belong there. They belong with law; they belong with policy; they belong with a whole host of things, but they do not belong in the middle of the bargaining arena.

SENATOR LESNIAK: That seems to be the issue.

MR. MORAN: The Commissioner testified that four years ago, when the last legislation was up--

SENATOR LESNIAK: Well, maybe we will get the Commissioner to testify now.

MR. MORAN: Well, I'm saying, he testified very clearly, and I believe his testimony this time said that for the greater part, most of these things should not be -- these types of things should not be in the bargaining arena. They deserve a better forum to be handled in. Either handle them by law-- You know, very clear prescriptive law for transfers; very clear prescriptive law for cocurricular. But don't leave it to negotiations across the whole State, where you are going to get 99-- Well, you are going to get a whole hell of a lot of different results.

SENATOR LESNIAK: Thank you very much for your testimony. Your testimony will be entered into the record, by the way, that you didn't get to give.

MR. MORAN: Thank you very much.

SENATOR LESNIAK: We are going to take a 10-minute recess at this time. (Chairman decided to adjourn at this point instead; the subject to be taken up at a future hearing.)

(HEARING CONCLUDED)

APPENDIX

GERALD L. DORF
A PROFESSIONAL CORPORATION
COUNSELLORS AT LAW

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BOCA RATON, FLA. 33434

May 22, 1989

TO: State of New Jersey
Senate Labor, Industry and Professions Committee
State House Annex - CN-068
Trenton, New Jersey 08625

RE: Public Hearing on Proposed Senate Bill Nos. 266, 606, 855 and 3567.

My name is Gerald L. Dorf.

Thank you very much for affording me the opportunity to present this position paper to you. For your information, I have had in excess of twenty-five (25) years of labor relations experience representing management interests in both the private and public sectors including municipalities, counties and school boards.

I am Labor Relations Counsel to the New Jersey State League of Municipalities and have held that position since 1973. In the interest of time and your full agenda, I will comment briefly and in general on the subject of scope of negotiations in the public sector, and then more specifically on the major sections of the proposed bills.

I. INTRODUCTION

A. The League represents five hundred sixty-one (561) municipalities in the State of New Jersey. All of these municipalities, as public employers, are subject to the provisions of the New Jersey Employer-Employee Relations Act (N.J.S.A. 34:13A-1 et seq.) and their taxpayers must bear the cost of agreements which are negotiated thereunder or which would be negotiated under the provisions of Senate Bill Nos. 266, 606, 855 and 3567.

Since the enactment of the so-called "PERC Law" in 1968, the Law has been amended on several occasions. The proposed legislation before your Committee today is to make additional changes in the existing law, many of which the League feels are either unwise, unwarranted or both. The balance of this statement will deal with those proposed changes.

B. The bills under consideration seek to introduce into non-fire and police negotiations the category of permissive subjects, as well as expand the mandatory category of subjects, while limiting or totally eliminating those subjects which have heretofore been considered managerial prerogatives. A number of other amendments would:

1. Narrow the definition of confidential employees, thus increasing the possibility or probability of certain currently confidential employees being unionized.

2. Permit negotiated grievance procedures to supersede

statutory procedures for the resolution of disputes, controversies or grievances.

3. Include as part of mandatory subjects for negotiations all conditions of employment not specifically removed from negotiations by statute.

4. Limit illegal subjects for negotiations only to matters which are specifically prohibited by statute.

On the whole, the legislation, if enacted, would diminish the authority of a municipality over its day-to-day operation, while at the same time, increase the union's role in those operations.

II. BACKGROUND

A. When the New Jersey Employer-Employee Relations Act (Chapter 303 of the Laws of 1968) was enacted, the law provided for two categories of negotiable subjects -- mandatory and illegal. In 1974, the Act was amended (Chapter 123 of the Laws of 1974) but it again contained no establishment of a permissive category of negotiations. Such a category was developed, however, by PERC, which read the amendments to allow a permissive category.

B. In 1978, in the case of Ridgefield Park Education Assn. v. Ridgefield Park Board of Ed., 78 N.J. 144 (1978), the Court specifically held that "there are but two categories of subjects in public employment negotiation -- mandatorily negotiable terms

and conditions of employment and non-negotiable matters for governmental policy." A major rationale for this decision was the Court's belief that the creation of a permissive category of negotiations would permit public employee unions to negotiate items which would severely impinge upon management's right to effectively govern a municipality.

C. In 1982, in the case of In re IFPTE, Local 195 v. State, 88 N.J. 393 (1982), the Court went further to limit the scope of mandatorily negotiable terms by holding that a term and condition of employment is negotiable only if:

1. It intimately and directly affects the work and welfare of public employees;

2. It has not been preempted by statute or negotiation; and

3. It is a matter on which a negotiated agreement would not significantly interfere with the exercise of inherent management prerogatives pertaining to the determination of governmental policies.

Failure to meet all three criteria of this test results in determining such a subject to be non-negotiable. The Court went so far as to hold that "when the dominant concern is the government's managerial prerogative to determine policy, a subject may not be included in collective negotiations even though it may intimately affect employees' working conditions." Subsequent

case law has maintained the scope of negotiations as set out in Ridgefield Park and IFPTE.

D. With respect to fire and police negotiations, permissive subjects of negotiation are mentioned and included in the so-called Interest Arbitration Law enacted in 1977 as an amendment to the Act and now included as N.J.S.A. 34:13A-16 et seq.

III. THE CRUX OF THE MATTER -- SCOPE EXPANSION

A. The passage of the bills under consideration would literally set the present order of public sector collective negotiations in New Jersey on its ear. The basic premises which many unions supporting this legislation have made for the enactment of the legislation are:

1. Public sector employees should be treated the same as their private sector counterparts; and

2. This legislation would swing the pendulum back from complete management control to a more balanced position.

Neither premise is supportable by this legislation or by the present law governing public employment relations in New Jersey.

B. The proposed legislation would replace and amend present statutory language and thereby broaden the scope of negotiations potentially along the lines of the private sector and thereby create a compatibility between the implementation and interpretation of contract language between the sectors. Unfortunately,

there is a "fatal flaw" in wholly accepting and adopting the private sector collective bargaining system for the public sector. That flaw is the basis upon which both sectors operate -- profit motive versus tax rate stability.

B. The employer in the private sector is solely concerned with the bottom line profit picture in determining the success or failure of his operations. The public sector, on the other hand, is not directed toward the profit motive. The existence of the public sector is to provide its constituents with services, both essential and non-essential at the lowest tax rate possible. The establishment of a permissive category of negotiations in the public sector would severely infringe upon the service-oriented goals of the public sector. With both sectors so diverse in the fundamental goal which drives each, it would be financially impractical and unrealistic to attempt to adopt the private sector collective negotiations scheme in the public sector.

C. Furthermore in this regard, many New Jersey municipalities find themselves in a financial bind and hard-pressed for funds from the Legislature and its taxpayers. The adoption of the proposed bills would force municipalities to increase their tax rates, as well as use increasing amounts of time and expenses to abide by any additional bargaining obligations.

IV. THE PROPOSED LEGISLATION

A. General

1. Senate Bill Nos. 266, 606 and 855 all refer to "the interest and rights of the consumers and people of the State" as being "considered, respected and protected" and their sponsors state that an "expansive system" of collective negotiations will implement and promote the constitutional mandate that public employees be given the right to organize and present grievances to their employers. These two statements are neither wholly accurate nor indeed compatible. In fact, it is only the public employer who takes into the account the interests and rights of the consumers and the people of the State since public employees are driven solely or predominantly by the motive of enhancing their own economic and work conditions. Secondly, it does not appear to me that any fair reading of the New Jersey Constitution leads to the belief that the rights of employees can or should be promoted by an "expansive" collective negotiations system whereby there is a never-ending number of items or subjects over which to negotiate.

2. The sponsor's statement in Senate 266 includes a notation that the bill would "...act as a catalyst to resolving disputes..." and that the addition of the mandatory subjects of bargaining would avoid much litigation. I would take issue with both of these statements and in my view, the catalyst to further

bargaining would only lead to further dispute and such dispute would undoubtedly result in further litigation as these so-called new areas of bargaining are finely honed by the Public Employment Relations Commission and the Courts.

B. Senate Bill No. 266

The thrust of the subjects to be included as mandatory subjects of collective negotiations appear primarily to deal with school boards, such as extra and co-curricular activities and involuntary transfer of employees within school districts. However, additional subjects concern themselves with absenteeism or tardiness, disciplinary procedures, evaluation critera as well as procedures and subcontracting. The latter subject has already been dealt with by the New Jersey Supreme Court and found to be substantially a managerial prerogative with respect to the decision, although the impact is to be negotiated. This would already appear to be a fair resolution of the problem since the employer is then able to subcontract for the purpose of improved service and/or economic reasons, while the affected employees may negotiate over the impact including potential severance. The bill would interfere with what has already become established practice in the State in the area of subcontracting and further inhibit employers from establishing absenteeism or tardiness work rules (as is done by virtually every private sector employer) and proscribing the ability of transferring employees.

Furthermore, since the employer is charged with running the enterprise, evaluation criteria would appear to be uniquely and properly within the purview of such employer (as has heretofore been the case) with appropriate procedural safeguards for the employee.

Finally, it is unclear from the bill as to whether or not present disciplinary procedures, i.e. Commissioner of Education in the case of school employees and Department of Personnel in the case of "Civil Service employees," would be ignored, circumscribed or added to.

C. Senate Bill No. 606

Included within this bill are several proposed troublesome changes. Among these are:

1. The introductory portion of this bill acknowledges that "...although collective negotiations may involve matters lying within the managerial discretion of public employers..." collective negotiations is the most appropriate manner for exercising that discretion. Furthermore, the introduction notes that since public employers are presumed to consider the public interest (note specifically by its absence any reference to public employees being concerned about the public interest) that where those public employers agree upon permissive subjects of negotiations, it is in the public interest as well not to interfere with those voluntary agreements. In my view many so-called voluntary agreements

may not be so voluntary under the hammer of a militant union and a potential strike.

2. In the public sector (as contrasted with the private sector), management is "very thin." While in the private sector only non-supervisory employees are permitted to organize for the purpose of collective negotiations, in the public sector supervisory employees are likewise given the ability to organize, thereby leaving the ranks of "management" very thin for the purpose of running the enterprise on behalf of the citizens and taxpayers of the State. To further erode this limited management by narrowing the category of confidential employees makes an already intolerable situation even worse.

3. The bill later defines mandatory subjects for collective negoatiations essentially as being those that are "...not specifically prohibited by statute..." Permissive subjects are defined as those which are "...neither mandatory nor illegal subjects for negotiations." And finally, illegal subjects for negotiations are those which are "...specifically prohibited by statutory language."

Query: Is there really a permissive subject area within the confines of this bill? If a mandatory subject is simply one which is not prohibited by statute, then unless the employer can find such a prohibition, all subjects become mandatory unless they are specifically found to be illegal.

4. Finally, the bill proposes that "notwithstanding any procedures for the resolution of disputes, controversies or grievances established by any other law...," grievance and disciplinary review procedures established by the collective bargaining agreement shall be utilized. Thus, with one fell swoop the Commissioner of Education in school board matters and the Department of Personnel in Civil-Service type matters are now effectively removed from the discipline procedure. While some public employers might well welcome such a process, I wonder whether school board employees would willingly abandon tenure proceedings before the Commissioner of Education in return for an arbitration procedure.

D. Senate Bill No. 855

Many of the comments noted in Section C above would apply to this bill as well, including:

1. The introductory discussion with respect to the interest of taxpayers and citizens.

2. The narrowing of the definition of "confidential employee."

3. The query with respect to whether or not a permissive category would exist if mandatory subjects of collective negotiations are defined as those that are not specifically prohibited by statute.

E. Senate Bill No. 3567

This bill is solely devoted to collective bargaining and public sector employees. The primary concerns of the bill deal with extra-curricular activities and discipline including increment withholding. The bill presents a number of problems including:

1. The school board is prohibited from assigning an employee to extra-curricular activities since such assignment would be deemed a mandatory subject for collective negotiations. However, the employer is permitted to establish the qualifications for such positions and if negotiations fail, is able to employ from outside the bargaining unit any qualified person who holds an appropriate New Jersey teaching certificate. The difficulty, however, is the ability to hire such a person from outside the district with the time and travel which undoubtedly would be involved. Clearly, as is done at present, volunteers should be encouraged and appropriate compensation should be negotiated for employees from within the district. However, failing to determine a volunteer, it would appear to desirable and indeed even necessary for the school board to be able to assign (perhaps in inverse order of seniority) a qualified employee from within the district to accept the extra-curricular assignment.

2. The bill then raises a literal hornet's nest by noting that the transfer of employees between work sites should

not be mandatorily negotiable except that the employer should not transfer an employee for disciplinary reasons and where it is determined that the transfer was predominantly for disciplinary reasons, such transfer shall be subject to the grievance procedure. In the event of a dispute concerning the "predominant nature" of the reason for transfer (Query - What about the mixed motive?), then the Public Employment Relations Commission shall make a determination as to whether or not discipline was the predominant reason. In the event it is not the predominant reason, the matter would proceed in accordance with school law.

3. The employer is granted the authority to impose minor discipline on employees provided (and not withstanding any other law to the contrary) such right is negotiated with the majority representative.

4. Employers are required to negotiate procedures for employees to file grievances on matters involving the imposition of discipline and such procedure shall be deemed to require binding arbitration as the terminal step. Furthermore, it is clearly spelled out that the burden of proof in such discipline cases is upon the employer.

5. Thus, the employees are given a grievance procedure with binding arbitration and the employer may only "negotiate" over the right to impose discipline. This would hardly appear to be an even-handed arrangement.

CONCLUSION

The New Jersey State League of Municipalities strongly urges this Committee to consider its views with respect to the impropriety of enlarging the already broad scope of negotiations which at this juncture literally numbers dozens of subjects. The needs of the citizens and taxpayers of New Jersey can best be met by no further enlargement of the scope of negotiations and permitting the public employer the limited managerial prerogatives which still exist without further potential encroachment by unions.

On behalf of the League, I sincerely appreciate the opportunity of presenting this statement to the Committee. I would, nevertheless, be pleased to respond orally or in writing to any questions which the members of this Committee may wish to raise based upon the foregoing statement.

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New Jersey Association of School Administrators
920 West State Street, Trenton, New Jersey 08618
Telephone: (609) 599-2900

TESTIMONY BEFORE THE SENATE LABOR, INDUSTRY AND PROFESSIONS COMMITTEE

REGARDING

SCOPE OF NEGOTIATIONS LEGISLATION

MONDAY, MAY 22, 1989

I am James A. Moran, Executive Director of the New Jersey Association of School Administrators. In addition, I have had over twenty years experience as a teacher of and consultant in the field of employee relations. My purpose in appearing before you today is to oppose strongly any and all attempts to expand the scope of negotiations; in particular, the following bills: S3567 (Russo), S-606 (Cowan), S-266 (Dumont) and S-855 (Jackman).

Negotiations in the state of New Jersey for public employees is over twenty years old, and history indicates that a delicate balance has been achieved between management and labor. Any legislation that would expand the scope of negotiations could, and in all probability will, unduly disrupt that balance. The end result of such disruption will be (a) increased cost to school districts, both in bargaining and in

settlements, (b) protracted bargaining, (c) disparate means of solving problems outlined in the law, and (d) damage to attempts at educational reform.

NJASA strongly recommends that these bills not be released from committee. If the legislature believes problems exist in areas such as transfers, discipline and extra- and co-curricular activities, it should address such problems through definitive legislation, but should not subject these important areas to the collective bargaining process.

NJASA further requests that the opinion of the Department of Education be sought, in view of the fact that the authority of the Commissioner of Education to determine educational issues, and what is or is not an educational issue, will be seriously diminished by designating the Public Employee Relations Commission as the proper forum for adjudication of these matters. Further, I am attaching herewith the Department position submitted to the legislature on June 16, 1983, which refers to other bills pertaining to expanded scope. The Department position clearly points out the problems inherent in expecting collective bargaining to handle important areas of educational concern.

Management of the schools of our state is at best a very difficult process. It is a process that must be carried out by lay boards of education and their administrators in such a manner as to benefit the students and provide accountability to the taxpayers of a community. It must be noted that board members are volunteers -- generally with-

out significant experience either as board members or as bargaining specialists. It is unlikely that they will serve on a board of education long enough to gain the experience necessary to deal with union tactics. Administrators, for the greater part, are isolated, inadequately trained to handle the bargaining arena and, in the very small districts of New Jersey, inappropriately staffed, even if knowledgeable about the process. On the other hand, teacher associations (unions) can and do put into the field a highly trained staff who have had a great number of years experience and are well trained in bargaining tactics -- both from a psychological and technical standpoint.

The legislature should at all times be mindful that it must help the persons responsible to manage the schools by passing legislation which is beneficial, or by not passing legislation which would impede progress in educational reform.

The legislature must see that the public is protected from union pressure which would force boards of education and management personnel to err in the bargaining process, thereby compromising the interests of children.

Passage of expanded scope of negotiations would open a "Pandora's Box;" which would, without question, result in clause language being negotiated that is not only less than in the public interest, but diametrically opposed to the public interest.

Bargaining is not a means of enhancing teacher morale; it is, instead, a means of enhancing union goals and objectives and maintaining the vitality of the union. The legislature should not confuse union rhetoric with actual representation of the interests of teachers and children.

Although NJASA strongly opposes all four of the bills currently being considered, I will comment in particular on S-3567, Senator Russo's bill, which many associations believe has been placed on a "fast track" as a result of implied support from the Governor's office. This proposed legislation would cover all "public school employees;" therefore, administrators, teachers, secretaries, custodial, maintenance and any other employees included in a bargaining unit(s) would be covered by this legislation.

The legislation is bad for education in that it substantively diminishes the managerial right to discipline personnel, to assign personnel or to transfer personnel. The proposed legislation would obviously infringe upon a board of education's inherent right to staff the district, thus sacrificing the quality of education. Moreover, this legislation would further serve as an inroad into other areas of assignments, transfers, promotions and other essential managerial rights. It could, in fact, eventually cause the demise of many valuable co- and extracurricular activities. To my knowledge, the issue of assignment and employment in extracurricular activities has not been a labor relations problem in most districts. Therefore, the need for such legisla-

tion must be seriously questioned, especially since it could potentially create a great deal of litigation and labor unrest.

The legislation further deals with the establishment of minor discipline, and requires that the board negotiate over its right to discipline -- a right which has always existed and has always been reserved to the board alone. The legislation, and the subsequent negotiations it calls for, could remove discretion from the employer which is an essential part of good remedial discipline. Again, negotiations in this area would undoubtedly result in protracted negotiations for all bargaining units, more expensive settlements and a substantial increase in the number of arbitrations.

A major problem in the bill is that it accords to the Public Employee Relations Commission the responsibility for determining whether or not actions by management are disciplinary or for educational reasons. This responsibility should, instead, be retained by the Commissioner of Education, because of the obvious expertise vested in his office. To do otherwise will unduly protract dispute resolution.

The legislation further requires that if the issue is appropriate to the grievance procedure, at least relative to the items covered by this legislation, it shall be binding. This "back door" approach to requiring binding arbitration of grievances goes far beyond the original bargaining legislation, which provided that negotiations of grievance procedures could end in binding arbitration, but need not. Again, the cost

to the public in dollars, the cost in time to boards of education, and the substantial disruption to the normal employer-employee relationship would occur.

In conclusion, from a labor relations perspective this is extremely poor legislation. It would significantly encroach on some of the most essential and basic managerial rights, and it would cause drastic increases in the cost of collective bargaining. Most importantly, one must question the necessity for this legislation for teachers, who have substantially more employment security and have received much larger settlements over the past several years than almost any other group in the New Jersey workforce.

Attachments:

1. Resolution of the NJASA Urban Schools Superintendents Committee, dated May 22, 1989

2. Testimony by the Commissioner of Education relative to expanded scope of negotiations, dated June 16, 1983

20X

New Jersey Association of School Administrators
920 West State Street, Trenton, New Jersey 08618
Telephone: (609) 599-2300

NJASA URBAN SCHOOLS SUPERINTENDENTS COMMITTEE

RESOLUTION

WHEREAS, a number of bills expanding the scope of negotiations are scheduled for hearing; and

WHEREAS, as of this writing these bills have been identified as S-606(Cowan); S-855 (Jackman); S-266 (Dumont); S-3567 (Russo); and

WHEREAS, the Senate, Labor Industry and Professional Committee will hold hearings on these bills; and

WHEREAS, an expanded scope of negotiations severely limits board prerogatives, permits unions the right to administer schools by expanding the scope of negotiations to include items such as: discipline, transfers, withholding of increments, extracurricular and co-curricular assignments, duty assignments, evaluation criteria, class size, academic calendar and use of teacher aides, among others; and

WHEREAS, passage of such legislation contains the potential for increasing costs upon already financially hard-pressed urban school districts; and

WHEREAS, passage of such legislation could lead to increased number of strikes in school districts who must hold the line to work under cap spending or continually face budget setbacks at the hands of its voters; and

WHEREAS, passage of such legislation clearly conflicts with the legislature's own Public School Education Act of 1975, which would be made useless by legalizing negotiations and binding arbitration over T&E matters; and

WHEREAS, passage of such legislation clearly favors an employee interest group and does not serve in the best interests of the community and the children in its schools; and

WHEREAS, the NJASA Urban Schools Superintendents Committee representing the Chief School Administrators in thirty-six of New Jersey's largest Urban School Districts; and

WHEREAS, these districts educate almost forty percent of all the school children attending public schools in our state.

NOW THEREFORE, BE IT RESOLVED THAT the NJASA Urban Schools Superintendents Committee HEREBY, petition members of the state legislature to take any action necessary, that might prevent expanding scope of negotiations legislation; AND FURTHERMORE,

BE IT RESOLVED, that this RESOLUTION be presented to the Senate Labor, Industry and Professional Committee; and

BE IT FURTHER RESOLVED, that this RESOLUTION be forwarded to all said members of the legislature, the Governor, the Commissioner of Education, professional organizations and the media.

DATED: May 22, 1989

STATE OF NEW JERSEY
DEPARTMENT OF EDUCATION

OFFICE OF THE COMMISSIONER

June 16, 1983

TO: New Jersey Education Leaders

FROM: Saul Cooperman
Commissioner of Education

Attached for your information is a packet of material distributed to each Senator and Assemblyman on Thursday, June 16, 1983, concerning the Department of Education's position on A-585/S-1235.

The packet contains:

- Cover memo to Senators/Assemblymen
- State Board of Education June 1 Resolution
- Commissioner's Position Statement.

Attachment

STATE OF NEW JERSEY
DEPARTMENT OF EDUCATION
225 WEST STATE STREET
TRENTON, N. J

OFFICE OF THE COMMISSIONER

June 16, 1983

TO: Members of the Senate and General Assembly

FROM: Saul Cooperman, Commissioner of Education and Secretary to the State Board of Education Saul Cooperman

The State Board of Education has directed me to bring to your attention a resolution adopted at its June 1, 1983 meeting, opposing enactment of Assembly Bill 585/Senate Bill 1235 which would amend the law concerning collective bargaining by public employees.

I have spent much time reviewing this legislation during the past several weeks and have concluded that its enactment would not be in the best interests of public education and the students of our public schools.

Because of the significance of this issue, I have attached a position paper which represents my views on this subject and the considerations that have led to these conclusions.

STATE OF NEW JERSEY

DEPARTMENT OF EDUCATION

STATE BOARD OF EDUCATION

A RESOLUTION OPPOSING THE ENACTMENT OF ASSEMBLY BILL 585/SENATE BILL 1235 CONCERNING ADMENDMENTS TO THE PUBLIC EMPLOYEE COLLECTION BARGAINING STATUTES

WHEREAS: The State Legislature is currently considering legislation to amend the law concerning collective bargaining by public employees; and

WHEREAS: Proposed amendments to the law would permit collective bargaining on a number of issues which are managerial in nature and should not be the subject of collective bargaining; which amendments would also collective bargaining agreements to supersede executive department regulations and statutory disciplinary procedures; and

RESOLVED: That the State Board of Education cpposes the enactment of Assembly Bill 585/Senate Bill 1235 and makes known their opposition to this legislation to the State Legislature.

S. David Brandt
President, State Board of Education

Saul Cooperman
Secretary, State Board of Education

JUNE 1, 1983

25X

POSITION PAPER

ASSEMBLY BILL 585/SENATE BILL 1235

Saul Cooperman
Commissioner of Educati
June 15, 1983

After careful analysis of the ramifications of A-585 and its companion bill S-1235, I oppose the passage of this legislation. Central to my decision to oppose this legislation are the following:

1. A myriad number of subjects would enventually enter the collective bargaining arena. Althcugh matters of mutual concern between employers and employees, they should not be resolved in that particular forum.

2. The Department of Education must maintain jurisdiction over the areas of discipline and administrative rule and regulation relative to the educational process.

3. Delegation to the bargaining process behind closed doors and without citizen participation would be detrimental to the public interest.

4. There are significant differences between the public sector and the private sector. To follow the private sector model of the National Labor Relations Act is not appropriate.

5. Arbitrators and other divisions of government, such as the Public Employment Relations Commission, are not the appropriate forums for the resolution of disputes in such areas as budget formulation, class size, lesson plan format, qualifications for promotion, transfer and assignment of personnel, staffing and manpower levels, etc.

Over the years, the State Department of Education has generally remained neutral in matters pertaining to the scope of negotiability. A few weeks ago, in my testimony before the Joint Appropriation Committee, I reiterated this neutral approach. With two exceptions, I continued to assert that position of neutrality in testimony given on my behalf before the Assembly Labor Committee. In the ensuing weeks since my position became public, I have continued to read and listen to people representing a wide range of views on the fundamental issues contained within S-1235.

My reading and discussions have even more firmly convinced me that the conflicting positions over the fundamental issues involved in S-1235 are not easily reconcilable.

On the one hand, some proponents of S-1235 describe the existing conditions which prevail in public employment in New Jersey as one between "lords" and "serfs" while some opponents describe the possible enactment of this legislation as leading to the destruction of public education in New Jersey. I find both of these views to be unnecessarily emotional and without a firm basis in fact.

I strongly support those who express the view that any employee affected by a decision should be able to participate in the process of decision making. Indeed, the more important the issue or policy, the greater the involvement of the employees who will have the responsibility of implementing that policy.

With this in mind, I feel very strongly that school boards and administrators must involve teachers in issues where they have expertise, or in issues of policy initiatives that affect their lives. Teachers must participate in such areas as textbook selection, curriculum issues, district-wide testing policies, disciplinary policies, evaluation systems for teachers and staff development policies. The issue, as I see it, is not whether teachers should participate in those decisions which go to the very heart of the educational program, but how.

The Collective Bargaining Act of 1968, and its subsequent revision in 1974, was established under the philosophical premise that a structured bargaining relationship was preferable to the haphazard relationship occurring without the law. It was believed that such a relationship would, in fact, provide a mechanism for employees to seek contractual relationships that would help to provide just treatment. Yet, even then, the legislature was struggling with issues of defining the scope of bargaining in public employment. Immediately prior to the signing of the first collective bargaining bill, a change in language was made by excluding the words "matters of mutual concern." The law, in its original draft form, indicated that negotiable items would be "terms and conditions of employment and matters of mutual concern." It seems apparent that in excluding the words "matters of mutual concern" the legislative intent was to narrow the scope of negotiations and to exclude from the bargaining process those matters which directly impacted upon the ability of governmental bodies to carry out public policy.

Yet, even the words "terms and conditions of employment" are not easy to interpret as it might seem. Lieberman, in his book Public Sector Bargaining states "if a proposal is deemed an important condition of employment but not crucial to managerial control, it is held to be within the scope of representation. If deemed of minor importance as a condition of employment but critical to management control, it is held to be outside the scope of representation." Lieberman goes on to give an example of a public employer who wishes to require all employees to live within its geographic boundaries. To the employee, it is a term and condition of employment and, as such, negotiable; to the employer this is a policy issue and not negotiable.

When differences arise as to what is or what is not a term and condition of employement in our state, the Pubic Employment Relations Commission decides "the scope of negotiability." Prior to 1978, PERC had found the following partial list of subjects as being mandatorily negotiable: agency shop; arbitration of grievances; compensation; duty free lunch; fair dismissal procedures; grievance procedures; holidays; hours; payment for unused accumulated sick leave; past practice clause; personal file, access to; physical working condition; preparation periods; teacher/pupil contact time; tuition reimbursement; vacations; work load; length of work day; and length of work year. Other subjects such as evaluation criteria, pensions and calendar up to 180 day, etc., were found to be non-negotiable because they were established by statutes or regulations.

On the other hand and over time, PERC interpreted an increasing number of issues as being permissibly negotiable. Some of these were: absenteeism and tardiness policies; academic calendar; assignments; audio-visual equipment utilization; budget formulation; class size; decision to assign cafeteria, corridor or playground, and bus supervision; decisions to reschedule snow days; teacher vacations; lesson plan format; productivity studies; qualifications for promotion; staffing requirements and use of teacher aides.

The above cited tripartite division of mandatorily negotiable, non-negotiable and permissibly negotiable persisted until the Ridgefield Park case was decided by the Supreme Court. The court in this landmark decision reiterated a strict legal standard for delegation of governmental policy-making power. It said that "our concern is with the very function of government. Both state and federal doctrines of substantive due process prohibits delegations of governmental

policy-making power to private groups where a serious potential for self-serving action is created thereby." The court futher stated "to be constitutionally sustainable, a delegation must be narrowly limited, reasonable, and surrounded with stringent safeguards to protect against the possibility of arbitrary or self-serving action detrimental to third parties or the public good generally." In this decision, the Supreme Court held that PERC had erred in its interpretation and that no permissive category should exist.

Arguments are frequently submitted that public sector bargaining should follow bargaining in the private sector, including permissive categories. There are, however, significant differences between the two sectors, and these differences make a transplant of the private sector model to the public sector inappropriate.

The private sector concerns the production of goods for consumption by individuals and groups who are buying these goods in a competitive "marketplace." The private employer judges his success by reviewing the bottom line, i.e., dollars and cents. He is operating with private funds towards a private purpose, viz. profit. Hence, a our Supreme Court stated, "a private employer may bargain away as much or as little of its managerial control as it likes," because it is his control and his property and wealth which are the subjects of the negotiations.

Nearly all aspects of private employment are determined locally during the negotiations process. The private employer's failure to control his costs, quality and productivity will lead to the consumer's decision to take his dollars to another producer of the same or similar products. This flexibility on the consumer's part is the ultimate check on the profligacy of the private employer.

Public education, like all of the public sector, is remarkably different on each of these points. Public education concerns the establishment of a critical public service, the education of our youth, and is available to all the citizenry. The success of public education is much more difficult to quantify than is success in the private sector. The public sector, including education, operates on public funds which are taken involuntarily from each citizen regardless of whether he wants or utilizes the particular services. The goals of public education are set by the citizenry through the conscious, public actions of their elected or

appointed representatives. It is for this reason that our Supreme Court stated "....the very foundation of a representative democracy would be endangered if decisions on signficant matters of government policy were left to the process of collective negotiations where citizen participation is precluded. This court would be most reluctant to sanction collective agreement on matters which are essentially managerial in nature, because the true managers are the people. Our democratic system demands that governmental bodies retain their accountability to the citizenry."

Negotiations in public education start from a base of employee rights, benefits, and security found in our pension, sick leave, civil service and tenure laws that do not exist in the private sector. Finally, the freedom of the consumer in the market place to buy another product does not exist in public education. If one disapproves of the policies of his public school system, he cannot readily put his children in another system. Moving to another school district is impractical for most people; it certainly doesn't parallel the freedom in the private sector to shop around among competing car dealerships or department stores. Placing one's children in a private school is also not a comparable freedom, since one's taxes still are used to support the public system.

It is the public nature of public education that makes it so different from auto manufacturing or retail sales. The public determines the type and size of the service; it chooses the board members to oversee the service; it pays for the service with its taxes; and it receives the service, directly as parents and indirectly as citizens, community member and employers.

As I said before, I believe strongly that those affected by decisions must be participants in the evolution of the decision. Without question, the teachers of mathematics or history should select and recommend for adoption by the local board those textbooks to be utilized in their respective classes. Participation in such process, however, must be as professional staff members and not as union members over the bargaining tables. To do otherwise, would thwart the T & E Act of 1975, which held that "....a thorough and efficient system of education includes local school districts in which decisions pertaining to the hiring and dismissal of personnel, the curriculum of the school, the establishment of district budgets and other essentially local questions are made democratically with a maximum of citizen involvement and self-determination, consistent with Statewide goals, guidelines and standards."

The statement accompanying S-1235 suggest that "....an effective balancing of the interest of employees and employers and the public interest in the democratic process are and can be best achieved by the provisions here and after set forth including negotiations on permissive subjects."

I cannot agree with that reasoning. I do not believe that the public interest is best served by all questions being discussed at a bargaining table. I do not feel the negotiating table is the proper forum because the process of collective bargaining is not cooperative; it is essentially, and of necessity, an adversarial proceeding. It is in all cases an interest proceeding where one group seeks to obtain what it views as its interest, notwithstanding the effect the acquisition may have on another group. Indeed, the Supreme Court stated, "the interest of teachers do not always conincide with the interest of students on many important matters of educational policy. Teachers associations, like any employee organization, have as their primary responsibility, the advancement of the interests of their members. Arbitrators, to whom the resolution of grievance under collective agreements is generally entrusted, are concerned primarily with contractual rights and remedies. Of the relevant actions at the local level, only the school boards have a primary responsibility of insuring that all children receive a thorough and efficient education. These boards are responsible to the local electorate, as well as to the State and may not make difficult educational policy decisions in a forum from which the public is excluded."

Broadening the collective bargaining format to formally include all issues affecting diverse areas of educational policy and school operations will unnecessarily impair the ability of local boards of education to manage the schools in a manner that is responsive to the public at large and the public trust placed upon them. Critical management decisions should not be decided in negotiating sessions, behind closed doors and without citizen participation. The proper forum for discussing education policy and programs of the public schools is not at the bargaining table.

Therefore, while I want a maximum of teacher involvement in policies affecting the educational direction of a school district, I do not think that the negotiating table is the proper forum, and for these reasons, I oppose Senate Bill 1235.

Nwk Star Ledger
6/18/89

VIEWPOINT

A threat to education

The Legislature is contemplating a major leap backward in New Jersey education.

Four bills that would expand the scope of collective bargaining in the public schools are now before the lawmakers. The proposed legislation would reverse a decade-old state Supreme Court decision that restricted the reach of bargaining to protect the right of the public to participate in developing public school policy.

Gov. Thomas Kean supports one bill that would make disciplinary action against teachers a matter of negotiations. Mr. Kean has said little about why he supports the bill.

The New Jersey Education Association (NJEA) leadership is attempting to portray the expansion of the scope of bargaining as a matter of justice for teachers who are treated unfairly by capricious school boards. But any legislation enhancing bargaining as a method of setting school policy deprives individual teachers from direct participation in running schools.

The teachers' union has been left behind in the drive toward reform of the schools. It has acted as a drag, a counterweight, trying to turn the clock back to the time when teachers were viewed as wage-hour employees, not educational professionals.

The key to the NJEA's power has been collective bargaining. As long as it remained the major method of settling grievances and determining employment policy, the NJEA and its affiliates were the most powerful voice for teachers in this state.

The last decade, however, has seen the empowerment of individual teachers and the first tentative steps toward treatment of teachers as true professionals. Gov. Kean himself helped to build that momentum through a variety of programs aimed at improving the status of teachers, reforming their training and licensing and recognizing their accomplishments. The NJEA knows that the result of such efforts is a decline in the union's importance.

Collective bargaining occurs behind closed doors. It thrives on an adversarial relationship between school boards and unions. It relies not on the best interests of children or teachers, but on the exercise of power. It is, in short, anathema to the ideas of making schools more accountable, teachers more professional, schools more open.

The state Supreme Court helped set the stage for New Jersey's era of school reform by restricting bargaining to areas best suited for negotiations—wages, hours and benefits. To upset that court decision now would choke off public participation in the schools, crush the tender stalks of teacher professionalism and end the state's decade of change in education. The legislation should be defeated.

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NO PROBLEM, FOLKS, I'LL HANDLE EVERYTHING!
PUBLIC
NJEA
PUBLIC SCHOOLS
! ? X
BL CANFIELD 6/18/89

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New Jersey Association of School Administrators
920 West State Street, Trenton, New Jersey 08618
Telephone: (609) 599-2900

TESTIMONY BEFORE THE SENATE LABOR, INDUSTRY AND PROFESSIONS COMMITTEE

REGARDING

SCOPE OF NEGOTIATIONS LEGISLATION

June 19, 1989

I am Jim Murphy, President of the New Jersey Association of School Administrators. During the 1980's, New Jersey and the entire nation has espoused the educational reform movement and dozens of initiatives have been enacted to assist educational opportunity for the children in our care. The key word in the reform movement has been "accountability." Boards of education, school administrators, and the professional staffs are called to account for the progress or lack of progress in achieving educational goals. The public is demanding to see substantial progress. The taxpayer is in revolt at the spiraling costs. The state has not provided the formula aid required under the T&E law. An array of new mandates and over-regulation have school boards and school administrators reeling to keep pace with the rapid changes.

The scope of negotiations legislation under consideration are bad bills for education and contribute nothing to New Jersey's quest for quality in educational programming and instructional improvement.

In my opinion, these bills will increase costs, decrease the quality of education, increase the number of strikes, increase litigation, and decrease accountability. This situation is not in the public interest, and may very well be unconstitutional.

First and foremost, S-3567 represents an attempt to transfer power from the school board to the union by severely limiting the responsibility of school boards to determine educational policy.

Given the predictions of continuing reductions in revenue, the current inability of the state to meet its fiscal obligations for full funding, and the potential ramifications of Abbott vs. Burke, it is ludicrous to consider siphoning off sorely needed resources for extended negotiations, arbitration and other conflict resolution episodes which this bill will most certainly generate.

The determination of professional standards of performance should be made on the basis of relevant research and professional data; not in a climate of compromise and trade-offs, which is the accepted norm in bargaining and conflict resolution. In such a climate, the kids become the real losers; because the interests of unions, as employee interest groups, and the interests of students and the community do not always coincide.

Requiring binding arbitration on matters which relate to the assignment of personnel to situations that meet the programmatic needs of youngsters, or to personnel standards of performance, neutralizes the authority of the board as it seeks to meet its responsibilities.

New Jersey school employees are already protected by the toughest "tenure for life" laws in the nation. New legal provisions which "hamstring" legitimate attempts to maintain standards are an exercise in overkill.

Senators, I ask that you not handcuff the school boards and school administrators as we strive very hard to cope with all the new responsibilities given to public education today. If we are to be successful in improving our school systems, we must continue to have the decision-making power to act in the public's interest. Don't surrender public rights to the arbitrators, mediators and factfinders, who are untrained in educational policy matters. Don't pass legislation which will divert additional dollars away from instruction. If you do both, the public and the children lose.

I thank you for your time and consideration today.

The schools and the unions

Clete Bulach
William L. Sharp

AKRON, Ohio — The future of public education — for better or worse — lies, in part, in the hands of teachers' unions. Unfortunately, as states have enacted bargaining laws for public employees, teachers' unions have become more militant about rights for their members. This militancy has resulted in a number of problems for boards of education, including contractual constraints on their ability to respond to criticism, a lower priority assigned to servicing students and a perceived decline in the quality of education.

Boards and administrators are increasingly finding that their hands are tied. Contracts between teachers and boards limit the ability of administrators to improve the quality of instruction. For example, in many states, if the board wants to lengthen the school day for students or change the number of periods in a day, these changes must be negotiated with the union.

Growing teacher militancy has also led to a shift in emphasis from serving students to taking care of the needs of teachers. Many union leaders will tell you that schools exist for students, but, in practice, especially at the bargaining table, schools exist to provide jobs. For example, when boards propose increasing English and math requirements for graduation, union leaders oppose these changes. Unions fear that hiring more English and math teachers may cause other teachers to lose their jobs. Their No. 1 concern is job security.

This shift away from providing service to students is in direct proportion to the degree of teacher militancy and is concomitant with a growing decline in teacher professionalism. A professional has a strong desire — a compulsion — to serve the client.

If unions continue to be more concerned with the needs of their members and with the organization itself than they are with the needs of students, a decline in the quality of public education will result.

As parents detect, or think they detect, this decline in quality, they will insist on alternatives to education currently available. A recent study shows that 23 states have adopted, or are in the process of adopting plans that involve "educational choice," in which parents are allowed to select among public schools.

Boards and administrators are increasingly finding that their hands are tied

Such plans would drastically change public education as we know it. Some schools would lose students and encounter a funding crisis; others would have more students than they could handle, causing them to rid themselves of less promising students. The American comprehensive community high school would be a thing of the past. Instead, we may create a two-tier school system, with smart students in an elitist tier and academically poor students in the other.

The leaders of the two national teachers' unions have written on reform and the role of unions. Mary Futrell, president of the National Education Association, suggests three strategies and 12 guidelines for improving schools. She emphasizes the role of the members of National Education Association but does not mention the effect these strategies and guidelines would have on students.

Albert Shanker, president of the rival American Federation of Teachers, takes a different approach. In a recent newspaper ad, he stated that strong union leadership is essential to make the necessary classroom reforms that affect students. Mr. Shanker suggests that teachers, with proper union leadership, can constructively influence reform.

Mr. Shanker may be right, but only if teachers' unions change their priorities toward greater professionalism and promoting a balance of power among all groups. If unions begin to use their power to cooperate in the reform effort instead of fighting it, they will get support from sources they have forgotten: Parents, administrators, the business community and boards of education. And as these groups work to help students, schools and unions will become stronger and win back community respect and support.

Clete Bulach, superintendent of the Norton City School District in Ohio, teaches at the University of Akron. William L. Sharp, who also teaches at Akron, is a former school superintendent in Indiana and Illinois.

editorial

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Scrap the 'scope' bills

The teachers' unions are once again pushing so-called "scope of negotiations" bills in the Legislature. The bills are very much in the interest of the unions. They are in no way in the public interest. They ought to be defeated.

Four bills currently comprise the package: S-266 (sponsored by Wayne Dumont), S-606 (Thomas F. Cowan), S-855 (Christopher Jackman) and S-3567 (John Russo). To some extent they overlap, but all have the same aim: To take from elected or appointed school boards the power to make policy in a wide range of educational areas, and move that power to the collective bargaining table — or in some cases kill it completely.

• • •

School employees today are anything but an oppressed class. Teachers have life tenure. Their unions are guaranteed the right, by the courts and the Public Employee Relations Commission, to negotiate on no fewer than 55 specific topics that primarily and directly affect them, including pay, hours, holidays, vacations, fair dismissal procedures, maternity and child-rearing leaves, sick leave above the statutory minimum, safety matters, promotion procedures, and so on. In addition, they have plenty of input into educational issues about which they are rightly concerned. Individually they serve on curriculum and textbook committees, collectively they lobby and publicize their points of view. The system, as far as protecting the interests and rights of school employees is concerned, works.

But under S-606 and S-855, the unions would also be handed a voice in determining such items as class size, employee assignments, the academic calendar, curriculum, criteria for evaluating teachers, teacher transfer and use of teacher aides. These are all matters that pertain to educational policy and are properly the responsibility of local boards — boards that have an obligation to the community to deliver the best possible education for its children, taking into consideration many factors, not the least of which is the community's ability to pay the bill.

As long as such issues are where they belong, in the hands of the school board, the public is assured through the Sunshine Law a reasonable amount of input. Non-personnel matters such as class size can be and are debated in the open. Under the scope of negotiations bills, however, those issues would be hammered out behind closed doors; collective bargaining isn't subject to Sunshine requirements.

Supporters of the legislation argue that it's merely permissive (although S-3567 flatly bans transfers for disciplinary purposes and mandates binding arbitration for disciplinary matters as the final step in the grievance procedure). Local boards don't have to yield on such things as class size or its right to evaluate staff if they don't want to. To accept that reasoning requires a naive view of the bargaining procedure. If boards resist on these new options that would be opened up to the education associations and teacher federations, they'll have to buy them off the table with better pay-and-perk offers. On the other hand, boards with limited funds and small tax bases will be under pressure to negotiate in these previously non-negotiable areas in order to save money.

• • •

The bills fly in the face of the trend in New Jersey and the nation to demand more *accountability* from school boards and educational professionals, a trend embodied in school performance monitoring, school report cards, state takeovers of failing districts and schools-of-choice programs. By giving a large measure of control over basic issues to union negotiators, accountable to nobody but the union membership, the legislation mocks the principle. Taking the existing right of a school board to evaluate staff and set the criteria used for evaluation and making it negotiable would weaken or destroy the board's ability to assure quality employee performance — an ability already seriously diminished by the tenure laws. If that's gone, what's left to be accountable for?

There's no need to change the system in this way. There's enormous need not to.

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NJASA Administrative Guide
AUGUST 1978, Volume 6, Number 2

For several years the Public Employment Relations Commission had determined that a number of matters were permissively negotiable. The State Supreme Court, however, has recently held that there is no persuasive statutory or case law which would support the viability of such a category. ***Ridgefield Park Education Association v. Ridgefield Park Board of Education***, N.J., 4 NJPR 341 (1978). This GUIDE examines this important decision and provides counsel for local boards in the matter of

scope of negotiations

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of the Chancery judgement from the Appellate Division on July 7, 1977, as of which date arbitration had not yet begun. PERC, in response to a board's petition filed on March 2, 1977, for a scope of negotiations determination pursuant to NJSA 34:13A-5.4(d), granted a full hearing and issued its decision on August 17, 1977. PERC No. 78-9, 3 NJPER 319 (1977). In its decision PERC upheld its past practice of denominating certain matters as permissive subjects of negotiation and, therefore, ruled against the board. Both the board and association filed motions for direct certification to the Supreme Court. In addition, the association appealed for an order vacating the Appellate Division's interlocutory stay. Certification was granted, the Supreme Court disapproving PERC's scope of negotiations determination and reversing the Chancery Division's order that the parties proceed to arbitration.[1]

2. PERC's decision was based on its perception that in enacting L. 1974, c. 123, the legislature reacted to the restrictiveness of standards enunciated

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1. The Court addressed itself to certain procedural aspects before reaching the merits of the instant case. It recognized that under the current legislative scheme, it may be necessary to go to both PERC and the Superior Court to completely resolve a disagreement concerning the arbitrability of a particular dispute. For instance, when one party disputes a claim that a matter is arbitrable under the contract, the party seeking arbitration should proceed to Superior Court for an order compelling arbitration. Where the trial judge determines that the real issue is not one of contractual arbitrability, but the propriety of negotiating as to the item in dispute, he should refrain from reaching the merits. Stated the Court:

> We agree with PERC that contract interpretation is a question for judicial resolution. Thus, where a party resists an attempt to have a dispute arbitrated, it may go to the Superior Court for a ruling on the issue of its contractual obligation to arbitrate. However, the issue of contractual arbitrability may not be reached if the threshold issue of whether the subject matter of the grievance is within the scope of collective negotiations is contested. In that event, a ruling on that issue must be obtained from PERC. Thus, the preferable procedure in the instant case would have been for PERC to have rendered its scope determination before the issue of contractual arbitrability was addressed. Where an item is within the scope of collective negotiations, and a court determines that the agreement contains a valid arbitration clause, the matter must proceed to arbitration.

4 NJPER at 342-343.

--Lesson plan format
--Preference on substitute list for riffed tenured teachers
--Productivity studies
--Qualifications for employment
--Qualifications for promotion
--Staffing, number of employees, manpower levels
--Student safety
--Student testing
--Sunshine bargaining
--Transfers
--Use of teacher aides [2]

The amendments were seen by PERC as reversing Dunellen, supra, which had limited arbitration of disputes between a public employer and its employees in New Jersey to items which were not predominantly educational policies and which directly affected the financial and personal welfare of the employees. In Dunellen, the Supreme Court had interpreted the prohibition of NJSA 34:13A-8.1, as it had been promulgated by L. 1968, c. 303, that no provision of the act shall "annul or modify any statute or statutes of this state," to mean that the parties to a collective negotiations agreement could not agree to substitute the dispute resolution forum of arbitration for the traditional one of the commissioner of education in matters of major educational policy. 64 N.J. at 28-29. As a consequence of this decision, PERC expressed its view that ". . .a dispute concerning the merits of a decision not to retain a non-tenured teacher would not have been arbitrable under an agreement governed by Chapter 303 of the Public Laws of 1968. However, it would appear that the contract in this case (Ridgefield Park) is to be administered pursuant to the amendments to the Act enacted by Chapter 123 of the Public Laws of 1974." 3 NJPER at 25.

Two aspects of Chapter 123 were viewed by PERC as reversing Dunellen's prohibition of arbitration of contract disputes relating to subjects normally

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2. List of permissive subjects compiled by New Jersey School Boards Association (NJSBA).

relied on the language of the statute: "Whether or not it is necessary and desirable either to define the phrase 'terms and conditions of employment' as used in section 7 of the 1968 act [NJSA 34:13A-5.3] and, in so doing, specify what subjects are mandatory, voluntary or illegal within the scope of bargaining or of grievance arbitration, or to require that procedural guidelines be established for determining the same," L. 1974, c. 124, § 3(c). The court stressed, however, that a proposal to study changes is not given "the same close scrutiny by legislators as is one which has the force of law." 4 NJPER at 343. In addition, no expansive view of negotiations would be implied from such ambiguous language. Id. PERC's allusion to L. 1977, c. 85, NJSA 34:13A-14 to 21, was considered a specific decision on the part of the legislature to authorize permissive negotiations with respect to police and firemen. "This recent statute," stated the Court, "covering a small percentage of all public employees may not be accorded dispositive effect in interpreting a more general statute passed three years earlier." Id. at 343.

PERC's citations to federal precedents under the Labor Management Relations Act, 29 U.S.C. § 141 et seq., were considered inapposite, as those cases dealt with the private sector, not public employment, as pointed out in Lullo v. Intern. Assoc. of Fire Fighters, 55 N.J. 409 (1970). In that case the Supreme Court found significant differences between NJASA 34:13A-5.3, which grants only a right to "collective negotiations," and 29 U.S.C. § 157, which grants a right to "collective bargaining." Thus, the Court stated:

> It is crystal clear that in using the term 'collective negotiations' the Legislature intended to recognize inherent limitations on the bargaining power of public employer and employee.
> ...
> And undoubtedly they were conscious also that public agencies, departments, etc., cannot abdicate or bargain away their continuing legislative or executive obligations or discretion. Consequently, absent some further changes in pertinent statutes public employers may not be able to make binding contractual commitments relating to certain subjects
> ...
> Finally, it signified an effort to make public employers and employees realize that the process of collective bargaining as understood in the private employment sector cannot be transplanted into the public service.

4 NJPER at 344, citing 55 N.J. at 440.

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5. The Court cautioned the Legislature to carefully consider any proposal to authorize permissive negotiability with respect to all public employees. Stated the Court:

> A private employer may bargain away as much or as little of its managerial control as it likes. However, the very foundation of representative democracy would be endangered if decisions on significant matters of governmental policy were left to the process of collective negotiation, where citizen participation is precluded. This Court would be most reluctant to sanction collective agreement on matters which are essentially managerial in nature, because the true managers are the people. Our democratic system demands that governmental bodies retain their accountability to the citizenry.

Id. at 345. Indeed, the Court has invalidated delegations of governmental policy-making power to private groups where a serious potential for self-serving action was created. See, e.g. Group Health Insurance v. Howell, 40 N.J. 436, after remand 43 N.J. 104 (1964), in which the Court struck down a statute which required prior approval by the New Jersey Medical Societ of any medical services corporation before it could be licensed by the Commissioner of Insurance. In conclusion, the Court stated that the legislature was, of course, free to determine whether a permissive category is sound policy. "We wish merely to point out that careful consideration of the limits which our democratic system places on delegation of government powers is called for before any such action is taken. On the other hand, we are in no way prejudging the constitutionality of the concept of permissive negotiation per se." 4 NJPER at 345.

Board Policy

The Board of Education recognized its responsibility to negotiate as to terms and conditions of employment pursuant to statutory and case law. The board also recognizes its duty to hear grievances over the interpretation, application, or violation of policies, agreements, and administration decisions affecting employees. However, the board is not obligated to utilize arbitration, binding or not, in the absence of a negotiated agreement as to such. The board will neither negotiate nor arbitrate if the effect of such would be to contravene state law.

TESTIMONY ON S-3567

by

Dr. Kenneth D. Hall
Superintendent of Schools
Matawan-Aberdeen Regional School District

The Matawan-Aberdeen Regional Board of Education has expended more than a quarter of a million dollars in the area of collective bargaining and related labor issues over the past two years. This amount does not include the hundreds of hours of administrative time spent on matters that have contributed nothing to the education of children. During this period, the school district has experienced teacher "job actions," both disruptive and detrimental to the educational process.

The powers of a teachers' union are broad. There are but a few managerial prerogatives left to boards of education. Teachers have life tenure after three years and are guaranteed rights by the courts and the Public Employee Relations Commission to negotiate on more than 55 specific topics that primarily and directly affect them in the work place.

In most school districts there is presently a good balance of power between unions and boards of education; however, in cases of adversarial and hostile collective bargaining conditions, teachers' unions can and have completely disrupted the delivery of educational services to children in school districts across the state of New Jersey. The ultimate disruption is a teacher strike; however, subtle "job actions" and refusals to assist and participate in inservice programs, curricular and co-curricular activities can also have a devastating effect on the quality of educational programs.

In order to better understand the significance of the expansion of "scope" legislation, I would like to comment briefly on discipline of staff, transfers of staff, co-curricular assignments and the assignment of non-teaching duties.

DISCIPLINE OF STAFF

Unions now have the ability to negotiate "Just Cause" provisions that provide for progressive discipline. In addition, they may negotiate on grievance language, binding arbitration, procedures for placing and reviewing materials in files, or for meetings by staff with administrators, to name just a few. For example, in our district teachers must know when materials are being placed in their files and they have not only the opportunity to rebut, but also may grieve to have the materials removed if they are truly deemed to be inappropriate. Moreover, if teachers are called to a meeting that potentially could involve discipline they must be informed of the reason in writing and must be told they may have a representative present.

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If a tenured teacher's increment is withheld the matter may be appealed to the Commissioner. If a tenured teacher is faced with possible dismissal or is suspended then it goes directly to the Commissioner. Arbitrary and capricious actions or harrassment issues may be brought to the Public Employees Relations Commission in the form of Unfair Labor Practice charges. Lastly, in some instances such as affirmative action, employees have redress to administrative agencies and the courts.

The point is that we presently have the ability to negotiate adequate employee safeguards that provide for impartial review. Each case is slightly different from every other case which is why a simple list of possible offenses and actual disciplinary measures is absurd, especially if areas are omitted. In everyday life, if one commits an act that another believes to be inappropriate we have judges who rule on a case by case basis.

TRANSFERS OF STAFF

Transfers are now amply protected by certification; and, in the event of a RIF are also amply protected by seniority rights. When a person becomes certified and they are then hired it is with the understanding that they have the ability to teach under the full scope of their certificate. When they are hired they are glad to have a job. What rational reason could there be in possibly limiting an employer's ability in moving persons to other areas that they are, by law, fully capable of working in? How will we define transfers? Will it be from one grade level to another within a school? Will it be from one department to another in the same school? Will it be from one school to another? Will the unions expect transfers to be based upon seniority? If so, what if a "senior" teacher has no computer skills but must, if we use seniority as the determining factor, go to an opening where that skill is necessary? What is to prevent one from raising the smokescreen of so-called disciplinary transfers? Transfers are by definition really not disciplinary. Without wrongdoing, teachers may not be reduced, by law, in either rank or compensation. In the above case you will note that the union's method does not take into account the needs of the students.

In our district teachers, by contract, must know their assignments for the next school year two days before the end of the present school year. Transfers within the scope of one's certification made in this manner may not be challenged; however, disciplinary measures may at all times be challenged. Transfers made during the summer or during the school year that are involuntary must have written reasons given to the person affected [redacted] and must be the result of an emergency; otherwise, they are subject to grievance. Obviously the interpretation of the motive, the reason, or the emergency is also subject to grievance.

CO-CURRICULAR ASSIGNMENTS

The union presently negotiates the compensation and working conditions for co-curricular assignments. Our first responsibility is to our children's needs. If, for example, we have a debate team that is in the middle of its season and the advisor becomes ill and no one else in the school wants the job, do we throw the students to the wolves? We must retain the ability to assign someone. The just and fair compensation has already been negotiated. If a board foolishly picks a person who can't do the job, then the employee can't be faulted if he/she tries. If this were done, then the union has recourse to either arbitration or PERC.

In our district we have been fortunate in not ever having had to appoint anyone against his/her will; however, we would not like to lose our ability to do that if we had to. In some cases in our district, aides or substitute teachers perform co-curricular functions. If we are required to use "teaching staff members only" then we would be forced to either assign or, if we could not do that, drop the activity.

ASSIGNMENT OF NON-TEACHING DUTIES

If districts are forced to hire other persons to perform non-teaching duties then the cost of public education will, of necessity, increase. The teachers will want to use their newly found time as preparation time. The jobs will still be there and someone will have to be paid to do the work. Where will the money come from? The State hasn't even funded its own formula. Boards are faulted for giving out raises of 8% or above when the inflation rate is less; yet, it was the State that mandated $18,500. Moreover, the State did not praise districts for giving lower than inflationary raises when inflation was over 15%.

The teachers know the students and have their respect. Other persons performing study hall duty would not command the same respect.

IN CONCLUSION

Both the unions and the boards are frequently unhappy with arbitrators who are either pro-labor or pro-management or who "split the baby." Both sides may "blackball" certain arbitrators. To be sure, they are conscious of this. Why muddy up more waters? Why take more prerogatives away that protect students and the public?

There are few real horror stories. The ones that do exist should be dealt with as appropriate, but not by changing the whole system for everyone else. We need to spotlight the problem areas and cause public pressure from many sources to clean up such trouble spots.

Under the present legal structure a union may, if it wants to, file grievances, PERC actions, Commissioner actions, and court

actions. It may undertake job actions that are questionable or outright intended to harrass without substantial fear of fine or punishment and thus cripple a school district and rob it of valuable time and money resources. Over the course of many years a delicate balance has been achieved that each side already believes favors the other. Why tip the scales clearly in favor of the union when absolutely no pressing reason exists for doing so?

STATEMENT OF N.J. CONFERENCE OF MAYORS

SENATE BILLS 3567, 266, 606 and 855

SENATE LABOR, INDUSTRIES AND PROFESSIONS COMMITTEE

GOOD AFTERNOON:

I AM JAMES SMITH, FORMER MAYOR OF HACKETTSTOWN. I APPEAR TODAY ON BEHALF OF MAYOR JOHN TARDITI, MAYOR OF HADDONFIELD AND PRESIDENT OF THE NEW JERSEY CONFERENCE OF MAYORS, OF WHICH I AM A PAST PRESIDENT.

THE CONFERENCE OF MAYORS OPPOSES THE SCOPE OF NEGOTIATIONS BILLS BEFORE THIS COMMITTEE. THESE INCLUDE SENATE BILLS 3567, 266, 606 AND 855.

WE OPPOSE THEM AS A MATTER OF PRINCIPLE. THIS TYPE OF LEGISLATION HAS APPEARED IN OTHER GUISES IN PREVIOUS LEGISLATURES, BUT FORTUNATELY HAS BEEN DEFEATED. IT IS NOT IN THE PUBLIC INTEREST. NOT ONLY IS IT LIKELY TO COST OUR TAXPAYERS MORE MONEY DURING A TIME WHEN MONEY IS LIMITED, IT UNFAIRLY TIPS THE NEGOTIATING SCALES IN FAVOR OF A SPECIAL INTEREST.

THE PROPONENTS OF SUCH LEGISLATION HAVE NOT DEMONSTRATED A COMPELLING NEED FOR IT. NEW JERSEY AT THIS TIME HAS AMONG THE MOST LIBERAL LAWS IN THE NATION IN THE AREA OF COLLECTIVE BARGAINING. A FURTHER EROSION OF LEGITIMATE MANAGEMENT PREROGATIVES IS NOT JUSTIFIED.

IT IS ONE THING TO GUARANTEE EMPLOYEES A FAIR BARGAINING SYSTEM ON MATTERS OF COMPENSATION AND WELFARE. THAT THEY SHOULD HAVE, AND LAWS ALREADY ON THE BOOKS ADEQUATELY PROTECT SUCH RIGHTS.

BUT GRANTING PUBLIC EMPLOYEES BROADER CONTROL OVER POLICY AND DISCIPLINARY DECISIONS IS A DIFFERENT MATTER ENTIRELY.

UNDER OUR SYSTEM, ELECTED OFFICIALS, OR BOARDS APPOINTED BY ELECTED OFFICIALS, ARE PLACED INTO OFFICE TO REPRESENT INTERESTS OF THE COMMUNITY AT LARGE. BARGAINING UNITS FOR PUBLIC EMPLOYEES ARE A SPECIAL INTEREST GROUP REPRESENTING ONLY A SMALL SEGMENT OF THAT COMMUNITY.

>>>>

OUR INTEREST IN THE THREE BILLS AFFECTING ALL PUBLIC EMPLOYEES IS SELF EVIDENT. AS TO THE ONE AFFECTING ONLY SCHOOL BOARDS, WE CANNOT IGNORE THE FACT THAT WHILE SCHOOL BOARDS AND MUNICIPAL GOVERNING BODIES ARE SEPARATE LEGAL ENTITIES, THEY DO DRAW FUNDING FROM THE SAME LIMITED BASE OF PROPERTY TAXES. THE INDIVIDUAL TAXPAYER USUALLY SEES THEM AS ONE AND THE SAME, SINCE HE PAYS ONE TAX BILL FORWARDED BY THE MUNICIPALITY.

TODAY, IN PARTICULAR, FUNDING SLASHES AT THE FEDERAL AND STATE LEVELS, PLUS THE IMPACT OF STATE MANDATES, HAVE MANY COMMUNITIES IN SEVERE FISCAL DISTRESS. THEY CANNOT AFFORD ADDITIONAL COSTS RESULTING FROM ONE-SIDED LABOR NEGOTIATIONS. SIMPLY PUT, THIS IS THE WRONG ISSUE AT THE WRONG TIME.

THESE BILLS APPEAR TO BE A CLEAR ATTEMPT TO CIRCUMVENT RECENT SUPREME COURT RULINGS DESIGNED TO PRESERVE THE BALANCE BETWEEN PUBLIC AND SPECIAL INTERESTS. THE RULINGS WERE REACHED AFTER EXTENSIVE STUDY AND ARGUMENTS BY BOTH SIDES. THEY SHOULD NOT BE SHOVED ASIDE.

IN FAIRNESS TO THE COMMUNITY AT LARGE, WHICH YOU AS LEGISLATORS AND WE AS LOCAL OFFICIALS BOTH REPRESENT, WE URGE THAT YOU REJECT THESE ATTEMPTS TO TAKE NECESSARY AND LEGITIMATE AUTHORITY AWAY FROM US.

WE FEAR THE CONSEQUENCES OF SUCH ACTION COULD BE SEVERE, INCLUDING CRIPPLING STRIKES, HIGHER COSTS AND A ROADBLOCKING OF BENEFICIAL POLICY CHANGES.

THANK YOU FOR YOUR ATTENTION.

MaH
5/15/89

55X

Resolution

Cranford Board of Education

No. 1

Motion by Dr. Sintich *Seconded by* Mrs. Martinelli

OPPOSITION TO S-606 and S-3567

BE IT RESOLVED that the Cranford Board of Education opposes S-606, S-3567, and any other newly proposed Senate bills which would expand the scope of negotiations. The subject of these bills, if enacted, would be a serious threat to school boards and public education.

FURTHER, BE IT RESOLVED that this resolution be sent to Senate President John Russo, with a copy to the Senate Labor Committee, so that an expression of the Cranford Board of Education's opposition to this bill can be noted.

This is a true copy of action taken by the Cranford Board of Education on

June 12, 1989

Fred P. Moore

Board Secretary

56X

JAMES J. NASH, JR., PRESIDENT
MARYBELLE HARRIS, SECRETARY
609-723-2139

"The Home of Fort Dix and McGuire Air Force Base"

NEW HANOVER BOARD OF EDUCATION
P. O. BOX 276, FORT DIX STREET
WRIGHTSTOWN, NJ 08562

May 19, 1989

TO: Senator Raymond J. Lesniak
Franklin State Plaza
24-52 Rahway Ave.
Elizabeth, N.J. 07202

From: New Hanover Township
Board of Education
P.O. Box 276
Wrightstown, N.J. 08562
(609) 723-2139

Subject: S-3567 and as yet unnumbered companion legislation anticipated to be introduced by the assembly.

Whereas it is anticipated that the Senate Labor Committee will hold public hearings on the aforementioned S-3567, together with related S-606 (Cowan), S-855 (Jackman), and S-266 (Dumont) and,

Whereas the State Assembly Labor Committee will also consider similar if not identical legislative proposals,

Now therefore, the New Hanover Township Board Of Education in Burlington County, hereby unanimously indicates its collective concern and opposition to any/all such legislation having as its ultimate effect the diminution of each and every school board fundamental right to establish and administer school policies.

5-7X

Board members through out the state give unselfishly of their time and efforts to insure thorough and efficient education for those in their charge, simultaneously attempting to provide monetary effectiveness to the taxpayers, already overburdened, and in the face of large funding reductions.

Subject legislation, if passed, can be expected to precipitate numerous unwarranted "adverse actions", with attendant expensive litigation.

Cognizance is taken that fortunately the majority of teachers are professional, dedicated, effective and productive. However means must continue to exist whereby a board may properly discipline those who are not equally professional and effective.

To negotiate teacher discipline is tantamount to "setting the fox to watch the hen house", or negotiating a laundry list of potential infractions with very small children in an attempt to establish punishments in advance, a ludicrous and most inappropriate solution.

Proposed expansion of negotiable items will effectively blackmail school boards into trading off crucial responsibilities for labor peace or monetary savings a truly reprehensible action.

Recognition should be taken of the fact that the Constitution of the United States, exists for the good of all the people, not just special interest groups ie, N.J.E.A., which in this instance will be the sole beneficiary of the proposed legislation to the concurrent detriment to Students, Parents and Taxpayers through out the State of New Jersey.

Due process already exists to permit effective negotiations, therefore, if it isn't broke, why fix it?

In summary, the New Hanover Township Board of Education pleads with and trusts that the respective committees and the entire legislative body will exercise prudent judgment and act for the benefit of the entire public which they were elected to represent, to the exclusion of any person or groups of persons whose self-serving motivations are not in the public interest.

Respectfully,

James J. Nash, Jr.

cf:

N.J.S.B.A.
Governmental Relations Department

JAMES J. NASH, JR., PRESIDENT
MARYBELLE HARRIS, SECRETARY
609-723-2139

"The Home of Fort Dix and McGuire Air Force Base"

NEW HANOVER BOARD OF EDUCATION
P. O. BOX 276, FORT DIX STREET
WRIGHTSTOWN, NJ 08562

I, Marybelle Harris, Secretary of the New Hanover Township Board of Education, County of Burlington, State of New Jersey, HEREBY CERTIFY that the attached extract from the minutes of the meeting held on May 10, 1989 is a true and correct copy of the minutes as recorded in the Minute Book of this Board of Education.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of said Board of Education this 19th day of May 1989

Marybelle Harris

Marybelle Harris, Secretary

60X

STATE OF NEW JERSEY
COUNCIL OF COUNTY COLLEGES
330 WEST STATE STREET, TRENTON, NEW JERSEY 08608

MR. MICHAEL J. TRAINO
Chairman of the Council of
County Colleges
(609) 392-3434

May 22, 1989

TESTIMONY PRESENTED TO THE SENATE LABOR,
INDUSTRY, AND PROFESSIONS COMMITTEE
by The New Jersey Council of County Colleges

The New Jersey Council of County Colleges strongly opposes a bill sponsored by Senator Cowan, S-606, which would change the categories of negotiations in public employee labor contracts covered under the "Public Employee Relations Act". Just as the Council appreciates being excluded from another bill that would expand the scope of negotiations, S-3567, sponsored by Senator Russo, we object to expanding the scope of negotiations in general and to the provisions of S-606 in particular.

Currently, county college employee negotiations are governed by the Supreme Court's Ridgefield Park Decision (Ridgefield Park Education Association V. Ridgefield Park Board of Education 78 NJ 144 - 1978), which states that there can be no permissive category of negotiations, only illegal matters or mandatory ones. The court reasoned that a permissive category could severely infringe upon management's statutory responsibility.

S-606 would undo that decision: it would re-instate the permissive category; broadly extend the mandatory category to additional matters; and re-define the illegal category as those subjects "which are specifically prohibited by statutory language." Negotiated agreements could even

supersede the rules and regulations promulgated by State agencies. The bill would, in short, turn existing labor law on its head.

Under permissive subjects, for example, could be a good number of educational policy issues such as class size, academic calendar, curriculum, and evaluation criteria.

Dependent on tuition, and county and state revenues, the county community colleges are public institutions lead by trustees. When formulating policy decisions, the trustees must consider the school's mission, directives from the State, student needs, and the priorities of state and county residents.

Maintaining administrative flexibility is a necessity for the county colleges because their policy decisions are based on a constantly changing set of factors from advances in high technology to improvements in courses and curriculum. The colleges must accommodate the needs of huge, non-traditional student bodies. The colleges must also consider fluctuating factors such as incidents of crime and the condition of equipment when deciding questions which involve the students' safety and welfare. When certain courses are offered or when access gates are open should not be decided in a vacuum, behind closed doors, in a high-pressure negotiating session.

Also, S-606 would mandate that binding arbitration be part of the grievance procedure. This provision would allow an arbitrator, who is unaccountable to the public and has no stake in the school, to reverse a college decision and thereby make public policy governing the quality and character of the public work force. Should this legislation be enacted, a college's ability to carry-out its mission would be seriously threatened.

Most importantly, S-606 would work against the public interest in two ways. First, by requiring the county colleges to negotiate a much wider range of issues, this legislation would soon raise the costs of providing higher education. Unlike school boards, the county colleges do not have taxing authority. They are dependent on tuition and contributions from the county and state. In fact, because of the budget shortfall, the colleges now confront a decrease in their financial aid. Increased expenses would be likely to require higher tuitions from a group of students who can least afford it.

Simultaneously, the bill would take a critical measure of control away from the college and give it to a collective bargaining unit.

When considering a legislative change, the cost/benefit ratio to the public is usually considered. In this case, S-606 would raise the cost of providing a higher education

without providing any additional benefits. In fact, it could eventually lower the quality of the educational opportunity.

Because this legislation is not in the public interest, the Council of County Colleges vigorously urges you to vote against this bill's release.

AFSCME
American Federation of State, County, and Municipal Employees
Administrative Council 1, New Jersey
3635 Quakerbridge Road, Suite 1
Trenton, New Jersey 08619
Telephone: 609-587-5000

Robert Angelo
Executive Director

May 22, 1989

AFSCME SUPPORTS S-855

More than 20 years have passed since the State of New Jersey declared that it is in the public interest for public employees and public employers to negotiate in good faith over the terms and conditions of public employment. During the intervening years since the Public Employment Relations Act was passed, a complex and sometimes technical system of labor relations has developed. This system has been shaped and re-shaped by amendments to the PERC law, PERC decisions and most significantly, judicial interpretations.

A critical ingredient in any collective bargaining process is the establishment of a common ground upon which employers and employee organizations can meet as equals to negotiate in good faith. Unfortunately, New Jersey court decisions over the last decade, starting with the infamous Ridgefield Park case, have served to undermine this basic tenet of equality which makes collective negotiations an effective means for resolving disputes. By severely limiting the "scope of negotiations" New Jersey courts have provided employers with a clear and distinct advantage at the bargaining table. This erosion of equality has dramatically limited the ability of the collective bargaining process to fulfill its mandate to "prevent labor disputes, strikes, lockouts, work stoppages and other forms of employer and employee strife".

S-855 proposes to expand the current limited "scope of negotiations". This bill represents a first step in restoring the public sector negotiating process to the productive system it was intended to be. AFSCME negotiates hundreds of public sector contracts each year, on behalf of its 40,000 public employee members in New Jersey, and our union is painfully aware of the deficiencies in the law which tip the balance of power clearly to the management side. Passage of S-855 will go a long way towards reducing strikes and work stoppages because it will increase the number of topics which can be negotiated out at a bargaining table rather than fought out in the streets.

The Public Employment Relations Act was sound public policy in 1968 and S-855, which will restore the original intent of the PERC Act, is sound public policy in 1989.

MAHWAH TOWNSHIP PUBLIC SCHOOLS
MAHWAH, NEW JERSEY 07430

BARRENT M. HENRY
SUPERINTENDENT OF SCHOOLS

Administrative Offices
Ridge Road
(201) 529-5000-ext. 228

June 9, 1989

Senate Labor, Industry and Professional Committee
Office of Legislative Services
State House Annex, Room 442
CN 068
Trenton, New Jersey 08625

Attention: Dale Davis, Aide

Re: Opposition to S-3567

Dear Committee Aide:

On May 8 of this year, a bill sponsored by President John Russo expanding the scope of negotiations was introduced for consideration. Along with that bill, three others, S-266, S-606 and S-855, deal with scope of negotiations also. I ask that all of these bills be opposed by your committee.

The reason for my opposition to these bills includes:

1. Each of these bills gives additional strength to a special interest group - a teachers' union - at the expense of the taxpayers (many of whom do not have children in the school system).

The teachers' union should not be in the position to take control of the public schools. That control is given to the elected officials, or the appointed officials who represent the public.

2. The quality of education will be impaired. As a teacher with tenure there is now lifetime job security. If these bills were passed, the school boards would have to negotiate for the AUTHORITY to impose minor disciplinary action. Transfers of teachers for disciplinary actions would also be prohibited.

The employer must have the flexibility to handle disciplinary actions immediately.

3. The cost of education will go up. Cost to negotiate these contracts is only the initial cost. If the union is not in agreement with class size or any other item, the union will demand more money. This would constitute a trade of money for educational policy.

4. The bills are discriminatory to smaller districts. Smaller and less affluent districts would not be able to afford special "negotiation lawyers" to handle the negotiations that were introduced. Those who could provide the attorneys would be taking money from education.

I ask that you reject these bills unanimously. Thank you.

Sincerely,

John Raiz
Mahwah Board of Education

JR
ml

c: Governor Kean
Senate President John Russo

COUNCIL OF NEW JERSEY STATE COLLEGE LOCALS

NJSFT-AFT/AFL-CIO
420 CHESTNUT STREET
UNION, NEW JERSEY 07083
201-964-8476

June 19, 1989

The Honorable Raymond Lesniak, Chairman
and Honorable Members
Senate Labor, Industry and Professions Committee
State House
Trenton, New Jersey 08625

Re: Collective Negotiations for Public Employees

The Council of New Jersey State College Locals, AFT, which represents the faculty and professional staff in the nine state colleges, strongly supports the bills sponsored by Senators Cowan(S-606) and Jackman(S-855) and urges that you vote today to report these bills to the full Senate.

The Council supports S-606 and S-855 because they are comprehensive and broaden the scope of negotiations for all public employees. The Council has always rejected the notion that scope of negotiations may be broadened piecemeal.

The Council therefore opposes S-3567 which affects only one group of employees. Passage of bills like S-3567 which affect only one group unfortunately creates the illusion that scope of negotiations in New Jersey has been expanded, and makes it more difficult for those employee groups who are shut out from its limited provisions to secure similar rights.

Your support for the Cowan and Jackman bills ensures fairness to all public employee groups and meaningful expansion of the scope of negotiations.

Sincerely,

Marcoantonio Lacatena

Marcoantonio Lacatena
President

NEW JERSEY ASSOCIATION OF SCHOOL BUSINESS OFFICIALS

Craddock Professional Building, 146 U.S. Highway 130, Bordentown, N.J. 08505
(609) 298-5800

NEW JERSEY ASSOCIATION

OF

SCHOOL BUSINESS OFFICIALS

TESTIMONY PRESENTED TO

the

SENATE LABOR, INDUSTRY AND PROFESSIONS COMMITTEE

on

S-266, S-606, S-855 and S-3567

(Scope of Negotiations Legislation)

June 19, 1989

70X

NEW JERSEY ASSOCIATION OF SCHOOL BUSINESS OFFICIALS

Craddock Professional Building, 146 U.S. Highway 130, Bordentown, N.J. 08505
(609) 298-5800

Good Morning. My name is Nick Puleio, President-Elect of the New Jersey Association of School Business Officials and Business Administrator for the Lawrence Township Board of Education. I appreciate the opportunity to communicate the concerns of our membership pertaining to the proposed legislation expanding the scope of negotiations.

The various bills being considered raise a number of issues critical to the governance of a school district. It would be easy to recite a litany of objections or agreements to each issue, however, in the interest of time, I will limit my testimony to three concerns:

1. The proposed legislation will change the "balance" of negotiations which has taken almost twenty years to develop.
2. There will be an attendant increase in costs to the local district.
3. There will be a diminishing of accountability at the local level.

A cursory review of the negotiations process will reveal that a majority of districts have achieved a balance, over the years, where the majority of language issues have been resolved and fiscal offers are the prime concern. They can be negotiated in an atmosphere which allows the negotiating teams to focus on one major element and, as the records indicate, come to an amicable settlement.

The introduction of a number of new items into the negotiations process can only serve to upset that balance and raise the spectre of increased labor unrest.

The issue of cost is a simple process to understand for those who have participated in the negotiations process. Negotiations are trade-offs; when one participant holds a greater number of cards the other participant is forced to make the crucial decision - language or dollars. It is easy to say that one side can still say no, but that kind of thinking is naive and does not reflect an understanding of the outside forces impacting upon negotiations. There is no doubt that the expansion of issues will increase costs and this comes at a time when this legislature is faced with difficult fiscal decisions including the amount of state aid to education.

Another issue which needs to be seriously considered as you review this legislation revolves around accountability. The infusion of binding arbitration into the disciplinary process places the arbitrator in the position of final decision maker without any accountability to parents, taxpayers and citizens of a community. What message are you sending to communities about the abilities of their elected board of education members and their professional administrators?

Finally, what is so dramatically wrong at the local school district level that it requires legislation so encompassing to upset the balance of district governance? I submit to you that passage of these bills will cause labor unrest, additional costs with no appreciable benefit and a loss of accountability to the community for a sound education program.

Based on these major concerns and a number of other minor issues, the New Jersey Association of School Business Officials opposes the proposed legislation and respectfully requests the members of this committee to seriously consider the negative impact of this legislation before casting their vote.

Thank you for the opportunity to express the concerns of the membership of the New Jersey Association of School Business Officials.

MORRIS HILLS REGIONAL DISTRICT

48 KNOLL DRIVE

ROCKAWAY, NEW JERSEY 07866-4088

(201) 989-2700

CHIEF SCHOOL ADMINISTRATOR
JAMES J. MCNASBY, ED.D.
(201) 989-2707
ASS'T SUPERINTENDENT FOR
CURRICULUM & INSTRUCTION
FRED ROSENZWEIG
(201) 989-2705

BUSINESS ADMINISTRATOR/
BOARD SECRETARY
MANUEL E. DEUS
(201) 989-2704

May 22, 1989

The Honorable Raymond J. Lesniak, Chairperson
Senate Labor, Industry & Professions Committee
State House Annex
Trenton, New Jersey 08625

Dear Senator Lesniak and Members of the Committee:

We have been made aware that your committee will be addressing the issue of expanded scope of negotiations by considering bill #S-3657 which would provide for a broad range of permissive categories of negotiation.

The Morris Hills Regional District Board of Education will be adopting, at their regular monthly meeting tonight at 7:45 P.M., a resolution to support opposition to this bill in its entirety.

This resolution is based on that document which is attached and which was adopted by the Wharton Board of Education and submitted to us for review and support.

As it has been noted, an expanded scope of negotiations underscores the ultimate question of who should control the public schools — the teachers' unions who represent a special interest, or elected or appointed officials who represent the public.

We urge you all to stand up to the special interests and vote against this or any bill which increases union power at the expense of public education and public dollars.

Sincerely yours,

Manuel E. Deus

Manuel E. Deus
Business Administrator/
Board of Education

MED:pmf
Attachment

73X

WHARTON BOARD OF EDUCATION
137 E. Central Avenue
Wharton, NJ 07885

RESOLUTION

WHEREAS, New Jersey Legislature is considering a new bill #S-3567, Expanded Scope of Negotiations, and

WHEREAS, local Boards of Education in the State of New Jersey will lose management rights;

NOW, THEREFORE BE IT RESOLVED, that the Board of Education of the Borough of Wharton opposes bill #S-3567 in its entirety for the following reasons:

1. A board would have to negotiate the authority to impose "minor" discipline, such as letters of reprimand, fines, and suspensions with or without pay.

2. A board would have to negotiate and list all acts and omissions to act that warrant disciplinary actions, as well as identify the corresponding penalties and procedures for each action.

3. Transfers for disciplinary purposes would be prohibited.

4. Binding arbitration for disciplinary matters would be mandated as the final step in the grievance procedure.

5. It will cost the public more money. Boards are in a no-win position in negotiations of this type. If they attempt to keep their legitimate authority in matters of class size, assignments, discipline and public educational policy, the union will demand more money in order to give up their demands for more control of class size, assignments, and discipline. Boards will be forced to trade money for the right to establish their educational policies.

6. It will decrease the quality of education. It will be lead to less accountability in education. It will make discipline so difficult to achieve so as to chill the rights of the board to discipline ineffective teachers. This is in conflict with legislative and public demands for better teacher performance and accountability. The board must be in a position to use various disciplinary actions to enhance productivity of employees. The legislation could prevent boards from assigning teachers where they are needed to enhance productivity.

7. It will increase the number of strikes.

8. S-3567 and S-266 will encourage the union to seek to expand the laundry list each year, making more and more items negotiable. This will be a never ending process.

-over-

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9. While S-3567 purports to expand the number of negotiable items, it actually precludes negotiations of disciplinary transfers and binding arbitration for disciplinary grievances, because the teachers want this mandated. The bill is extremely one-sided; it "gives" only to the union and "takes" from the public.

10. An expanded scope of negotiations underscores the ultimate question of who should control the public schools -- the teachers unions who represent a special interest, or elected or appointed officials who represent the public.

ATTEST

Ann Rossetti

Ann Rossetti, Board Secretary
WHARTON BOROUGH BOARD OF EDUCATION

Adopted by the Wharton
Borough Board of Education
at the regular meeting held
on May 3, 1989

RESOLUTION

WHEREAS Senate Bills 3567 (Russo), 606 (Cowan), 855 (Jackman) and S-266 (Dumont), commonly referred to as "Scope of Negotiations" bills, are scheduled for a public hearing today, Monday, June 19, 1989, and

WHEREAS the Berkeley Township Board of Education, County of Ocean, is on record strongly opposing said senate bills for reasons herein cited, but not limited to and as follows:

1) The bills are in the interest of the teachers' unions.

2) The bills completely disregard the interest of the non-teaching, general public's rights.

3) The bills' intent is to take away rights of management (boards of education) to make policy.

4) The bills would take away from boards the power to make policy and move it to the bargaining table.

5) Senate Bills 606 and 855 would allow unions to negotiate class size, class placement assignment, school calendar, curriculum, evaluation procedures, and transfers of staff for disciplinary reasons, and the use of teacher aides; additionally, approval of S-606 and S-855 would take away the right of school boards to develop educational policy.

6) Senate Bill 3567 would also ban transfers for disciplinary purposes as well as binding arbitration for disciplinary matters.

7) Passage of said bills would give control of the schools to the union as boards would no longer be able to evaluate its employees for accountability to the public taxpayers which they serve.

8) Passage of these bills would put evaluation of teaching performance standards into the hands of the teachers.

9) Teachers have the protection of tenure laws; additionally they do have the legal right to negotiate salary, fringe benefits, hours of employment, dismissal procedures, leaves of absence, promotion, and ad infinitum as outlined in the New Jersey Employer-Employee Relations Act.

10) Since 1979 senate and assembly similar "scope of negotiations" bills have been continuously proposed, all of which in some form or other would force boards of education to balance union demands against monetary demands, ie: "Give us this, that or the other thing" or "pay us".

11) It is essential to public welfare that issues such as class size, with its obvious impact on budgets and taxes remain excluded from the bargaining table.

12) Because boards of education are accountable to the public at large for providing a thorough and efficient education for the children, that responsibility should not be subject to blood-letting at a bargaining table.

WHEREAS, the Berkeley Township Board of Education believes that Senate Bills 266, 606, 855 and 3567 will not serve to improve the educational programs nor the reading and math scores nor the quality of teaching, quality teaching is only as good as the teachers, and

WHEREAS, Senate Bills 266, 606, 855 and 3567 will serve only to play havoc with management-employee relationships and ultimately prove to be extremely costly to school districts, the taxpayers of individual communities and to the State at large, now

THEREFORE, Be It Resolved by the Berkeley Township Board of Education, County of Ocean, that it opposes said Senate Bills as herein noted, and

Be It Further Resolved that members of the New Jersey Senate and Assembly vote "NO" on said Bills.

CERTIFIED TRUE COPY

Elaine M. Clay

Elaine M. Clay, Secretary
Berkeley Township Board of Education
County of Ocean
Adopted June 13, 1989

AANJ AUTHORITIES ASSOCIATION OF NEW JERSEY

2333 Whitehorse-Mercerville Rd. • Suite 4 • Mercerville, NJ 08619 • (609) 584-1877

June 7, 1989

Senator Raymond J. Lesniak
24-52 Rahway Avenue
Elizabeth, NJ 07202

Dear Senator Lesniak:

The Authorities Association of New Jersey opposes S-606 because the bill offers more managerial problems than actual help to employees.

In the water, wastewater, and solid waste industry nearly 50% of all employees are unionized and more than 50% are civil service. These bargaining units have handled the needs of these employees well under the existing law. The water, wastewater, and solid waste industry is highly regulated. Public Employees OSHA, Workers' Right to Know, Confined Space Entry Regulations, and the Toxic Catastrophic Prevention Act all protect the safety of employees. In addition to a complex network of work rules and safety rules, employees in these industries are licensed for specific tasks. The state requires employees with various licenses to be available to operate the plant around the clock.

Seeing that these employees have the proper licenses and are scheduled to work appropriately in order to conform with the law is often a difficult manangerial task. Under the provisions of S-606 employees might choose to negotiate permanent work locations and remove the needed flexibility to move specially licensed individuals from plant to plant as needed.

Authority managers have an important obligation to the public to be sure that trained personnel are operating the plant properly. Managers also have an obligation to provide sewer, water, and garbage disposal services at as low a cost as possible. By permitting employees to negotiate transferring, assigning, sub-contracting, and staffing the public impact could be detrimental.

The public welfare must take precedence over the comforts of a few. As long as health and safety are prioritized, ancilary issues should not be considered in the scope of negotiations.

Please do not release this bill from committee.

Sincerely,

Ellen Gulbinsky

Ellen Gulbinsky
Executive Director

cc: Senate Labor Industry and Professions Committee
Lucy McKenzie
E. Robert Flynn
Ed Buzak
Kim Young
Dennis Palmer

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Board of Education
Dennis Township

THOMAS J. CHAMPION, *President*
DENNISVILLE, N.J. 08214

H. VICTOR GILSON
Chief School Administrator
CARL J. GALLELA
Principal

PHONE (609) 861-2859

TAMARA E. SUTTON
Secretary,
Board of Education

May 18, 1989

Senate Labor, Industry, & Professions Committee
State House Annex
Trenton, NJ 08625

ATTENTION: Mr. Dale Davis

Dear Mr. Davis:

Please accept this letter encouraging you to avoid the temptation of yielding to the great pressures that can be brought to bear by special interest groups at the expense of children. To save time let me simply say that Boards of Education are elected to serve the interests of children, the community, and the people they employ. Unions exist to serve the interests of union members. Please do not confuse either group's primary purpose.

The Dennis Township Board of Education unanimously asks you to resist any temptation to expand the scope of negotiations. Vote NO on S-3567, S-606, and S-855. We would ask Assemblymen to do likewise on any similar bill brought before the Assembly. Your consideration is appreciated.

Sincerely,

H. Victor Gilson (cp)

H. Victor Gilson
Chief School Administrator

HVG/cp
cc: Tamara Sutton, Board Secretary
Dennis Township Board of Education
Legislative Committee
NJ School Boards Governmental Relations Dept.
Senator James Hurley
Senator Raymond Lesniak
Assemblyman Robert Littell
Assemblyman Frank LoBiondo
Assemblyman Edward Salmon

79X

MILLTOWN BOARD OF EDUCATION

134 NORTH MAIN STREET
MILLTOWN, NEW JERSEY 08850

SUZY COULTER
Board Secretary / Business Manager

Telephone: 201-828-8620
201-828-8621

June 20, 1989

Mr. Dale C. Davis, Aide
Senate Labor Committee
Office of Legislative Services
State House Annex
CN 068
Trenton, NJ 08625

Dear Mr. Davis,

The Board of Education of the Borough of Milltown has directed me to notify the Senate Labor Committee of its opposition to the four bills regarding expansion of the scope of negotiations, specifically bills S-3567, S-606, S-855 and S-266.

A member of our Board serves on the executive committee of the Middlesex County School Boards Association, as well as the legislative liaison to the New Jersey Schools Boards Association. Through him, the Board is kept abreast of all pending legislation.

The Milltown Board of Education wishes you to relate to the Senate Labor Committee its complete support of the enclosed resolution adopted on June 5th by the Middlesex County School Boards Association, opposing the four aforementioned bills.

Please keep this district apprised of any pending action on this matter.

Yours truly,

Suzy Coulter

Suzy Coulter
Board Secretary

encls

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MIDDLESEX COUNTY SCHOOL BOARDS ASSOCIATION
RESOLUTION ON EXPANSION OF THE SCOPE OF NEGOTIATIONS

WHEREAS, bills S-3567, S-606, S-855 and S-266 have been introduced into the legislature and would expand the scope of negotiations in the area of disciplinary procedures, permissive categories of negotiated items and expansion of the mandatory list of negotiated items; and

WHEREAS, passage of these bills would serious erode the ability of local boards of education to respond to public and legislative demands for increased accountability of staff; and

WHEREAS, passage of these bills would impact economically on districts, both in terms of incresaed litigation arising from the binding arbitration requirement for disputes involving disciplinary actions as well as increased monetary or benefits settlements resulting from boards conceding such increases in exchange for maintaining control over disciplinary procedures; and

WHEREAS, passage of bills expanding scope of negotiations by adding a permissive category inappropriately places educational policy decision making into the context of collective bargaining; and

WHEREAS, passage of these bills may potentially incresae the likelihood of strikes as boards hold fast to positions which they beleive are in the best interests of the district; and

WHEREAS, passage of these bills exclusively benefits employee associations in a manner which contravenes the public interest in education; now, therefore, be it

RESOLVED, that the Middlesex County School Boards Association opposes S-3567, S-606, S-855 and S-266 and views this proposed legislation as contrary to the public interest of a free, appropriate education; and be it further

RESOLVED, that the Middlesex County School Board Association urges the Senate Labor Committee to reject these bills, thus reaffirming that control of the public schools must remain with the public.

Adopted at an Executive Committee
meeting of the Middlesex County
School Boards Association on June 5, 1989.

_____

Randy Ellen Solomon
President
Middlesex County School Boards Association

STATE OF NEW JERSEY

June 21, 1989

Senator Raymond Lesniak, Chairman
Senate Labor, Industry and Professions Committee
24-52 Rahway Avenue
Elizabeth, New Jersey 07202

Dear Senator Lesniak:

I ask that the following comments be incorporated as part of the record of the public hearing held on May 22, 1989 on S-266, S-606 and S-855 in accordance with Dale Davis's instructions.

The Department of Higher Education opposes these three bills which would all expand the scope of public sector bargaining to include permissive subjects. The New Jersey Supreme Court decided in Ridgefield Park Ed. Ass'n v. Ridgefield Bd. of Ed., 78 N.J. 144 (1978) to eliminate permissive subjects recognizing that management had to be protected against itself in the bargaining process in order to protect the public's interests. For instance, should class size become permissively negotiable, then faculty would have a hand in determining an institution's staffing needs. Having a voice in such decisions may greatly influence an institution's economic well-being, size and mission. Should permissive subjects again become negotiable, the governing body of an institution of higher education would lose the ability to govern effectively.

Permissive subjects typically involve educational policy. A requirement that such subjects be open to negotiation would severely limit boards of trustees from exercising their statutory prerogatives to make policy decisions. Citizen participation in determining educational policy would be similarly limited because issues currently deliberated and decided in open public meetings would be negotiated in closed door collective bargaining situations. The court in the Ridgefield decision indicated that the "potential difficulties should be carefully considered by the Legislature before taking any action expressly to authorize permissive negotiability with respect to all public employees." The Ridgefield decision makes it clear that negotiation should only be required where it would not significantly interfere with the exercise of inherent management prerogatives pertaining to the determination of governmental policy. We support that concept because it is in the public's best interest that management remain accountable to the public by adopting policies and setting terms in full view of the public and the Open Public Meetings Act.

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Expanding the negotiation process to include permissive subjects would also affect the negotiation process itself. The negotiations are labor intensive, time consuming and costly to the public now. Adding permissive subjects would burden the system greatly. Strikes could ensue resulting in a waste of state dollars and time. In addition, management and labor resources of the institution would be diverted from institutional responsibilities to negotiations.

Our institutions would suffer as a result of such a proposed legislative change. Expanding the scope of negotiations will immediately place the labor unions in a much stronger bargaining position. If the number of items to be negotiated increases, it follows that the unions will need to obtain agreement on more items in more areas in order to satisfy its membership. Management has nothing to gain from such a situation, but would undoubtedly be forced into compromising some important management prerogatives to prevent the occurrence of labor problems.

Finally, illegal subjects for negotiations now include, among other things, those that are statutorily controlled as well as those promulgated in regulations adopted to implement the statutes. Under the terms of S-606, agency regulations would become negotiable. Such a proposal is logically inconsistent because regulations which implement law should be given the same protection as the law itself. In addition, the New Jersey Supreme Court clearly articulated in N.J. State College Locals v. State Bd. of Higher Ed., 91 N.J. 18 (1982) that unions are protected against an agency regulating to avoid negotiating. Properly promulgated regulations should be protected in the same manner as statutes.

For all the above reasons, the Department of Higher Education strongly opposes these three legislative proposals and asks that the committee recognize the importance of preserving an equitable negotiation process, of protecting the public's best interest and of preventing the expansion of negotiable subjects. New Jersey's system of higher education and its pursuit of excellence would be severely hampered by a broadening of public sector bargaining.

Sincerely,

T. Edward Hollander
Chancellor

c Senate Labor, Industry
and Professions Committee
Members
Dale Davis, Committee Aide

BOARD OF EDUCATION
TOWNSHIP OF MONTAGUE
— Top of New Jersey —
RD #5, BOX 571
MONTAGUE, NEW JERSEY 07827
PHONE: (201) 293-7400

WHEREAS, the Senate Labor Committee is currently considering S-3567 (Russo), S-606 (Cowan), S-855 (Jackman), and S-266 (Dumont) which would expand the scope of negotiations to mandate bargaining of assignment of extra-curricular duties as well as making board's disciplinary authority for some infractions a mandatory subject of negotiations; and

WHEREAS, the Montague Township Board of Education believes that S-3567, S-606, S-855, and S-266 will cost the public more money in negotiated settlements when boards are forced to pay more to retain their legitimate authority as well as more money in legal fees when boards are forced to defend their legitimate exercise of authority; and

WHEREAS, the Montague Township Board of Education further believes that this expansion of the scope of negotiations will lead to a decrease in the quality of education by putting a chill on the rights of a board to discipline ineffective teachers at a time when the legislature and public are demanding better teacher performance and accountability; and

WHEREAS, the Montague Township Board of Education also maintains that this legislation will increase the number of strikes when boards feel compelled to hold steadfast to a position that will not allow unions to limit local board rights to protect the children and the public interest; and

WHEREAS, the Montague Township Board of Education believes that such unwarranted expansion of the scope of negotiations underscores the ultimate question of who should control and be responsible for the public schools--elected or appointed officials who represent the public or the teachers unions who represent a special interest;

NOW THEREFORE BE IT RESOLVED, the Montague Board of Education hereby express its strong opposition to S-3567, S-606, S-855, and S-266 and request that the Senate Labor Committee reject this legislation as being contrary to the interest of every school district and to the interests of the public at large; and

BE IT FURTHER RESOLVED that copies of this resolution be sent to all members of the Senate Labor Committee, the Honorable Senator Wayne Dumont, Assemblyman Robert Littell, Assemblyman Garabed Haytaian, Sussex County boards of education, and the New Jersey School Boards Association.

Adopted by the Montague Board of Education
at their public meeting, June 12, 1989.

William J. Moylan
William J. Moylan,
Board President

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JOINT COUNCIL No. 73

INTERNATIONAL BROTHERHOOD

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OF AMERICA

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UNION, NEW JERSEY 07083
Phone: (201) 686-8450

EXECUTIVE BOARD
DONALD GILES, Trustee
ANTHONY CATENARO, Trustee
ROBERT FEENEY, Trustee

June 30, 1989

The Honorable Chairman & Members of
New Jersey Senate Labor Industry &
Professional Committee
Senate Building
Trenton, New Jersey 08625

Honorable Gentlemen:

New Jersey Teamsters Joint Council No. 73 has taken note of the agenda before you, including proposed amendments of the Public Employees Relations Act.

It is the position of Joint Council No. 73 that the scope of negotiations should be expanded for public employees to provide that all union proposals be permitted within the scope of collective bargaining, which relates to hours of work, conditions of work, rates of pay, system of remuneration, manning, as it affects the work load, health and safety of bargaining unit employees, general safety and health environmental factors as they affect or could affect the unit employees, internal departmental rules as they affect the unit employees, rules as they affect the unit employees, and mandatory grievance and arbitration procedure, other than interest arbitration, for all collective contract provisions.

It is submitted that there is urgent need to eliminate the present unrealistic limitations upon the present ability of public employees to negotiate the items which mightly affect them, their families and their future.

Respectfully submitted,

Frank Carracino

Frank Carracino,
President

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