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

before

ASSEMBLY LABOR COMMITTEE

ASSEMBLY BILL No. 3181

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

December 6, 1990
Room 368
State House Annex
Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Assemblyman Joseph D. Patero, Chairman
Assemblyman Louis J. Gill, Vice-Chairman
Assemblyman E. Scott Garrett
Assemblyman Gary W. Stuhltrager

ALSO PRESENT:

Donna A. DiMartino
Office of Legislative Services
Aide, Assembly Labor 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

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 shall include all matters concerning compensation, hours of work, 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 compensation, hours of work, grievance procedures, disciplinary disputes and all other terms and conditions of employment not specifically prohibited by statute. Mandatory subjects for collective negotiations in public employment shall include, but are not limited to, those matters presently classified as mandatory subjects for collective bargaining and the following matters related to the terms and conditions of employment:

(1) All matter relating to job security, including layoffs, reductions in force, discipline, discharge and demotions;

(2) All matters relating to compensation including merit, bonus and increment payments;

(3) All matters relating to hours of work including shift schedules and length of the school or work year;

(4) All matters relating to job transfers and reassignments;

(5) All matters relating to procedures and criteria for evaluations, promotions and hiring;

(6) All matters relating to workload, including assignment of extracurricular and co-curricular activities and class size;

(7) All matters relating to health and safety; and

(8) All matters relating to subcontracting which impact upon the terms and conditions of employment of unit employees.

(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 prevent collective negotiations required or permitted by this act nor supersede the provisions of any negotiated agreement, except to the extent that such rules and regulations set minimum compensation or benefit levels with respect to mandatory and permissive subjects for collective negotiations.

(cf: P.L.1974, c.123, s.2)

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 executive, 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] mandatory subjects for collective negotiations or permissive subjects mutually agreed upon by the parties 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 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 permissible 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] shall 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 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.] Notwithstanding any procedures for the resolution of disputes, controversies or grievances established by any other statute, grievance procedures established by agreement between the public employer and the representative organization shall be utilized for any disputes covered by the terms of the agreement, except that an employee may elect to utilize alternate statutory and regulatory review mechanisms available pursuant to Titles 11A, 18A, and 40A of the New Jersey Statutes.

(cf: P.L.1982, c.103, s.1)

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] those matters defined as mandatory subjects for collective negotiations concerning 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 right 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] those matters defined as mandatory subjects for collective negotiations concerning 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 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-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 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 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 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.

(cf: P.L.1979, c.477, s.1)

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 fact-finding 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 [subponas] 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.

(cf: P.L.1974, c.123, s.5)

6. (New section) Nothing contained in this 1990 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. (New section) For the purpose of implementing the provisions of this 1990 amendatory and supplementary act, all statutes relating to compensation, hours of work, sick, vacation and other leave time, and pension, health, and welfare benefits shall be construed as setting minimum compensation or benefit levels.

8. 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 bargaining 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

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

ASSEMBLY, No. 3181

STATE OF NEW JERSEY

INTRODUCED MARCH 8, 1990

By Assemblyman FOY

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 employers will be implemented and promoted by the establishment 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 interests of public employers and the public, 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 agree upon mandatory subjects of negotiations or permissive subjects of negotiations, or both, 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. The Legislature further recognizes that an effective balancing of the interests of employees, employers and the

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.

public 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.

(cf: P.L.1968, c.303, s.3)

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

New Jersey State Legislature
ASSEMBLY LABOR COMMITTEE
STATE HOUSE ANNEX, CN-068
TRENTON, NEW JERSEY 08625-0068
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NOTICE OF PUBLIC HEARING

The Assembly Labor Committee will hold a public hearing on the following legislation:

A-3181 Foy	Clarifies the law with respect to the kinds of matters which are proper subjects for negotiations in public sector employment.

The hearing will be held on **Thursday, December 6, 1990, at 11:00 A.M. in Room 368, State House Annex, Trenton, New Jersey.**

The public may address comments and questions to Gregory L. Williams, Committee Aide, and persons wishing to testify should contact Kathleen Lieblang, secretary, at (609) 984-0445. Those persons presenting written testimony should provide 10 copies to the committee on the day of the hearing.

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JOSEPH D. PATERO (Chairman): Okay. We're going to start our meeting on the Scope bill right away. Just to let you know what's going to happen, we're going to meet until 12:15, and then we'll break and be back at 1:00. So we'll continue on until we've heard almost everyone on this bill.

The first one we're going to have to speak is the representative for--

UNIDENTIFIED SPEAKER FROM AUDIENCE: Speak into the mike. (discussion regarding microphones and sound system follows)

ASSEMBLYMAN PATERO: Okay. I'll try to talk a little louder.

The first person that we are going to have to speak on this bill is Assemblyman Foy's representative. Assemblyman Foy -- who is going to be Senator Foy in a little while -- is in Washington, so he could not be here. The first speaker we'll have, representing Assemblyman Foy, is Maryann Rivell.

M A R Y A N N R I V E L L: Thank you, Mr. Chairman, and members of the Committee. Assemblyman Foy is attending business meetings in Washington today, and he regrets that he is unable to be here personally to speak for the bill. He has asked that I present his testimony, which is brief, and reads as follows. Some copies of this have been presented to the Committee aide:

"This bill was introduced to restore an appropriate balance to the contract negotiation process in the public sector. Since the passage of the original 'Scope of Negotiations' law in 1968, the court has issued a number of rulings which significantly realigned the relationship of public employers and public employee representatives in the bargaining process. It is time for the Legislature to restore the balance that was unsettled by the courts.

"A-3181 establishes as State policy, a collective bargaining system which will permit public employees to

negotiate on any issue that is not specifically precluded by statute.

"It also 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.

"Further, 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.

"The Committee will undoubtedly be asked to consider changes in this legislation as it deliberates on the 'scope' issue. For my part, I intend to introduce legislation similar to A-3181 when I accept my new role in the Senate, and I will include all reasonable and necessary changes that this Committee deems necessary.

"A-3181 is a necessary piece of legislation. I urge my colleagues from both sides of the aisle to support this restoration of employee rights.

"Thank you for your consideration of this important legislation."

Thank you, Mr. Chairman.

ASSEMBLYMAN PATERO: Thank you.

Now, we'll go into the public hearing portion of the bill. The first person we'll have speak is Robert Yackel, the Chairman of the Public Employee Committee of the New Jersey AFL-CIO. Bob?

R O B E R T Y A C K E L: I brought along with me today Frank Forst, who was a Commissioner on the PERC board at its inception, and he'll give you some background.

Thank you for the opportunity to speak on--

ASSEMBLYMAN PATERO: Bob? He will have to speak and identify himself, for the record.

F R A N C I S A. F O R S T: Now? My name is Francis A. F-O-R-S-T, Forst. I'm a Vice President of the New Jersey AFL-CIO. I'm a labor consultant with Local No. 194 of the International Federation of Professional and Technical Engineers, and as Bob said, I was a PERC Commissioner for six years under two different Governors.

ASSEMBLYMAN PATERO: Okay. Thank you.

MR. YACKEL: Thank you for the opportunity to address this Committee on A-3181. It is the piece of legislation before us that addresses the real problems of public sector collective bargaining in this State.

This bill expands the scope of bargaining for public employees. Collective bargaining means just that: management and labor hammering out an agreement that is fair and equitable to both sides, including the taxpayer.

It's been said that this legislation will cost the taxpayer more money. That is simply not true. Public sector unions may very well opt to forgo economic considerations for the opportunity to negotiate a contract clause that is noneconomic in nature, but that is of the utmost importance to their members. This legislation will restore to the process such areas as matters relating to layoff procedures that are to be followed, procedures and criteria for promotions, and health and safety in the workplace.

To illustrate the travesties of the Ridgefield Park decision, let me underscore for you the rights that one union has lost by the creation of New Jersey Transit, which used to be a private sector union which went into the public sector. They have lost the following rights to negotiate:

* subcontracting of bargaining unit's work,
* vacancies and promotions,
* transfers,

* part-time employees replacing full-timers,

* scheduling,

* provisions relating to the criteria for employee performance,

* staffing,

* union security,

* sick leave policy, and

* work assignments.

Twice before we have had these rights restored by the Legislature only to have the State Supreme Court exacerbate the collective bargaining laws of this State. The courts, who employ so many public employees, have carefully restructured the collective bargaining laws for public employees to the extent that the original intent of the law is now lost.

It is for this reason that we urge this Committee and the entire Legislature to return to public employees and employers alike, the rights and dignity they deserve in the collective bargaining process. To leave the current court decisions in place is to have public employees and their employers enter into collective bargaining with one hand tied behind their backs.

Frank, I'd like you to give them a little history of how the law started and where we've come to today.

ASSEMBLYMAN PATERO: Mr. Forst?

MR. FORST: I was President through the 1960s when the bargaining law was originally discussed and various commissions were set up. A Public Study Commission was set up in 1967 under Governor Hughes, and the passage of the law in 1968 which the Governor vetoed. Those of you who are here who were aware or not aware, the Legislature overrode the Governor's veto, to put the first public employees' law into effect, because the Governor's Office at that time -- and I guess subsequently many times -- has, as the primary public employer never really wanted to bargain or negotiate with workers. But it was the

Legislature that came to the realization that public employees should have these rights. That's why whenever we get into trouble on these things -- whenever there is a problem -- we always are back appealing to the Legislature, trying to correct those problems.

The first and biggest difficulty that we had was when the courts started to make rulings that were contrary to what seemed to be in the PERC Law in 1968. It took us until 1974 to have that amended. In 1974, after a lot of discussions and hearings similar to what we are having here today, it was agreed that the easiest way to resolve the problem was to amend the law which said that, "Nothing contained herein shall annul or modify any statute or statutes of the State."

That was to be amended and was amended in 1974 to read, "Nothing contained herein shall annul or modify any pension statute or statutes of the State," which the Legislature did in order to make everything -- let us say -- negotiable, except pensions. They felt that the cost of pensions -- in their own wisdom I suppose -- should not be negotiated and in fact, today, as you know, are not negotiated.

But by some quirk -- either clerical quirk, or whatever -- they put the word "or" in twice, and the words, "Nothing contained herein shall annul or modify any statute or pension statute." They ended up with the word "pension" before the first word "statute," and went back to the courts. And since 1974, that which the Legislature thought that it had done by correcting the law was nullified, because the Supreme Court has interpreted that to have been no change at all. It only reiterated what had been in the law prior to.

We have been trying since 1974, which now happens to be 16 years, to try to get that changed. The constant approach of the Legislature has been one bill after another. Those of you who have been here for awhile know the various bills that have been around.

We have been challenged by many legislators in both parties. "Well, come up with a laundry list. Don't just tell us that you want to negotiate everything. Come up with a laundry list of what you want to negotiate."

As a negotiator over a number of years, the idea of a laundry list has always been anathema to me, because I always thought that if decided here -- let's say right here in 1990 -- that we should have a laundry list of what is negotiable, we might leave something out.

We all know that before the 1940s employees didn't have pensions, for example. They didn't have dependent hospitalization in contracts. Later on, they didn't have dental care. We now have such things as vision care. There are so many things that are now negotiable that weren't even thought of in the 1940s and 1950s, that it would be hard to make a list.

I've tried it in my own business in negotiating with public employers who want to say that employees can be disciplined or discharged for cause. I've said to employers, "Define 'cause' for me." "Well, 'cause' is, you know, when they do something wrong." "Well, give me a laundry list. Tell me what you are willing to fire people for." They won't make the list. "Well, tell me what things are that you want to discipline people for." They won't make a list. They might leave something out; they might forget something.

You know, it's almost the same thing, in juxtaposition of trying to make a list of what you want to negotiate, you know, and have that law last for any length of time.

However, to meet the opposition to amending the PERC Law and to meet the disagreements that come along, A-3181 was drafted. It does have a laundry list. It does attempt to make that demand upon the laboring groups that they should at least list what is negotiable.

In my six years as PERC Commissioner -- and I'm not going to waste a lot of your time with this, no war stories, just a little background. I was appointed by Governor Cahill, who as you all know, was a Republican Governor, and when Governor Byrne came in, I was reappointed by Governor Byrne. So I didn't have a party position on the PERC Commission. I had a position because I was involved and I knew what was going on and had some continuity of oversight.

The PERC Commission had ruled on the question of permissible negotiable items, and I think that the-- When you talk about people going the extra mile, the PERC Commission was well aware-- It was a tripartite commission: public employers, public employees, and three noninvolved members. Although when I was on there, there were three management lawyers, representatives of private employers, but they all recognized that there is a difference between public employment and private employment.

I think the law recognized that. The Constitution of the State of New Jersey recognized that. I think that with the courts now trying to bind up everything, the Public Employment Relations Commission decided to set up permissible negotiations.

They became very strict on what was negotiable. They said certain things should not be negotiable because in private employment it's all right. But in public employment -- because of the public interest and the need for the public interest -- it was not negotiable. But there were items in-between, which under the National Labor Relations Act -- under the Federal laws that private employees negotiate -- they are allowed to negotiate, but we're not going to allow them; we'll make it permissive.

We will try something here. It's 1970, there is only one or two other PERC Laws in the whole country, one in Wisconsin I believe, and one in Michigan. So they were going to try to set up this permissible area of negotiations so that each public employer in different situations--

I'm not going to go into the merits of all of them, but you have school boards that have an educational process that begins in September, as we know, and ends in June. They have a certain procedure and a number of days that they have, in order to educate children, and so on and so forth. You have county colleges that have a paid tuition system where people are actually paying to attend, even though they may be subsidized by government. You have -- like where I'm from -- the Turnpike, where it's not taxes but it's tolls that pays for the maintenance of the road. So that PERC set up a permissive system of negotiability so that what would fit in a given situation, what would be negotiable in a school situation, but maybe not necessarily in a county situation-- Or what might be negotiable for rights of transfer, let's say on the Turnpike or in a transit situation, that may not be negotiable in a--

And the courts knocked it down. The court said, "There is no such thing." We were left with nothing, you know. A whole list of things, where PERC had been very stringent in what was mandatorily negotiable and then no permissive negotiations, and threw the whole thing out of whack again--

So this effort is a 16-year effort to put us back where we were, where we believed we were; where we believed we were in 1968 when we started out, and where we believed we were when the law was amended in 1974. I don't know who of you were here in 1974, but in fact, the courts have said the amendments of 1974 were meaningless. Even though words were changed, they said they didn't mean anything; that there was no legislative intent because of the slip of somebody putting the word "pensions" in front of the second word "statutes" instead of the first word "statutes" or the extra "or" in the law.

To this day I've talked to legislators and your predecessors; I don't know who put it there. I've talked to staff; nobody knows how it got there. But that's where it was, and that's what the courts have interpreted.

I'm going to conclude with that. This is a fair law. This is an honest law. It's a bill that's past its time, and we look for bipartisan consideration for this law. The original PERC Law -- the amendments to the PERC Law -- were all bipartisan efforts, and we would hope to have a bipartisan effort in this, to restore the rights of the public employees in this area.

ASSEMBLYMAN PATERO: Mr. Forst, as you know, my background was in personnel, so I worked with contracts. I was a mayor when this was law before the court overturned it, and I always try to-- And I was the last sponsor of A-585, which passed both Houses and was vetoed by the Governor.

I've always tried to explain to management, "Look, it works both ways." A lot of times the unions will be willing to give up money -- some parts of the money settlement -- for some little thing like a five minute washup, or a little something that doesn't cost anything. That's one of the hardest things to try and explain to management.

I think their fears shouldn't be fears at all. I think this is a just bill.

MR. FORST: If you don't mind my just briefly responding to that, we had a lot of public employees around in 1974. The one who comes visually to my mind is Mayor Jordan of Jersey City, who argued so valiantly about not including pensions because they had a separate pension system and Newark had separate pension systems. That's why that agreement was struck. Pat Dodd, who now is on the Casino Control Commission, was on that committee, as best as I remember. The issue really is never money as to what's negotiable. The real issue of what's negotiable becomes as to whether you have a work force-- If anybody saw the article in The Star-Ledger that Don Warshau wrote the other day about private industry complaining that only about 30% of the people are interested in their jobs. If you ever saw such a condemnation of private

employer/employee relations, the lack of interest, the survey that was done by some business group, and an article right underneath it by Charles Marciante, talking about what we need to revitalize business and to get the economy going again -- in the same issue of The Star-Ledger.

I think of my own Turnpike situation, where we do negotiate most of the things that are not legal and not even permissible, because the management over there has been pretty wise for a long period of time and realizes that good labor relations -- good employer/employee relations-- You go over and ask a Turnpike worker, and he'll tell you that you couldn't shoot them out of their job. You couldn't blow them out of their job, you see. And they work hard and they're loyal and you see the backups on the road and you see how the toll collectors--

So that management buys not just money value for whatever is negotiated, management buys a work force that is very strong, hard working, and loyal, with the right to talk about what is safe.

I don't want to tell another war story but when I started with the highway workers, when Governor Hughes was here, one of the first things that we negotiated was the trucks that we plowed snow with. There were holes in the bottoms of the trucks, and the guy who plowed snow-- And the snow would come up through the cabin. We had one fellow who stepped on the running board in Ocean Township and go off the running board and cut his leg because it was all rusted. We negotiated a revolving equipment purchase program for safety.

It didn't bring anything to the union. It didn't bring anything to the workers. We negotiated the six-man cabs, because the men who cut the grass and all with the big scythes and sickles in the back of the truck, would sit back there, and these things would be flopping all over the back of the truck.

They could get a foot cut off, or a leg cut off with all these big cutting instruments that if-- They're riding in the back of the truck.

Safety things are important, and I don't think it's a money thing. Sure, some unions are unreasonable. I'll grant that up front, just as some management is unreasonable. I wasn't going to mention his name. (laughter)

ASSEMBLYMAN PATERO: But Frank, as I said, if you could only bring up money matters, that's not negotiations. There are other things that can be brought up. It's a give and take.

MR. YACKEL: It severely limits what you can negotiate.

ASSEMBLYMAN PATERO: That's right.

MR. YACKEL: You can't even negotiate safety and health things that you would be willing to forgo financial considerations for.

ASSEMBLYMAN PATERO: Money, right.

MR. YACKEL: And the employer in their infinite wisdom doesn't see that in a lot of cases.

ASSEMBLYMAN PATERO: Are there any questions from the Committee? (no response) Okay, thank you very much.

MR. YACKEL: Thank you.

MR. FORST: For having us.

ASSEMBLYMAN PATERO: The next person will be Mr. Robert Angelo from AFSCME, District Council No. 1.

R O B E R T A N G E L O: Good morning, Mr. Chairman. I have copies of my statement that I will not read, but I would like to make a few remarks regarding this legislation.

ASSEMBLYMAN PATERO: Okay. Before you start, just to let everyone-- We'd appreciate, if you have statements that you do not read it, because we will give it to the stenographer, and she will print it verbatim. If you just give a brief synopsis, we'd appreciate it.

One other thing, I just want, for the record, to know that the members who are present are: Vice-Chairman of the Labor Committee, Lou Gill; and Assemblyman Scott Garrett.

MR. ANGELO: Thank you, Mr. Chairman. I'll be loud because we feel loudly about this bill, and because you can't hear in the back of the room. At least I couldn't hear. (applause)

Let me at the outset say, I did not cede any of my time to Brother Forst. I'll take my own time, but I will attempt to be brief. Obviously, I think the Chairman should be applauded for having the hearing today, and for his continued support of this issue over the many years that it's languished in the halls of the Legislature.

I also think the Committee and the Chairman can see by the size of the crowd here today, that this is an issue that every public employee in the State of New Jersey is concerned about, and will continue to come to Trenton for, every time there is a hearing or a vote on this piece of legislation.

We feel loudly about it. We feel loudly about it, I think in a sense, because of what's going on in public sector bargaining right now. Pick up the paper, whether it's the State government, the city government, or the county government; we're facing layoffs, we're facing furloughs, we're facing cutbacks, and damn it, we ought to be able to negotiate at a bargaining table what every other person in the private sector can negotiate, the items that are in this bill.

I'm the Executive Director of Council No. 1 of the American Federation of State, County, and Municipal Employees -- AFSCME. We've been negotiating in New Jersey under the current legislation since 1968 like everyone else. We negotiate and administer 120 contracts annually around the State. We face the problems that other speakers have alluded to before us; of having our hands tied on important work issues that belong in the labor-management agreement. Whether it's permissive or mandatory, it should be included in the contract.

We demand the right to come to the bargaining table as an equal with management, not as an unequal person. For years and years, public employees have been treated as second-class citizens in a number of areas, and at the bargaining table we continually are faced with, "No, no, no," from management when we bring up an issue, with the threat that they will go to PERC.

If you had the Chairman of the PERC Commission here, he would tell you that 100 or 150 cases a year come before PERC over scope issues. That's got to stop. We've got to be able to bargain over job security. We've got to be able to bargain over transfers. We've got to be able to bargain over reassignments. We've got to be able to bargain over work loads. And until we do that, we won't have the dignity and the justice that we deserve at the bargaining table. When we are able to achieve that, we'll be able to achieve a sense of fairness that the 1968 Act that the Legislature passed and the amendments that were passed in '74 were intended to give us.

We haven't had it since '74. A-3181 is the right thing to do, and now is the right time to do it. I thank you for having the hearing, but let's have a vote on the bill, and let's see where everybody stands.

Thank you. (applause)

ASSEMBLYMAN PATERO: First of all, you had very good testimony. I couldn't say it any better. You know I was a sponsor of the bill prior to this, but please, no outbursts, because we are going to hear testimony from people who are against it, and it's like coming to my house. If anyone is coming to my house I wouldn't want to treat them as a bully. I think we have to give respect to both sides of the issue.

I have no questions. That's my feeling, Bob, just as yours. I don't know if any members of the Committee have anything? (negative response)

Thank you very much, Mr. Angelo.

MR. ANGELO: Thank you, Mr. Chairman.

ASSEMBLYMAN PATERO: The next person is Donald Dileo, from the Mercer County Central Labor Council.

D O N A L D B. D I L E O: Good morning, Mr. Chairman and members of the Committee. I'm going to speak loud myself.

My name is Don Dileo. I'm the President of the Mercer County Labor Union Council of the AFL-CIO. I'm here today representing the Mercer County AFL-CIO, and its 67,000 members, 29,000 of which are public employees. I'm here to talk about leveling the playing field so the public employees in New Jersey can enjoy the same rights as employees in the private sector when it comes to collective bargaining.

For over 100 years the American labor movement has had to fight -- sometimes literally -- employers, politicians, and other organizations who convinced themselves that organized labor was a threat to the American system of government and enterprise. In reality, Mr. Chairman, the American labor movement helped create the wealth and strength of America, and is directly responsible for the highest standard of living in the world today. We have succeeded under some of the most adverse conditions to deliver a good life and opportunity for working Americans.

Quite frankly, Mr. Chairman, I have to ask the question: Why do public employees in New Jersey have to wait one second longer for the right to go to the bargaining table to talk about things that affect their working conditions and their lives? John L. Lewis, America's greatest labor leader, said it best when he stated in 1936 -- and that's 54 years ago -- that far too many people think of labor unions simply as militant organizations. The militant character of the labor movement is the result of the fact that labor has been placed constantly on the defensive, and its legal and natural rights to organize and bargain collectively have been denied, or at the very least, constantly opposed. It therefore unhappily

follows that an entirely disproportionate part of the energy and ability of union members and labor leaders is necessarily directed toward the struggle for existence.

Mr. Chairman, I, for one, am tired of struggling year after year, Legislature after Legislature, Governor after Governor, and trying to help deliver the working people fair and equitable treatment. I'm tired of trying to level the playing field so workers have more opportunity to talk about things that affect them. And I'm tired of committees and bureaucracies designed to frustrate labor in its attempt to level that field. I'm tired of delivering votes on election day to politicians who take our money and people power, only to tell us time after time, that the time is not right.

Well, Mr. Chairman, as far as I'm concerned, the time for A-3181 is now. We shouldn't have to wait any longer, and we're not going to wait any longer.

Now, help us level that playing field. And if you don't do that, then we're going to do what we do best: We're going to agitate; we're going to instigate; we're going to stimulate; we're going to lobby; we're going to organize; we're going to mobilize; we're going to advertise; we're going to work-- (applause)

ASSEMBLYMAN PATERO: Quiet, please.

MR. DILEO: --we're going to work; and we're going vote to level that playing field. In old-fashioned terms, Mr. Chairman, what we're going to do is we're going to roll the union on. And if the boss gets in the way, then we're going to roll right over him.

Thank you. (applause)

ASSEMBLYMAN PATERO: You know, I'm going to say once more, if we have another outburst-- You know, I could just be calling the speakers in here and have everybody out in the hall. I don't want to do that, because, again, I think it's important that we hear both sides of the issue.

I have to agree with Mr. Dileo. I've sent my message to the Governor's Office. It seems they just want to cut out people, and I'm saying that they've taken the wrong approach, because when you give out a certain amount of bodies that they want to lay off, I think it's wrong. I think there should be a money amount, because I think we have too many Executive Service people there, and if you cut three, you're saving almost a quarter million dollars.

The thing is, it's not bodies. Do you see what I mean? So, when they are looking at it they probably feel, "Well, we could cut 30, at 18,000 or 20,000 a year. At least we're showing we're cutting 30 people." Which I think is wrong. I think what the union should do is go and talk to the administration and say, "Look, let's work with a money angle, and work from there," rather than saying, "There should be 200 people cut from this department, 200 people cut from that department."

I think if we could show the people of New Jersey the amount of money saved, I think they would be more appreciative than just saying we cut 300 or 400 bodies from a certain department.

MR. DILEO: I don't think we can get to that point unless we are able to talk about layoffs.

ASSEMBLYMAN PATERO: You're right. You're right. And again, that's why we're hearing this bill. Thank you very much for your testimony.

The next person we'll have is the Superintendent of Schools from Bayonne, and also New Jersey Association of School Administrators, Mr. James H. Murphy.

Good morning.

J A M E S H. M U R P H Y: Thank you, Mr. Chairman. Thank you for inviting me to your house.

I am Jim Murphy. I'm the Legislative Chairperson of the New Jersey Association of School Administrators, and

Bayonne Superintendent of Schools. My remarks today will be brief.

I'd like to start by saying that in the last 10 years and in the 1980s, there has been a reform movement not only in New Jersey but nationally, and the key word has been "accountability." The boards of education, the administrators, and the teaching staffs have been called upon to have greater accountability, and we've been measured by our progress or lack of progress of achieving educational goals. The public is demanding to see substantial progress, and today, as we well know, the taxpayer is in revolt concerning spiraling costs in education. The new array of mandates over the period of the last 10 years, and over regulation, has school boards and school administrators reeling from the pace that has been achieved.

I believe that this scope of negotiation legislation under consideration is bad for education and will contribute nothing to New Jersey's quest for quality in educational programming and improvement in education.

In my opinion, the bill will increase costs, decrease the quality of education, increase the number of strikes, increase litigation, and decrease accountability. Negotiations for public employees in this State is now over 20 years old, and history dictates or shows that a delicate balance has been achieved between management and labor. I believe that this legislation that would expand the scope of negotiations, could and will in all probability can, I say, disrupt that balance.

NJASA strongly recommends that this bill not be released from the Committee. If the Legislature believes a problem exists, it should address that problem through definitive legislation and not through the collective bargaining process.

My Association 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 the adjudication of these matters.

The management of our schools in this 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. These school board members-- And I also have to say, many of our administrators, especially in the smaller districts, are not experienced when it comes to collective bargaining. They are volunteers, and it's unlikely that they will gain enough experience as board members to deal with the greater agenda being put on the table.

What's happening is, the teacher unions, for example, can and do have -- can put into the field highly trained staff, who have a great number of years of experience and are well trained in bargaining tactics, whether it be psychological or from a technical standpoint.

The Legislature should at all times be mindful that it must help people responsible for management of schools by passing legislation which is beneficial, or by not passing legislation which would impede the progress in educational reform.

The Legislature must guarantee that the public is protected from union pressure, which could compromise the interests of children by forcing boards of education and management personnel to err in the bargaining process.

The passage of this legislation would open a Pandora's box, which would without question result in clause language when negotiated that is not only less than, but diametrically opposed to the public interest.

New Jersey public employees in education are already protected by the toughest tenure for life laws in the nation. New legal provisions will hamstring legitimate attempts to maintain standards, and in my opinion, would be an exercise in overkill.

Finally, I would like to say to the Committee that I ask that you not handcuff the school boards and the 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 system, 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 will lose.

I would like to thank you at this time for your consideration today, and I'd be happy to answer any questions.

ASSEMBLYMAN PATERO: Thank you for your testimony, Mr. Murphy, but as you know, I think the school boards do have some safeguards. They can always get an injunction when there is a strike, and the courts have placed some of the heaviest fines on any union around, plus the officers could even have jail sentences, so there are protections. But, again, as President Roosevelt said, "The only thing we have to fear, is fear itself."

Again, I've been through negotiations, and right now the only thing that you can put on the table is money matters. I think if they had an open dialogue, because to negotiate you have to have something to negotiate about-- I personally think that maybe there is something like playground duty that the teachers would want to give up, and say, "Look, instead of giving us a 9% raise, we'll take an 8% raise." You could find the savings, but as it is now, you really don't have any dialogue except on the financial matters.

MR. MURPHY: Well, in my district we had nine months of negotiations at the table on language before we ever talked about money. We went through the entire contract. My contract, I guess, is about 35 pages long. The last three pages pertain to money. The other pages have to do with the language items, as they say.

The typical thing with school districts is you spend many months talking about language items which are currently under the mandatory negotiable items, or the permissive category. So, there's a lot to talk about as far as language, and a lot of progress has been made. We talk about the number of preparation periods that a teacher would have. We talk about the time schedule as to the number of minutes that a teacher works in the course of a day. We also talk about the posting of positions; it's page after page.

I would be happy to send to you what a typical contract looks like in the public education sector. I think you would see after reading it that very few pages deal with financial matters.

What's happening here is, there is a permissive category. If through that permissive category the sides wish to decide to negotiate it, they can, but it's up to the them. This takes that out, and says if it's not specifically against the law, it's in. So, what happens is, that balance that I believe has worked well-- And yes, there have been some strikes. I had a situation myself, I have to say. There have been in New Jersey, but that's 1% -- less than 1% -- maybe three or four a year. If there is a problem there, and those things can be addressed, I say address those through definitive legislation, but not to completely take the legislative -- upset the current bargaining process with public education in order to solve a couple of problems that could be addressed through definitive legislation.

ASSEMBLYMAN PATERO: Okay. Are there any questions? (no response) Mr. Murphy, thank you very much.

MR. MURPHY: Thank you.

ASSEMBLYMAN PATERO: And I thank the audience very much for being very kind and considerate.

The next person is Vince Trivelli, from CWA.

V I N C E N T M. T R I V E L L I: Mr. Chairman, I won't spend the time to repeat the arguments that you heard from the AFL-CIO, and our brothers and sisters at AFSCME and other unions. But, it was interesting to see that the first public employer who came to the table raised the three or four issues that we've heard all around the State. I just thought I might take a second to respond to those issues.

One is the issue of costs: This bill will not cost a dime. This bill says we can put more issues on the table which are outside the scope of bargaining now, and things can be traded for. It does not cost a dime.

He talked about the lack of experience of a school board, and that's also been said about the town council or a county freeholder board. It's absurd in our view to say that somehow a school board or a town council is too inexperienced to sit down with its clerical employees and negotiate transfers, but it can negotiate multimillion dollar sewers, contracts, and all kinds of things that come before a school board or come before a town council; that somehow they haven't enough experience to sit down with their employees. We just don't think that washes.

Whether or not moving these issues to the table is in the public interest or against the public interest: The way it's always presented is that somehow now the unions are going to come in and dictate on these issues. Negotiations mean compromise. Negotiations mean agreements. If, as the gentlemen said, there would be agreements that are not in the best interests of the employees or the students or the

taxpayers, the employer would have to agree to that, as well. It's not the union coming in with some off-the-wall proposal and the employer saying no, and then somehow that becomes in the contract. The employer would have to agree. They have been elected to protect the public interest. They say they are going to, when they run for office, and they can protect what they perceive to be the public interest at the negotiating table.

It's up to them to negotiate and agree. This is not a system of dictates. What we have now, however, is a system of dictates. There is a balance out there between public employers and public employees, and the balance is out of balance towards public employers. We had a system in this State where we passed a Civil Service law, and then a series of regulations which affected every aspect of a public employee's life. They would hold an occasional public hearing on it. We'd go there and we'd yell and we'd scream and we'd blow whistles, but that's not negotiations. That's a system where an employer dictates, and then through some kind of good grace says, "Well, maybe we'll change this sentence," or, "Maybe we'll change that." That's not a system of negotiations. That's not a system of collective bargaining.

And the whole question of permissive versus mandatory: The only issue by mandatory means, by permissive is under the current system, there are some issues that if the other side agrees to talk about, then we can talk about. All this bill does is says, if we put them on the table they have to talk about them. They don't have to agree, and they're very good at saying, "No." And they can put things on the table as well that we may not want to talk about. But this is a collective bargaining, a negotiation process, and all the bill does very simply is put it on a level playing field. We have the same power to raise issues and to say, "no," as the employer does.

Twice the Legislature has said that this is what should be. Twice the Supreme Court of this State has said, "No." We think it's high time that this bill becomes law, and we urge you to vote this bill out of Committee. Thank you very much.

ASSEMBLYMAN PATERO: Thank you. Anyone wishing to question-- (no response)

The next speaker will be Mr. William Dressel, Assistant Executive Director and Gerald Dorf, Legislative Labor Relations Counsel, New Jersey League of Municipalities.

W I L L I A M G. D R E S S E L, JR.: Thank you, Mr. Chairman. I believe my statement is before you.

ASSEMBLYMAN PATERO: Yes, we have it.

MR. DRESSEL: Does everyone have a copy of it?

ASSEMBLYMAN PATERO: We have it. We passed it out already.

MR. DRESSEL: I'm going to stick, if I may, Mr. Chairman with your indulgence, basically to my statement.

Mr. Chairman, I am a guest in your house, and I will not be rude by screaming, but I will hopefully talk loud enough for all to hear perfectly clear that the New Jersey State League of Municipalities is unalterably opposed to this legislation which would enlarge the scope of negotiable items under which public employee groups could bargain collectively, and is in direct contravention with the Supreme Court decision in Ridgefield Park Education Association v. The Ridgefield Park Board of Education.

The Court, at least partially, based its decision in that case on the fact that expanding the subject of negotiations would 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.

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. Contrary to what you have heard from many of the employee groups, this legislation will cost; it will cost dearly. Our ability -- management's ability -- to manage personnel and to allocate scarce resources in an effective manner will be dramatically impaired if this kind of legislation is enacted at this time.

We also oppose another 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 into law.

If you're following my statement, I would like to go to page eight of the prepared statement. I'm going to analyze and go over some of the major provisions in A-3181:

The thrust of the subjects to be included as mandatory subjects of collective negotiations, "Include all matters concerning compensation, hours of work, grievance procedures, disciplinary disputes and all other terms and conditions of employment not specifically prohibited by statute." Among the items specifically included as mandatory subjects for collective negotiations are reductions in force, job transfers and reassignments, school class size 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 employee may negotiate over the impact including potential severance. The bill could thus interfere with what has already become established

practice in the State in the area of subcontracting, and further inhibit employers in their ability to transfer and reassign employees.

The bill provides -- as I already mentioned -- for binding arbitration as the terminal step of the grievance and disciplinary review procedure, rather than permitting the employees to negotiate freely over the subject. Furthermore, the employee also is given the right to ignore alternate statutory and review mechanisms and opt for grievance arbitration despite contrary statutory language contained in Civil Service and other laws. Thus, in 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. Decades of law in the Civil Service and school board areas regarding dispute resolution would thus be rendered impotent and/or useless.

3) In the public sector -- as contrasted with the private sector -- management is very thin. While in the private sector only nonsupervisory 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.

4) Finally, the bill defines mandatory subjects for collective negotiations 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."

Question: 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.

In conclusion, the 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.

There is a quote that I would like to read that was found in the New Jersey Supreme Court decision in Ridgefield Park that I think kind of sums up our thinking -- management's thinking -- at the local level on the subject: "The very foundation of representative democracy would be endangered if decisions on significant matters of governmental policy were left to the process of collective negotiations, where citizen participation is precluded, because the true managers are the people. Our democratic system demands that governmental bodies retain their accountability to the citizens."

Mr. Chairman, that is my statement. You referenced, and you were kind enough to include myself and Mr. Dorf to present the statement. Mr. Dorf, Gerald Dorf, is the League's Labor Relations Counsel. Unfortunately, he was unable to be here.

Most of my statement was put together by Mr. Dorf. I intentionally had the statement-- It is quite large. There is a lot of background. There is a lot of case law. There is a lot of information in here that I think would be helpful to the advocates of the bill, and hopefully to the Legislature in considering management's objections to this.

I'd be glad to answer any questions, and any additional technical, legal aspects of my presentation that I cannot answer, I will get back to you in a timely fashion.

ASSEMBLYMAN PATERO: Just a statement, Mr. Dressel: You keep calling on the Supreme Court. Well, you know, all they do is interpret the law, and a lot of times I don't think they interpret the law right. You state that they came out with a decision in '74. Again, as I stated, they interpret the law and that's what the Legislature is. To either add to the law or improve the law and so forth. That's why we're having this public hearing.

I want you to know that your comments will be taken into consideration.

Any other members?

Mr. Garrett?

ASSEMBLYMAN GARRETT: You've heard the Chairman say before, and some other comments before, as to the cost factor. You say in Item "C" here, that this will cause an increase in the tax rates. Could you address the points that the Chairman raised and also one of the previous speakers said, that this is really not a cost-effective bill.

MR. DRESSEL: There are substantial costs associated with this. By the mere fact that you are going to be including more subjects for negotiations, that you are going to have to consider more subject areas, the length of that collective bargaining process is going to be drawn out.

Representatives of the employee groups, management, who normally would be working, who would be administering the public's business will be tied up for days, months, in these collective bargaining sessions. The work will not be getting done.

That in and of itself is an argument, but beyond that, when you are going to be removing management prerogatives over the ability to allocate scarce resources and be able to

allocate and redirect personnel, when those decisions become the subject of collective bargaining, there will definitely be an impact on cost.

ASSEMBLYMAN GARRETT: But are you really removing those? I mean you're just-- The argument is that you are just putting them on the table, and the final prerogative still rests with the board member or with the town council member.

MR. DRESSEL: I think in the process, there are costs. Again, getting back to the whole principle of the democratic form of government, you are electing people to make those decisions and I think that the costs involved in the whole process, as well as what is going to be taking place in those negotiations, will cost.

I have examples, you know. I can take the Committee's time. I have some examples -- some real live examples. I didn't go over them because I could go on for several pages, but there are some very illustrative examples of exactly what this would mean. It's found in the statement, but I would be willing to take the time, if the Committee so wishes.

ASSEMBLYMAN GARRETT: Not at this time.

ASSEMBLYMAN PATERO: Being a mayor, I know that what they would normally do: put the administrator on to serve on the negotiating Committee with two or three councilmen, so actually you're not taking anyone from management, unless we asked for their advice.

ASSEMBLYMAN GILL: Mr. Chairman?

ASSEMBLYMAN PATERO: Go ahead, Mr. Gill.

ASSEMBLYMAN GILL: Mr. Dressel, you pointed out that this has been causing adverse effects. Between 1968 and 1974, do you have any documentation as to the extra costs this scope would have caused to the municipalities?

MR. DRESSEL: That's hard to document exactly.

ASSEMBLYMAN GILL: You have no documentation, is what I am asking?

MR. DRESSEL: You're trying to crystal ball it. I can look into the matter and get back to you, but I think we're dealing with a situation that would be hard to document, but I can look into it.

ASSEMBLYMAN GILL: Okay.

ASSEMBLYMAN PATERO: One other thing: As I said, I was mayor from '69 to '74. I wasn't aware of any strikes as there are strikes now. And again, we had the law in favor of bargaining at that time. So I think that's why something has to be looked into. But you gave very good testimony, and we will look into the testimony. Thank you very much.

MR. DRESSEL: Thank you, Mr. Chairman.

ASSEMBLYMAN PATERO: The next person is Mr. John Fallan, from the New Jersey Federation of Teachers.

J O H N F A L L A N: As you can see from the statement that I have to distribute, it was prepared by Ray Peterson. For those of you who know Ray Peterson, you know that I am not Ray Peterson.

I would like to present his statement, and somewhat echo some of the things we've heard from other speakers representing the house of labor.

The New Jersey State Federation of Teachers is not looking at this as a teachers' bill. We are looking at it as a public employees' bill. I think that's an important element that should be noted today, especially after hearing from the Superintendent of Schools in Bayonne, where he talked about a delicate balance in the contract. I think the record could show that the City of Bayonne and its teachers do not have a mutually agreed to contract. They have been working without a contract for over three years. What they have is an imposed contract by the board of education. I think that should be clarified.

We support A-3181 because it would restore the bargaining rights that we exercised prior to the unfortunate

Ridgefield Park decision and the subsequent decisions that have turned back the calendar to another era.

We believe that more harmonious relationships will result if public employers cannot simply refuse to discuss certain topics, or threaten litigation when union representatives assert that certain topics need to be addressed. After the enactment of the Public Employment Relations Act in 1968, all public employee representatives were able to discuss a wide range of topics that concerned their members. Sometimes written agreements were reached on these topics, and those agreements became part of the contract. And sometimes the issues under discussion were resolved administratively after a healthy exchange of viewpoints across a bargaining table.

However, under the current legal framework, too many spokespersons for employers are inclined to raise the threat of litigation when public employees or their representatives want to discuss such issues as layoffs, reductions in force, transfers, criteria for promotion, extracurricular activities, or class size. Topics such as these and the subcontracting of work done by public employees carry serious implications for a person's career, as well as their working conditions. Yet, these are subjects that many employers will refuse to discuss, let alone negotiate contract language.

It seems to us that the restoration of the permissive area of negotiations would give many, many employee groups opportunities to resolve some of their most vexing problems, or at least, to air their concerns with the hope that management will listen and find a way to resolve those problems, either within the contract language or through changing attitudes and practices.

A transfer is one of the most traumatic experiences an employee can have, second only to a dismissal or a layoff. The negotiation of rational and fair policies on transfers and

other serious matters can serve to improve the relationship between public employers and employees.

But the current negotiating framework lends itself to overreliance on the old authoritarian concept of managerial prerogatives, but it works against present-day concepts of shared decision making, and of resolving problems close to the source of the problems. Too many employers, or at least their representatives, seem to think that litigation, not conversation, is the way to resolve problems. We don't believe that, and we hope that you don't believe it either. So we urge you to release this legislation and to help restore the concept of negotiations on a broad range of topics.

I would like to close on two points: One, by reminding you that nothing in the PERC Law or in this legislation would require an employer to make a counter proposal. PERC Decision Number One resolved that question. All that is required for negotiations to take place is that parties discuss a topic. Good faith negotiations do not require a concession or an agreement to a proposal of the other party. But good faith negotiations do improve understanding as well as relationships between the parties.

The second point: As I said in the beginning, Ray ran into a last-minute problem and he asked me to sit in for him. I heard Frank Forst and I heard other capable union leaders talk about what it was like in 1974, and the changes and the attempts that were made in 1968. Fortunately, or unfortunately, last month I went to a commemorative gathering. It was the 25th anniversary of the Perth Amboy Teacher's Union strike. That strike took place in November of 1965, when we had absolutely no type of bargaining law, and the teachers in Perth Amboy went out and suffered for two weeks. It was not over a grievance procedure. It was not over layoffs. It was not over seniority. It was over the simple right to sit down as equals and negotiate with their employer.

In January, 1967, the Woodbridge teachers had to do the same thing. They suffered for two weeks. In fact, they endured jail sentences. It was all done in the name of collective bargaining -- the right to collective bargaining. There is a certain unfortunate deja vu to what I am experiencing today, because I didn't think, 25 years ago, that I would be in Trenton today talking about something that we were fighting for in 1965.

Now sure, you might argue there have been improvements. We have the PERC Law. Sure we have the PERC Law, but we've also had court decisions. So, we urge you on behalf of all public employees, to release this bill, submit it, sign it, and let's put equity back at the bargaining table.

Thank you.

ASSEMBLYMAN PATERO: Thank you.

Before I introduce the next speaker, we're only going to have two more speakers before we break for lunch. The Governor has shown concern about this, and he also has sent people from the administration here. We have representatives from the Department of the Treasury, the Department of Personnel, and also from the Labor Department, so a lot of people are really concerned about this bill.

The next person we'll have is Jeannine Frisby-LaRue, the Associate Director of Government Relations of the NJEA.

J E A N N I N E F R I S B Y - L a R U E: Good morning, Mr. Chairman.

ASSEMBLYMAN PATERO: Good morning.

MS. FRISBY-LaRUE: I, like the other speakers, also will be brief. I will not read the statement, but I have presented each of you with copies for the record.

I just want to say before I make my remarks and refer to our written testimony, that I want to commend you, Mr. Chairman, for putting this bill up today for public hearing. It's consistent with your attitude over the past few years over labor issues, and we really are grateful for that.

As you know, last year, we were successful with public school employees to get some expansion of the scope of discipline for public school employees in four areas. I just want to mention them briefly.

One of the things that we can now negotiate are the aspects of extracurricular activities. We cannot talk about the qualifications, and we still would like to be able to do that, but we can talk about the terms of those extracurricular activities.

We can also talk about minor discipline and the withholding of increments, and can take the issue to binding arbitration. That was a big win for us.

We can talk about transfers. Transfers between sites are now illegal for disciplinary reasons. That was a big win.

And we can also talk about schedules of fines and suspensions, if we care to negotiate those items. They cannot be imposed now by a local board unless it is actually placed on the table.

These areas were big wins for public school employees. But as you know, NJEA has always been committed to comprehensive expansion of the scope of bargaining. We believe there are still a lot of areas that should be able to be brought to the table and discussed by the local school boards and the local unions.

Just referring to a comment that has been made by a couple other speakers about the doomsayers of what will occur if you place all of these items on the table: We did a study 10 years prior to the decision of Ridgefield Park, and we did a study after that decision, to see if there were any more strikes when we were able to talk about all of these issues. We found -- and I can provide the statistics to the members of the Committee -- there were only about two additional strikes during the time that we can talk about all of these issues that are now presented in this bill.

One of the other things that some of the opponents of the bill are saying is that unions are too strong. We hear this today, that people on the management side, municipalities, and local school boards are inexperienced. We're finding that if you give people an opportunity, statutorily, to discuss many of these issues -- just as Vince has already said -- there is a respect of just saying, "No." Each side can say, "No," to an issue, but it should at least be able to put these issues on the table.

Another thing that I've already heard is that if we are able to talk about all of these issues in the area of public school employees, that it's just going to destroy public education; it's bad for children. The opponents that say this-- We have not seen any evidence at all that they have given in writing, orally, or otherwise that would support the argument. They ignore the fact that these areas were open for bargaining for at almost 10 years, and all of the dire consequences that they are saying even today never, ever occurred.

In closing, I simply want to say that we still believe that while we made some wins last year, there are a lot of areas that remain unopened that we would like to be able to talk about at the table. This bill seems to be a perfect vehicle to get that dialogue going again.

I thank you for listening, and if you have any questions I'm willing to answer.

ASSEMBLYMAN PATERO: Jeannine, help me out. I think in the past when some of your locals went on strike, didn't some go and serve time in jail, like over the weekend?

MS. FRISBY-LaRUE: Oh yes. We have had several people -- especially in our urban areas -- spend time either in jail or they have been humiliated by picking up trash on beaches, serving their community time, over issues that are outlined in

this bill -- just minor issues that we wanted to be able to discuss, and because of that, they were treated as hardened criminals.

ASSEMBLYMAN PATERO: And also, your organization was forced to pay heavy fines besides, right?

MS. FRISBY-LaRUE: Oh, very recently. Absolutely.

ASSEMBLYMAN PATERO: Do you remember what was the total of one of them, or--

MS. FRISBY-LaRUE: I don't know the figures, but I know there were some pretty hefty fines out of the Elizabeth conflict. That occurred just a year or year-and-a-half ago. We believe that a lot of those issues could be resolved.

But understand, many of those types of job actions occurred not because of the items that are in this bill, but because of money items, those type things that you can already negotiate. So that type of situation would not be promoted or provoked by the areas that are outlined in this bill.

ASSEMBLYMAN PATERO: Right. So in other words, if there were some other stuff to negotiate, you could give and take.

MS. FRISBY-LaRUE: Yes. And I just want to say -- off the record and on the record at the same time -- I am, as you know, also an elected official. I sit on both sides of the table. I negotiate for management at the municipal level, and I know why management would never want to be able to discuss the items that are allowed in this bill. I mean, I watch some of my colleagues who are managers. The types of things that they do not want to do for their employees when they know that it's absolutely right to do, but simply because statutorily they don't have to do it, they choose not to talk about it. So it is time for a piece of legislation such as this, and we would like to see something happen in this area.

ASSEMBLYMAN GARRETT: A couple of questions?

MS. FRISBY-LaRUE: Yes.

ASSEMBLYMAN PATERO: Thank you. Before your questions, also for the record, let it be known Assemblyman Gary Stuhltrager is here.

ASSEMBLYMAN STUHLTRAGER: Thanks, Mr. Chairman.

ASSEMBLYMAN GARRETT: First, that last comment that you made about the management that you know--

MS. FRISBY-LaRUE: Yes.

ASSEMBLYMAN GARRETT: --and that they don't put certain things on the table: Would this bill actually change that situation? Because you said earlier, now those issues that they are keeping in the background, they are out on the table. But earlier on you said that if they want to, they can still just say, "No," to the employees.

MS. FRISBY-LaRUE: Well, what happened prior to Ridgefield Park, we had certain items in contracts that management decided that, "Yes, we will talk about these issues, and we will come to some kind of agreement." After the Ridgefield Park decision, even if the local school board and the local education association chose to discuss those areas and chose to agree upon them and write them in the contract, they were not enforceable by law, because they all became managerial prerogatives. So there are areas that managers feel that, "Well, if we were forced to have to be able to place these on the table we would talk about them, but since we're not forced by law, we're just not going to address that. We don't have to talk about those areas."

So the law is now on the side of management. If they choose to, they can. Even if they agree upon it, they don't have to abide by it, because the law says that they don't have to.

ASSEMBLYMAN GARRETT: Well, would it be satisfactory though, just to say that all those areas that you are talking about are simply permissive areas, and that they could, if they wanted to, throw them onto the table and discuss those?

MS. FRISBY-LaRUE: Well, I have to tell you, that's a source of debate within our organization even to date, because many of our attorneys see it as black and white. Either you have illegal subjects, or you have mandatory subjects. Because I think some people get confused. They feel that if you have a mandatory subject and you don't come to an agreement with those areas, you really have not bargained in good faith.

Mandatory simply means that it is required. If one person chooses to bring that issue to the table, it must be discussed. It doesn't mean that you have to agree upon that area. An agreement could be, "No." An agreement really could be, "No." Management could say, "No, we do not like your proposed language and we don't want this in the contract." That is an admirable position on a subject.

So we're even debating this within ourselves, as to even if there is a need for permissive language. Is there any such thing; either to require that you talk about it, or it's illegal, and you can't talk about it?

I said in the closing of my written statement that, once this bill begins to move, we will be offering some technical language in some of the areas, and that might be one of the areas that we'd like to address.

ASSEMBLYMAN GARRETT: What does management do on those certain areas under the bill? It's now in the mandatory provision?

MS. FRISBY-LaRUE: Right.

ASSEMBLYMAN GARRETT: Has to be on the table, but for their own reasons, managerial reasons, on accountability reasons, they say, "Really, we shouldn't be discussing. I mean, it should stay the way it is right now, so there's no room for discussion on it." What do they do in that situation, then?

MS. FRISBY-LaRUE: If this bill becomes law?

ASSEMBLYMAN GARRETT: Right.

MS. FRISBY-LaRUE: They simply, as the managerial team, say, "That we have discussed items 'A' through 'D', and we have decided that we don't like your proposal," and they could either give a counteroffer or there position could be, "No."

ASSEMBLYMAN GARRETT: But would they then be charged with not negotiating in good faith?

MS. FRISBY-LaRUE: No. That's bargaining in good faith. That is good faith.

ASSEMBLYMAN PATERO: Thank you very much.

MS. FRISBY-LaRUE: Thank you.

Now we'll have the last speakers before we go on break, Mr. Don Philippi and Mr. Archer Cole.

Okay, are you by yourself, Mr. Cole?

A R C H E R C O L E: Yes.

Assemblyman Patero and Committee, I want to thank you on behalf of the New Jersey Industrial Union Council, AFL-CIO, for the opportunity to speak in favor of A-3181, to restore the rights of public employees to discuss their problems on the job, bargain collectively around things which affect their livelihood and their working conditions -- their health and safety -- and other matters, which sometimes could be life and death to them.

It's a funny thing that we're here discussing the rights of American working people, and industry's -- or rather the opposition of some public employers to this bill, when American industry is reaching out to labor, now at this very moment, and asking for their participation in solving the economic problems which are facing our country in competing in a world market which has left a terrible recession on our country at the very moment.

I'm in negotiations with companies like Westinghouse, General Electric, and other companies, and they say, "What can the people do to improve things here? What are your ideas?

How do we assemble a widget or a car or any type of equipment better than we are doing today? How do we improve quality? How do we improve quantity?" And so on. And so they are setting up all kinds of labor management committees to discuss the very lifeblood of the industrial process.

We're here today, 55 years after the Wagner Act resolved the issue, that it was in the public interest that workers, through there elected representatives or unions, shall have the right to bargain collectively on wages, hours, working conditions, and other matters affecting their jobs. So here we are. Since 1968, the State of New Jersey said that it is in the public interest here that workers for the State and for various municipalities and counties have a similar right. That this is a democracy. That people should not be forced into positions of submission merely because management says, "This is our time-honored right, and this is so, and it's going to be so."

That law went along very well from '68 to '73. The Supreme Court ruled, and the Assembly reacted. The Assembly said in 1974 that we should restore these rights and strengthen these rights such as has been testified here, and again the Supreme Court acted and as Assemblyman Patero pointed out, the Court is merely a court. It is not the final place for decisions to be made. The Legislature has a right to change, amend, and improve court decisions, and that's where I believe the press is, that we are talking about today.

It's interesting that about a year ago I was asked to testify in the City of Newark. There had been a whole series of hearings around changes in the seniority rights of State employees. This was the Civil Service Commission arranging for this hearing. I sat through it, and I couldn't believe it. There were hundreds of people in the room, there were whistles, there were balloons, there were signs, and there was one guy from the Civil Service Commission, and he was taking a tape of all the testimony that we gave.

We never heard another word about it. It was a farce, spending public money to hear dozens of people denounce their regulations, which they unilaterally decided that they would put into effect, changing the seniority, worsening it, for people who worked for the State.

All those hearings, all over the State, could have been saved if they merely sat down with a committee of the various unions of the public employees and said, "Hey, we want to discuss seniority. How do we improve it? How do we work in the future?"

We have layoffs now impending in the State. These matters of seniority, layoff, and recall certainly should be on the table. It shouldn't be unilaterally determined by department heads, "We're going to lop off 30 people in our department."

I think what you said was very important: that we should be talking about money and where the money is spent. And it is not spent, unfortunately, on the low paid workers who are the first to suffer in this economic crunch that we are facing.

We hear certain contradictory statements here. For example, they say that municipalities and school boards are all in tough positions now, and therefore this is not the time. Since 1974, there's been legislation for scope, and they came in with the same testimony. It is never the time to give people their rights, according to the School Board Association, according to these various employer groups who want to confine the power unto themselves.

I believe that for democratic rights in our State that people have the opportunity to put on the table-- Now, I'm in collective bargaining with employers all the time. We can put anything on the table. We have never put a gun to the head of the employer, literally, and said, "Unless you give us the improved seniority, you're not bargaining in good faith." The

obligation is, however, under the law, to sit down and negotiate. Negotiate the rights of people. That's what this is all about.

It's been said here before, that school boards or local municipalities would be powerless in the face of these powerful unions. I live in Roselle. At every school board meeting -- and I've attended many as my kids grew up -- there is a lawyer or a team of lawyers who do the negotiating, who advise the board. There are consultants who they have in from various levels of government who come in. So to give the idea that this change that they will have to discuss, not say, "Yes," mind you -- let's understand that-- There is nothing that forces them to say, "Yes," except the logic of our positions, but to say that they are being forced to do something is absolutely false.

As President of my district with the IUE in support of the teachers' union I went through the-- In 1970 when they went on strike-- You talk about being jailed, Carol Graves was in jail for six months for violating an injunction, Don Nichols for three months, and Frank Fiorito for three months. There are very punitive things that are done in the name of people going beyond their legal rights.

But we want to establish the legal right here, once and for all, free from interference from courts or anybody else, that we are a democracy and people have to have the right for redress of their problems, and the process that has come down for the past 55 years in our country is collective bargaining, grievance, negotiate, try to reach an agreement. That's what we're trying to do here today.

ASSEMBLYMAN PATERO: Thank you, Mr. Cole.

If there are no other questions-- I just want you to know that we'll be here between 1:00 and 1:10. The list of speakers that we have will be: first, Nancy Becker, next Robert

Woodford, Jeremiah Regan, Debra Cosgrove, John Blakely, Mustafaa Shabazz, Don Telesco, and Charley Steinel.

Thank you.

(RECESS)

AFTER RECESS:

ASSEMBLYMAN PATERO: I'll read the names from this list. If you are here, you're welcome to step up. Is Jeremiah Regan here? (no response) Debra Cosgrove? (no response) John Blakely?

J O H N B L A K E L Y: Blakely, yes.

ASSEMBLYMAN PATERO: Okay. Would you step up please? Is that B-L-A-K-E-L-Y.

MR. BLAKELY: B-L-A-K-E-L-Y.

ASSEMBLYMAN PATERO: Okay. Go ahead.

MR. BLAKELY: Yes, sir. I'm here from CWA Local No. 1032 as a shop steward at 50 Barrack Street, Data Processing Center. I'm in support of the bill, A-3181, solely because I believe from the standpoint of my people -- who I work with -- that we do need a real, fair, bargaining chip in negotiating for the present and our future, mainly because in the past, we have noticed that a lot of things are unfair for the person there that works; not necessarily for management, directors, or commissioners, but for the personnel that work for them.

A lot of things are unfair at job sites all around the State of New Jersey, and a lot of things go on that we have no say-so in. But in the long-run, things are asked of us: to cut back this, to give up that, to give up overtime or anything like that. They ask us, and then we comply with it.

As for our future, all we would like to do is support this bill so that in the near future we could have something to bargain with. Just be fair with us in the long-run, that's all we ask; just to be fair.

When people who sit down for our next negotiations for our next contract, to treat us with respect. So that I can tell my people that, you know, they are sitting down with us, and they are going to give us some respect at the time.

Even though we might not get something, or we might give something back, or we do get anything, we know we have sat down fairly with the management and they have listened to us -- listened to what we had to say.

That's all that I want to say.

ASSEMBLYMAN PATERO: Thank you. As I said before, I was part of management, and I sat in on some of those negotiations. I never found the unions to be unreasonable. I mean, they had a job to do just like we had a job to do, and a lot of times I had to shirk from what management was doing. I believe that the worker should have their say, and it should be a fair say, rather than just say, "Sit down," and, "You take this," and, "This is it."

If you look at some of the school board elections: A guy runs for the school board and says, "I'm going to cut your taxes." How can you negotiate? In other words, if this guy gets elected -- and those are the ones who get elected, who say, "I'm going to cut the taxes by voting against the school budget" -- and I'm just using that as one example. I mean, this guy, is not going to give you anything when he gets up there, and you know, you can't negotiate that way.

MR. BLAKELY: That's true.

ASSEMBLYMAN PATERO: Okay. Thank you very much for your testimony.

MR. BLAKELY: Thank you very much.

ASSEMBLYMAN PATERO: I'll go back to the top of the list again. I see she came in. Nancy Becker, on behalf of New Jersey Council of County Colleges, and State College Governing Boards Associations.

You're not late; we started a little earlier.

N A N C Y B E C K E R: I just represent the County Colleges.

ASSEMBLYMAN PATERO: Oh. Okay. I'm sorry.

MS. BECKER: You can't represent both.

Good afternoon, Mr. Chairman.

ASSEMBLYMAN PATERO: Good afternoon.

MS. BECKER: My name is Nancy Becker and I represent the Council of County Colleges, and respectfully, the Council of County Colleges opposes A-3181.

The enactment of this bill would be cataclysmic to county colleges. By giving away intrinsic and indispensable managerial prerogatives at a time the colleges cannot afford an additional burden, the bill would jeopardize the colleges' ability to provide high quality, affordable education.

The Council opposes the bill because it would raise local property taxes, threaten the economic stability of the sector's revenue sources, and send a resounding signal to the unsteady business community in New Jersey, accelerating corporate flight. Further, the bill is likely to be found unconstitutional by the courts.

The Council urges the Committee to withhold support for this legislation. However, if you decide to release the bill, we would ask that you exclude the county colleges, by amendment. The county colleges have been exempted from previous laws that expanded the scope of public employee negotiations for reasons that still remain valid today. For example, A-476, which Ms. LaRue described on behalf of the NJEA, exempted county colleges from that bill.

A-3181 would destroy the integrity of the county college as an educational institution. For example, any academic initiative such as the Writing Across the Curriculum Program could be negotiated away. Class size and the number of school days could be reduced. The school calendar could be rearranged. The college curriculum and course syllabus could be weakened, and the requirements for retention, tenure, and promotion could be reduced.

In recent negotiations, for example, teacher representatives asked to change the standard for sabbaticals so that seniority would replace merit, a move that would scorn the academic needs of the institution and its students. Currently, the sabbatical issue falls outside the scope of negotiations, so the public's stake in financing sabbatical leave was not negotiated away.

Other examples of items employee organizations have brought to the bargaining table include: hours of operation for campus gates, certain temperatures in classrooms, a copy machine in every office, and lower standards for promotion and tenure.

Dependent on tuition and county and State revenues, the county colleges are public institutions led by trustees. Policy decisions must reflect the school's mission, directives from the State, student needs, and priorities of State and county residents.

Maintaining administrative flexibility is a necessity for the county colleges because their policy decisions are informed by a changing set of factors, from advances in high technology to new discoveries in research. The colleges must respond daily to new conditions that cannot be anticipated in closed-door, high-pressure negotiating sessions.

Because A-3181 would require the county colleges to negotiate a much wider range of issues, this legislation would raise the costs of providing higher education in our State. Unlike school boards and municipalities, county colleges do not have taxing authority. The county colleges simply cannot afford the legislation. 1991 will be a lean year for the colleges. Because of revenue shortfalls, the State is cutting the sector's funding. It has cut it this year, and perhaps it will be cut again next year. Counties are also under increasing pressure to reduce dollars to county colleges. The

sector's other revenue sources, the counties, the students, and corporations that buy training programs are also feeling the strain of recession.

A-3181 would not only jeopardize the colleges' ability to provide high quality, affordable education by placing the special interests of public employees above those of the public, it would threaten the economic stability of the colleges' main revenue sources. Increased expenses would ultimately require higher tuition from a group of students who can least afford it. By burdening the counties' budgets, the bill would ultimately result in an increase in property taxes across the State.

Further, the bill will cost the counties and municipalities more money in negotiations with their public employees. These increased costs will require yet another property tax increase. Overburdened county budgets will again diminish the potential revenue stream available to the county colleges.

Corporations are the last source of revenue to the county colleges. In a recession, corporations often relocate to cut labor and energy costs, and avoid business taxes. To survive, some companies consolidate their plants in one state. The states must compete vigorously to attract the consolidation.

A-3181 would send a clear and powerful signal to the business community. The enactment of this prolabor bill will tell New Jersey's corporations that labor is in charge and calling the shots. News that New Jersey has passed this legislation will be rapidly transmitted to states like Pennsylvania and Maryland, which are competing with New Jersey for corporate consolidations and relocations.

Finally, because A-3181 would compromise the current scope of negotiations law and allow inherent managerial prerogatives to be delegated through collective bargaining, we believe the bill is clearly unconstitutional.

In summary, enactment of this bill would be disastrous for the county colleges. It would give away managerial prerogatives at a time the colleges cannot afford the burden. It would jeopardize the colleges' ability to provide high quality, affordable education. It would raise local property taxes, and it would accelerate corporate flight from New Jersey. Above all, the bill would jeopardize the colleges' ability to provide high quality, affordable education. We urge the Committee to either withhold support for this legislation, or failing this request, we ask you to amend the bill and release the county colleges from its grasp.

ASSEMBLYMAN PATERO: Okay, any questions? (no response) Thank you for your testimony.

MS. BECKER: Thank you.

ASSEMBLYMAN PATERO: Is Bob Woodford here? (no response) Jeremiah Regan? (no response) Debra Cosgrove?

Debra is representing New Jersey Principals and Supervisors Association. Have you submitted written testimony?

D E B R A C O S G R O V E: Yes, I did. I'll just briefly run through it.

Mr. Chairman and members of the Committee: My name is Debra Cosgrove, and I'm the Assistant Director of Government Relations at the New Jersey Principals and Supervisors Association. We represent approximately 5000 school principals, vice-principals, and supervisors in the public education system in the State. I am here today to discuss and oppose Assembly Bill No. 3181 which seeks to expand the scope of collective bargaining negotiations in our schools.

These days, the public is demanding success in our schools through three things: accountability, accountability, accountability. In the face of Abbott v. Burke, the uproar over the Quality Education Act, and continuing issues of budget deficits and revenue shortfalls, the people of New Jersey are

demanding educational accountability and reform from the administration, the educational community, and from you, the legislators.

We feel you are listening. This week alone, a new State school monitoring system is being voted upon. Additional accountability is being considered through such proposed legislation as a school board ethics law and the creation of an Office of Inspector General to oversee educational operations.

Yet in this context, we are suddenly faced with Assembly Bill No. 3181, legislation which flies in the face of the public demand for accountability. This bill broadly expands the scope of collective bargaining in the public sector to grant a large measure of control over basic managerial decisions to public employees. Under this statute, issues of educational policy will now be removed from the expertise of our members, the professional administrators. Similarly, these issues will be removed from public input through their voice, their locally elected school board. Such a shift is clearly another step in the wrong direction.

As the educational leaders in our schools, our members have the dual responsibility of both managing the educational programs and the operation of the schools, as well as administering teacher contracts. It is our view that the creation of this new category of bargaining subjects will be detrimental to the operation of our schools. As written, the bill reestablishes and expands the permissive category of bargaining subjects which was eliminated in the Ridgefield Park decision. It also limits the illegal subjects of bargaining, and expands the mandatory category. I notice that several of your questions previously were, how big the category was of mandatory subjects? I have brought a list which I could Xerox for you which contains the current list. There are over 57 mandatory subjects of bargaining at this time, including such issues as duty-free lunch, compensation, and discipline procedures. There is an entire listing of them.

By restricting the illegal category to only statutory prohibitions, too many items would become permissive subjects in our opinion. For example, there is a long list of items that, although not specifically prohibited by the statute, have been held to be nonnegotiable items because they involve matters of educational policy, or are inherently management prerogatives. Items such as the academic calendar, certain assignments of staff, class size, evaluations, staffing, employment qualifications, and qualifications for salary increments and promotions have been management decisions in the past. If the new bill is to become law, such items will become permissive subjects for negotiations since no statute specifically prohibits them from negotiations. This would have the effect of eliminating the ability of publicly elected boards to establish policies and manage school districts in the interests of children and the community.

We feel this is bad public policy. It lessens the democratic process by weakening the school boards. It is even a worse management practice from our viewpoint. We feel it is worse yet to place the education of New Jersey's school children on the bargaining table, and we feel that this will happen.

Last January, the Legislature significantly modified the then existing scope law to require negotiations over the assignment of extracurricular activities and the imposition of minor discipline. Additional restrictions were imposed on management flexibility in the areas of employee transfers, withholding of increments, and discipline. These changes were not needed then; the system worked. We must question why the Legislature is now considering broadening the new law before we can determine its impact. Our office alone has had an increase in the number of legal cases involving those issues in the short period of time the law has been in effect.

Clearly, with more subjects to discuss, negotiations will take longer, become more complex, and cost more. We suggest a careful consideration of the overall impact and cost of this legislation, particularly in light of the new funding law. We ask you to table the bill until we all understand the realities of the new system.

Thank you.

ASSEMBLYMAN PATERO: You know, whenever there is a strike, the supervisors and principals have the hardest part--

MS. COSGROVE: Yes.

ASSEMBLYMAN PATERO: --because, I know, a lot of times the principals and supervisors will agree with the teachers, but because they are ordered by the school boards not to go along with them, they are in a tough position. What happens, the teachers are against them, and then after the strike, you know, they are buddy, buddy.

MS. COSGROVE: It makes it much more difficult.

ASSEMBLYMAN PATERO: I think they have the toughest position of all, the principals and supervisors. If we come out with a bill, we'll make sure that we take that into consideration.

MS. COSGROVE: Thank you. I appreciate that.

ASSEMBLYMAN PATERO: Okay. Are there any other questions?

ASSEMBLYMAN GARRETT: Is there a copy of that? Did you say you submitted it? (referring to written statement)

MS. COSGROVE: I did hand them out. There are a group of them.

ASSEMBLYMAN PATERO: They are right here.

MS. COSGROVE: One thing that I would like to say is that we have-- There are some aspects of this bill that benefit our members personally in terms of the binding arbitration and several provisions of it that they would benefit us, but despite that fact, they feel very strongly that

the bill is overall a bad move, because it is really going to impact on how they can run the schools and keep the educational quality going.

Thank you.

ASSEMBLYMAN PATERO: The Committee will take a good look at it. Thank you very much.

MS. COSGROVE: Thank you.

ASSEMBLYMAN PATERO: Mustafaa Shabazz? (no response)

Don Telesco?

D O N T E L E S C O: Mr. Chairman and Assemblypersons, thank you for allowing me to come over and give you some words from one of the rank and file members of the CWA. I'm not an officer, I'm simply a rank and file member.

I've been with the State for 35 years -- for the State Highway Department -- working as an inspector and engineer at construction jobs. I've seen a lot of things go on in the State over these years, and I'm sure you have too if you were in the Assembly for a long while as you say. Things that happen with this consultant hiring, for example. It's one of the matters -- number "G" in this bargaining scope -- relating to subcontracting, which impacts upon our employees.

What happens is they take the people who are on our jobs -- State employees -- and take them off the jobs and put on consultants and hire extra people. They then move our people around or have them sitting around in some other office until some other job starts, or something like that. This is a total waste of our own people who have the experience and the expertise to do these jobs. They are hiring consultants and paying extra money for those people to do the jobs. They are trying to not allow us to even talk about that.

That's what this bargaining is about. Just asking them to get to the table and be able to talk over these matters. This is one of the matters that are on here.

I'm only going to mention a couple of them because-- I mean, the people who were here before mentioned everything else quite thoroughly. I'm not going to even get involved in that, but I have a couple of specifics that I wanted to bring up, and one of them was this letter "G" on your list here, about subcontracting, specifically.

As I've said, I've seen what's happening. We have a Design Bureau that has had many jobs that are turned over to consultants, and as a result, I think it has been proven that the quality of work has gone downhill. Our people have to supervise the consultants' work and check their work. It just makes for double work and doesn't-- It's not worth it cost wise, for one.

Also there is the matter of the hours of work, under "H." We used to have a program where we were allowed to have either the "XP" time or overtime payment. That seemed to work quite well. Men who felt they needed the extra money when they worked overtime, they would request that. And men who felt that they needed the time off, they would take the "XP" time. It didn't cost the government any more money either way, really, but now they've got it down to they only want you to do it one way, which is the overtime method. I think that's not fair, because there are people who are still interested in taking the time off as a result of that.

Layoffs: I've got an article or two here I just happened to pick up in the last few days, talking about layoffs. Some people before were talking about how they are going to lay off people who are out in the field who are doing the job, and continue to hire or maintain the middle managers, which is where some of the fat should be gone. If they want to get rid of some of the fat, some of the middle management we think would help the case, because you need the people in the field.

There is an example in the paper yesterday where they were talking about laying off 222 of the State's 700 maintenance workers. That means you're not going to get roads plowed. That's about as ridiculous as you can be. I mean, why pick on somebody that is actually in the field, doing the job? If you are going to lay off somebody, you should be laying off the people who aren't necessary in the field. That's one of the prime things we want to bring up when we have these bargaining rights. That's one of the rights that we should have some say about, layoffs.

It seems to me that a lot of the money could be saved in the field as far as the consultants, first. If you are going to lay off people, let's lay off the people we didn't have on board in the first place; the extra consultants that we are hiring to do our own in-house jobs. That does not make sense. We were hired to do the surveying work, to do the landscape work, to do the engineering work, the inspection work, and now they are bringing on -- like I said before -- consultants to do these jobs which is not necessary at all. We have enough in-house people to do it on our own.

One other thing: I have something a little separate from this bill, but I have to bring it up, because I don't get down here too often. I'm not one of the officers; I'm just a member, and I only come down on emergency things. This is one thing I want to mention.

There is something going on in Somerset County where I live that I'm not sure if you are aware of. It doesn't deal directly with the scope of bargaining, but it's something that you might want to be aware of when you go to your budget people or Treasury or whoever you have to handle this with.

There is a property up there on the Somerville Circle. I don't know if you heard about it--

ASSEMBLYMAN PATERO: I lived there.

MR. TELESCO: --where the Wiz built their warehouse or whatever, knowing full well that we were going to do some improvements there one of these days on the Somerville Circle area. Now they've got the gall to be asking for more money than the State has offered them for settlement of one-third of an acre; like the State is going to offer them $480,000.

That is totally ridiculous. Now here is a company that moved in with the full knowledge that the circle was going to be built and rerouted, and that property would be needed. And yet they come in and make a claim against the State. Now they are going to have lawyers fight in court and they are going to be going after all that money. More money than they have been offered, which is some money we can save and help our situation in this budget.

ASSEMBLYMAN PATERO: Actually that has nothing to do with negotiations.

MR. TELESCO: I know, but I had to say that. I'm done, but I just had to say it because it was on my mind.

ASSEMBLYMAN PATERO: They should never have gotten permission to build the Wiz on that circle.

MR. TELESCO: I know. I can't see how a bureaucracy can cause that problem. That's just something you can bring to your own chambers when you get a chance. It's a little bonus.

That's really about all I have to say.

ASSEMBLYMAN PATERO: Okay. Thank you very much.

Is Charley Steinel here? (no response) Jeremiah Regan? (no response) Mustafaa Shabazz? (no response)

I see Mr. Don Philippi has walked in. You have submitted your written testimony, Don, so if you can make it brief, we would appreciate it because it looks like you are the last speaker. We saved the best for-- Oh, no. We have one more. I'm sorry.

D O N A L D R. P H I L I P P I: Thank you, Mr. Chairman and members of the Committee. I did submit a statement today. I will briefly go over it.

I am the Business Manager for Local No. 195 of the Professional and Technical Engineers. Our union represents approximately 8000 State employees. It's really the bargaining unit concerned with this bill; the operation, maintenance and service units, the crafts units, and the inspection and security units.

Our members are employed in every State facility and perform every conceivable type of job. You will find members of Local No. 195 performing custodial work in State developmental centers, in State capital buildings, and psychiatric hospitals. You will find our members repairing the plumbing in State prisons, operating the cameras for the Public Broadcasting Authority, inspecting produce and other fruit and vegetables in the Department of Agriculture, operating heavy equipment on the State highways, and testing applicants for driver's licenses. In fact, you will find our members providing services to the public in over 300 different job titles and positions on behalf of the State of New Jersey. I am here to speak for these workers, to let you know why it is important to us that Assemblyman Foy's bill becomes law.

The reason I am here today is that we, as employees, would like the opportunity to have input into our working conditions; what is known as terms and conditions of employment. What we ask is no different from what any other working person in this country asks, and in fact, expects in their workplace, the chance to have input, the chance to have negotiations, and the opportunity and right to reach an agreement on workplace matters which affect us.

While currently the law allows us to negotiate over terms and conditions of employment, the actual limitation of negotiable areas is such that we are reduced to negotiating mostly over money. However, there are many more areas which affect our terms and conditions of employment -- the quality of life in the workplace -- in which we are not allowed any say whatsoever.

We have no input into determining our job duties and our job descriptions. Management has an absolute right to define our job duties however rational or irrational their decisions may be. We, the employees who are doing the job, can make no decisions. We have no input into the qualifications for promotion, and our employers can decide not only the qualities they look for to effectuate a promotion, but who to promote, without any type of review being available. We have absolutely no control over whether we are transferred from one work site to another, no matter how inconvenient, no matter what our seniority is. In fact, you'll find that with a statewide unit, you can move an employee with a transfer or reassignment to make it inconvenient -- to make him travel some 100 miles everyday.

If any agency enacts regulations governing our employment, we cannot even negotiate over employment issues which would otherwise be negotiable. In short, the law allows us to negotiate only over money. All other areas are deemed managerial prerogative or preempted. This has reduced negotiations to a tug-of-war over money. We need Assemblyman Foy's bill to allow us meaningful negotiations over noneconomic aspects of our employment.

The response of public employers to our request for greater input is to come to this Committee and tell this Committee that only disaster can follow the passage of Assemblyman Foy's bill; that giving public employees the right to negotiate over their work situation will lead to public disaster. However, a review of the situation shows that this is not so.

Let us first address the fact that public employers told this Committee the very same horror stories that they are telling it now when the original Public Employer Employee Relations Act was passed. Public employers told this Committee that the passage of a law giving public employees the right to

collective negotiations over any topic would destroy their ability to provide services to the public. Public employers told this Committee that public employees were greedy, selfish people who cared only about putting more and more money in their pockets while doing less and less work, and being rude to the public.

None of these dire predictions have come true. New Jersey is known for the high quality of services which its government provides to its citizens, and the public employees -- the providers of those services -- are proud of their contribution. Government did not fall apart as predicted by public employers when their employees received the right to collectively bargain over the terms and conditions of their employment, and it is no more likely to fall apart if Assemblyman Foy's bill allowing negotiations in permissive areas passes, than it was to fall apart when these same public employers predicted 20 years ago the same dire results.

However, we need not look only at the identity of objections from public employers 20 years ago when the original Public Employer Employee Relations Act was passed and now, to see that these public employers are like a broken record; the same complaints without any proof of their validity. In fact, permissive bargaining existed in this State for 10 years without any of the dire results predicted by public employers.

After the passage of the original Public Employer Employee Relations Act, modeled after the National Labor Relations Act, the common assumption was that the Act allowed bargaining in the same areas as the NLRA. As pursuant to the NLRA, there had been for decades both mandatory and permissive bargaining. When public employers and public employee unions bargained after the passage of the original Act, they assumed the same categories applied in New Jersey and bargained over permissive subjects. In fact, bargaining took place over permissive subjects in this State for years, and agreements

were reached in this State over permissive subjects for years. It was not until the New Jersey Supreme Court issued its decision in Ridgefield Park Education Association v. Ridgefield Park Board of Education, that public employers and public employees were forbidden to negotiate over permissive subjects.

ASSEMBLYMAN PATERO: Excuse me, Mr. Philippi. Everyone explained the Supreme Court, even the opposition to the bill. You have a right to read the whole thing, but if you could make it brief, we would appreciate that.

MR. PHILIPPI: I'm making it brief, Joe. I'm making it brief.

ASSEMBLYMAN PATERO: It looks like you're reading there, word for word.

MR. PHILIPPI: No. I'm just going over some of the areas that have to be covered, that's all.

ASSEMBLYMAN PATERO: Yes. But, as I said, we've had CWA--

MR. PHILIPPI: That's why we're here. We don't ask that much time of you, Joe.

ASSEMBLYMAN PATERO: No. I'm giving you the right, but I'm telling you that we have people in the audience. We had AFSCME, CWA, AFL-CIO, even the opposition--

MR. PHILIPPI: Well, we're another international. We're the Professional and Technical Engineers.

ASSEMBLYMAN PATERO: Well, I just--

MR. PHILIPPI: Now we want to be heard.

ASSEMBLYMAN PATERO: I was just hoping you would take the people in the audience into consideration, that's all. But go ahead.

MR. PHILIPPI: I am taking it-- They want to hear it, Joe. That's why they came here today.

ASSEMBLYMAN PATERO: Okay. I'm trying to say, we heard this already, but go ahead.

MR. PHILIPPI: There is a long history, therefore, of negotiations over permissive subjects, and we submit to this Committee that the public employers have not been able to come to this Committee and show that horror stories occurred during the time of actual experience with permissive bargaining in New Jersey. Government did not fall apart, employees continued to serve the public and there was productive bargaining that occurred.

The Ridgefield Park decision prohibiting bargaining in permissive areas did not enhance the bargaining process. Ridgefield Park was counterproductive. Ridgefield Park resulted in a loss of flexibility in the bargaining process as well as a loss of good faith, as employers refused to abide by agreements.

Flexibility in bargaining is lost when issues on which bargaining can occur are limited. When employees can bargain on workplace issues -- issues which impact on their quality of work life and on how services are delivered to the public -- there is less need for employees to focus on the financial aspects of bargaining. Employees may be willing to accept a lesser raise, in return for more narrowly defined job duties. They may be willing to accept a higher deductible on insurance policies, in return for a greater ability to determine when and where they will provide services. When employees can negotiate only over financial issues, of necessity, the only requests the employees can make in bargaining are for more money or greater benefits. Bargaining areas are limited, and flexibility in forming an agreement is lost. Flexibility in bargaining is one of the greatest benefits that we seek through Assemblyman Foy's bill.

Another benefit of Assemblyman Foy's bill is that more good faith will occur in the bargaining process. One of the unfortunate results of Ridgefield Park was the manipulation by a number of public employers of the bargaining process. As

this Committee is aware, the collective bargaining process is a give and take process, each side giving up certain demands in return for certain concessions by the other party. The negotiations process moves from one of mutual trust and respect to one of distrust, when one of the parties has the right and exercises that right to unilaterally repudiate a part of a mutually bargained agreement after the fact.

In fact, this happened to us as a State workers' union in negotiating with Frank Mason's office. He signed a written agreement with us on how discipline would be handled, all right; through binding arbitration. He came in a day later, after he signed that agreement, and told us, "We made a mistake. We can't sign that agreement." That was when Degnan was the AG. He said, "There's a case up there in Ridgefield Park." I mean, if that's not bad faith bargaining, what can you expect, and that's what happens. Some of these employers run in, they sign an agreement with you, they run over to PERC. They want to scope the issue after signing up with you. This is what the Foy bill eliminates by allowing us to bargain.

I'll just wind up by saying that I think the time has come for this bill to be moved out. I know you helped the teachers with the bargaining bill last year, now the public workers are asking for your help in these areas:

The subcontracting issue: I think all the State unions have been hit hard. You have all types of subcontracting going on out there when we're told the Governor has no money for our people, but there are all types of subcontracts being let. I can tell you that in the Department of Human Services alone, they have a duplication of a contract where they have foremen supervising the cleaning people in all the mental hospitals, and then evidently they don't trust their own foremen. They bring in a company to supervise those foremen. Those contracts are sitting out there, about $1 million at each of the large mental hospitals. That's what we're talking about with subcontracting.

Now, we went to the State and said, "Give us the figures of what this costs. Maybe our people could do it cheaper." We just went to them on-- They closed the rest areas. They subcontracted the rest areas. For years, our people supplied the services at rest areas. We did the landscape work. This summer you saw weeds on 55 that were over your head. You couldn't even see.

What, are you giving away government? You can't give away government, all right. You need these employees. They won't talk on subcontracting. That's why we need the Foy bill, and we'd like to see it moved out today.

We know you've been helpful, Joe, for years. The members of this Committee have supported us, and we thank you for that. The public employees really respect the work you have done on their behalf, Joe.

ASSEMBLYMAN PATERO: Thank you. But I want you to know, Mr. Philippi, is that we have your testimony, and word for word, it will be in the minutes.

MR. PHILIPPI: All right. Thank you.

ASSEMBLYMAN PATERO: Thank you very much.

Did Mustafaa Shabazz come in yet? Or Charley Steinel?

Okay. The next person we are going to have is Jeremiah Regan, from the New Jersey School Boards Association.

J E R E M I A H F. R E G A N: Good afternoon. I'm Jeremiah Regan, immediate past President of the New Jersey School Boards Association. I want to thank you for the opportunity to appear before you this afternoon.

The implications of this new scope bill are so overwhelming that it is hard to describe them in the time allotted. In a nutshell, the bill proposes changes in the scope of negotiations that would significantly alter the current balance between employee rights and employer responsibilities in the public sector by expanding negotiability and mandating binding arbitration of public

policy decisions. This would result in increased costs of providing public services at a time when our State is facing some of the most serious fiscal problems in its history.

A-3181 will have a particularly severe impact on public education because it will cause results which run counter to the State's QEA policy. The Governor has told us on many occasions that this is a cost containment bill. He wants to equalize educational expenditures and opportunities, and require special needs districts to allocate funds in a manner which will improve their academic and operational programs.

Let me be specific about some of the major implications. It is the underlying rationale of this bill that it is in the best interest of the public to allow decisions not specifically precluded by statutes, to be made through the process of collective negotiations. This conclusion ignores the inferred responsibilities of public employers and the role of the public in the democratic process. It demonstrates a naive and unrealistic understanding of collective negotiations in the public sector.

The collective negotiations process is based on the parties' ability to strike a deal through the process of compromise and trade-offs. The process works well in determining traditional terms and conditions of employment such as compensation, work hours, and work load, where a natural relationship exists and trade-offs can occur for additional dollars or increased productivity. The resulting settlement primarily affects the amount of work required for the agreed upon compensation as well as the rules controlling the workplace. Under current law, negotiated agreements cannot significantly interfere with the employer's ability to set governmental policy.

Subjecting policy decisions of a governmental body to the negotiations process, however, involves more than the working relationship between employer and employees. These

policy determinations will occur through deals and compromises usually behind closed doors. The public input that is required under the Thorough and Efficient Law, will be overridden by the trade-offs inherent in the bargaining process. Public employers' accountability to the public will be undermined by the employers' obligation to reach a settlement with the union. Furthermore, the resulting settlement would no longer be limited to working conditions but could also implicate the quantity and quality of public services delivered to the community. It is hard to understand how this process would best serve the interests of the public.

Due to the dynamics of negotiations, A-3181 also contains the potential for increased costs. An increase in the number of proposals a union can legally bring to the negotiating table can raise the parameters of an acceptable economic agreement. To drop a demand, each side requires or expects a quid pro quo from the other side. Thus, it is expected that unions will introduce many proposals dealing with the broad range of new mandatory and permissive topics of negotiations. Employee unions will expect that, if a board is not willing to negotiate the issue or finds that agreement would be too restrictive on its ability to manage the schools, the board will buy it off the table by sweetening the pot. Indeed, unions have given tactical advice to their local units on how to use permissive topics of negotiations to obtain a better economic settlement.

Districts with limited resources, or with the need to allocate resources to areas other than employee compensation, may be forced to agree to union proposals which will limit the boards' ability to implement policy decisions.

Impact of expansion of mandatory topics of negotiations: Present law does not permit issues which are either preempted by statute or regulations, or which would significantly interfere with the determination of governmental

policy to be subjected to the process of collective negotiations. This balance would be totally eradicated by A-3181. The bill contains:

A laundry list of specifically enumerated mandatory topics includes negotiations over currently illegal topics such as class size, reductions in force, the criteria for all employment decisions including criteria for initial employment. In other words, the bill says we have to negotiate the qualifications of the person we are about to employ. The bill's requirement that all matters affecting job security and discharges be negotiated, would require negotiations over the nonrenewal of nontenured teachers.

Language that repeals the current PERC Law provisions which reserve to public employers the right to set standards and criteria for employee performance. All criteria used to evaluate, promote, transfer, and assign staff would become negotiable; in addition, criteria for the employment of new staff would also be negotiable.

Negotiations over criteria dealing with personnel and staff assignments can be particularly detrimental to the quality of public education. Negotiated criteria would reflect unions' traditional protection of its weakest members. Currently, tenure is granted on the basis of demonstrated performance. If this bill becomes law, it is likely that lifetime tenure will become automatic and completely unrelated to actual instructional competency.

The bill also mandates negotiations over the impact of all managerial decisions. This change would disturb the existing balance of interests and could result in situations where the bargaining obligation outweighs the employer's responsibility to set policy. For example, under this provision, all implications of a reduction in force would be negotiable and could result in a negotiated increase in compensation for the remaining staff which would dilute or

eliminate the savings effectuated by the reduction in force. Since reductions in force are statutorily authorized and implemented to respond efficiently to declining enrollment or increased costs, the result of concurrent impact negotiations could easily negate the board's cost-effectiveness decision. Thus, the consideration of the negotiation's impact could present a significant interference with the board's ability to provide an efficient system of education.

Similarly, board decisions concerning staff supervision to ensure student safety -- currently insulated from negotiations -- would, under this bill, need to include considerations of the board's ability to afford what it considers to be adequate levels of supervision. Boards may be forced to reallocate funds, at the expense of other district and community education goals, to provide basic student safety. Therefore, the impact of this provision elevates the interest of unions above the interest of students and the goals of the community. It loses sight of the fact that the board and its employees are there to serve the needs of the students and the community.

The ability to negotiate rules and regulations will diminish the State's ability to set uniform policy for New Jersey's public services. It will lead to widespread differences in services, standards, and procedures across the State. As one more item on the bargaining table, standards expressed in rules and regulations will be traded with other issues. It should, therefore, be expected that communities with the most limited resources to fund an economic settlement will be most pressured to agree to lower local standards in exchange for lower salary increases. This result will, once again, pose a challenge to the State's constitutional obligation to provide a thorough and efficient system of education for all children in the State.

This legislation would eliminate existing restrictions to create a new permissive category, unlimited by the requirement that agreements cannot interfere with governmental policy formulation. While the bill specifies that the parties are not required to negotiate over permissive topics, the realities and strategies of bargaining clearly indicate that the introduction of proposals on permissive topics will be used as leverage for greater management concessions in mandatory areas.

A-3181 would require that all disputes arising from the contract be resolved through binding arbitration unless the employee chooses to utilize a statutory appeal mechanism. Not only does this provision highlight the bill's bias toward employees' rights, but it also represents a significant modification in the topics which can now be submitted to arbitration. Under current law, an arbitrator may not review or reverse an employer's policy decision such as assessment of employee performance or qualifications, evaluations of teaching performance, or matters relating to the district's educational plan. All of those matters become subject now to binding arbitration under this legislation.

Under A-3181, however, all of these issues would be reviewable by an arbitrator. The arbitrator would make a binding determination without reference to the board's responsibilities to provide a thorough and efficient education, but with complete reliance upon contractual provisions. To obtain considerations of educational policies and criteria for employee performance, boards of education would be forced to appeal arbitration awards to the judiciary. This would complicate the exercise of board discretion in monitoring the performance of its staff, would increase the cost of exercising discretion, and would present significant interference with the local board's ability to plan their educational program.

How would this affect the ability of special needs districts to meet their new responsibilities under the Quality Education Act? To permit a labor arbitrator to review the board's application of educational policy criteria would thus not only significantly interfere with the board's responsibilities for employee performance, but would also replace existing State policy which provides that educational policy decisions be consistent and predictable.

A-3181 states that all benefits granted by statute shall be construed as minimum benefits which can be augmented by local negotiations. The bill clearly includes pensions as a statutory benefit which could be subject to additional negotiations. Under current law, pensions are not negotiable. This provision holds the potential for additional increases in costs of public employment, as well as a possibility for extending nonnegotiated increases in benefits to all employees.

Underlying the terms of A-3181 is the abandonment of present public policy. New Jersey courts have consistently held that in a democratic society, the balance between the statutory rights of public employers and employees must be maintained in order to assure that governmental policy determination is not subject to the undue influence by any interest group. Thus, the courts have consistently held that negotiations cannot significantly interfere with the determination of governmental policy. A-3181 would destroy the well-established balance of the current scope of negotiations, would elevate collective bargaining rights above other expressions of public policy, would allow one interest group to control the formulation of governmental policy, and would increase the cost of public employment, which can only be paid by the local property taxpayer.

The NJSBA opposes this bill and will put forth every effort to defeat it.

ASSEMBLYMAN PATERO: Your comments will be taken into consideration.

MR. REGAN: Yes, sir.

ASSEMBLYMAN PATERO: Thank you very much.

MR. REGAN: Thank you.

ASSEMBLYMAN PATERO: Is Mustafaa Shabazz here? (affirmative response) Okay.

After Mr. Shabazz, there will be one more speaker; Darryl Greer.

M U S T A F A A S H A B A Z Z: Mr. Chairman, Committee members, good day. I'm a representative of CWA Local No. 1032, and also a State worker working for the Department of the Treasury, Office of Telecommunications and Information Systems.

In looking at the bill, Mr. Chairman, and going over-- I wanted to relay a situation that affected the Department that I work with, and something that your bill really spells out that would really give us some advantage, I think, in opening up conditions for workers, for management, and also for our members.

We had a situation, I think, a year ago, where management and employees weren't satisfied with their present promotional criteria. Management and our local came together, and both of us wanted to try to devise a new type of promotional criteria within the State. That was kind of difficult to do because we had no legislative laws that let us do that. We endured red tape and came up with a proposal that was accepted by the Department of Personnel to try a trial basis year for new promotional package for analysts and programmers in OTIS. We had an agreement to see how it would go for one year.

This went pretty well. It is coming to the year end now, and we are going to vote again on whether we would like to try another year of this -- this new type of promotional criteria -- other than exams, or whether we would like to go to exams or something else.

I'm saying this to say that if we had a bill such as this, which would put things on the table to bargain for, this new promotional criteria that management and employees both wanted, we or our representatives, could sit down at the table, and it would be voted there without any ill feelings towards management and almost pointing a gun; I mean, a simple dialogue.

Both of us wanted it, but we didn't really have legislative laws, I think, and that prevented us from easily coming to agreement on what we both wanted.

So, what I'm saying here is that this bill doesn't put a gun to anyone's head. It just provides a forum where our representatives can sit down with management and devise better working agreements for us and also for them, too. I think it's a vital bill and I'm hoping that you will help push it through.

ASSEMBLYMAN PATERO: You know, Mr. Shabazz, I think you hit the nail on the head. Everyone who has opposed this bill has come up here and said how terrible the workers are; they are going to go to the extremes. Again, when I've been in the private sector I've seen where union members want to go along -- work along with management.

MR. SHABAZZ: Yes, they do.

ASSEMBLYMAN PATERO: I'm glad you brought that up. You're about the only person who brought that up. As I said, the only thing they have to fear is fear itself. Again, when it was in existence in '68 to '74, there weren't that many problems, especially with something new. Of all times, you would think that's when it would really be a serious problem -- when they first had the opportunity to bring everything up on the table. But that didn't happen.

I personally think it's going to work out if this bill goes through. It's going to work out, and I think it will be best for the workers and the State. It's a fair bill.

MR. SHABAZZ: I think our members would like to think so, too. Thank you. (applause)

ASSEMBLYMAN PATERO: Please. Even though I said it, please.

MR. SHABAZZ: Matter of fact, this right here was something new to us. We're pretty happy that this bill is right on target with something that we're hoping will maybe bring more working conditions up in dialogue between management and our representatives.

Thank you. Any questions?

ASSEMBLYMAN PATERO: Any questions? (no response)

Thank you for your testimony.

MR. SHABAZZ: Thank you.

ASSEMBLYMAN PATERO: The last one I see here now who is still here is Dr. Darryl Greer from New Jersey State College Governing Boards Association.

D A R R Y L G. G R E E R, Ph.D.: If I'm last Mr. Chairman, I'll make your day. I'll be very brief.

I'm Dr. Darryl Greer, Executive Director of the State College Governing Boards Association. I represent the boards of trustees of New Jersey's nine State colleges.

There is very little I can add to the testimony that I could give because you have heard from other higher education representatives. I just want, Mr. Chairman and members of the Committee, to go on record as opposing A-3181.

Basically we think the bill is costly and counterproductive. We are not afraid of our faculty or the good people at our colleges who support the institutions. Rather, there is a delicate balance in higher education, which is a very different business than most other businesses in the public sector, and that is between sheer governance. That is the right of the faculty to set academic standards regarding the recruitment of students, the standards for graduation, and

so forth; also the balance, the authority of trustees, and the administrators they hire, to actually implement the policies of the boards.

This bill just goes too far in upsetting that delicate balance in institutions of higher education. More importantly, at this point in time when the State colleges are looking at losing -- if proposed FY '92 budget projections become a reality -- between one-third to 40% of their base funding in just three years-- That's unprecedented in the history of this country.

The colleges need the support of the individuals who work in the colleges all, managers and employees under collective bargaining. They need greater flexibility. They don't need more overburden that is not only going to upset the tradition of sheer governance in academe, but is going to cost the citizens more, at a time when the State cannot afford to foot the bill, and the colleges cannot find the money to endorse or to support many of these conditions that would just be untenable in terms of the future of the State colleges.

I will have -- it is being prepared right now -- a written statement later, but that is the basic message. You have heard it from many other people.

ASSEMBLYMAN PATERO: Well, we'll make sure that when you present the written statement we'll make it part of the written record.

Again, as Assemblyman Garrett said, I really don't know where it is going to cost them more money, as you say? I mean, if you have a program for ways layoffs should be, that's not going to cost money.

DR. GREER: The money would be lost in lost time.

ASSEMBLYMAN PATERO: Where?

DR. GREER: In good faith, people must come to the table and bargain. The time will be passed when-- We're looking at a major dislocation in faculties over the next 10

years. If management prerogatives are upset, that balance is upset, and indeed, the bargaining unit is going to determine who is a member of the faculty and who is not, I think that the value of education we have in New Jersey, will be greatly upset. The time it takes to go through these processes, which now management does have certain prerogatives. We are going to lose a lot of time and a lot of money in the process.

Let me turn it around, Mr. Chairman. Before a bill like this is considered, it would be more productive, since there are certain things that are collectively bargained now, such as the current contracts for our faculty-- It would be a terrific boost to the colleges if the State lived up to its obligations. If we started there, that would be a terrific start before we looked at a bill like this.

I appreciate your time.

ASSEMBLYMAN PATERO: Okay. Thank you for your testimony.

Well, we heard everyone. Is there a motion to adjourn the public hearing?

ASSEMBLYMAN GILL: Move we adjourn the public hearing.

ASSEMBLYMAN PATERO: Second?

ASSEMBLYMAN GARRETT: Second.

ASSEMBLYMAN PATERO: All those in favor, say, "Aye."

ASSEMBLYMAN GILL: Aye.

ASSEMBLYMAN GARRETT: Aye.

ASSEMBLYMAN PATERO: Before I adjourn, I have to commend everyone out in the audience who did a really great job on such a hot, important issue as today's.

Thank you very much.

(HEARING CONCLUDED)

APPENDIX

N.J. ASSEMBLY LABOR COMMITTEE HEARING ON A-3181, THURSDAY, DECEMBER 6, 1990

STATEMENT OF ROBERT ANGELO, EXECUTIVE DIRECTOR, COUNCIL #1
AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES

I am Robert Angelo, Executive Director of Council #1 of the American Federation of State, County & Municipal Employees, AFL/CIO and I am speaking today on behalf of our union's 40,000 New Jersey public employees. AFSCME has been negotiating public sector contracts in New Jersey since 1968 and we currently negotiate and administer 133 collective bargaining agreements. We represent employees at all levels of government and in almost every conceivable job classification. A-3181 is of critical importance to AFSCME members and I am urging swift action on this legislation by the Assembly Labor Committee.

Throughout recorded history, opposing forces have sought effective methods to resolve conflict without resorting to violence or other forms of overt confrontation. The most successful alternative to conflict developed to date has been collective negotiations or collective bargaining. A process that brings opposing views and parties together in a forum that structures discussions and debates in a way that leads to compromise and consensus instead of confrontation.

By using this form of conflict resolution in the relationship between labor and management, the potential for confrontation is greatly reduced and a degree of democracy enters the workplace. The Wagner Act of 1936 mandated the use of collective bargaining as the method for peacefully resolving workplace disputes in the private sector. This system of collective bargaining in private industry has worked for more than fifty years because it is structured to make management and labor equals at the bargaining table where bilateral negotiations will result in a formal agreement on wages, working conditions and other terms of employment.

1x

More than twenty years ago, the New Jersey Legislature decided that collective bargaining as a formal process should be extended to government employees in our state when the New Jersey Employer-Employee Relations Act was passed. This law, passed over Governor Hughes' veto, was modeled after the private sector experience of reducing workplace disputes such as strikes and other job actions, through joint negotiations on a wide range of employment issues. To the detriment of public employees and their organizations, the "scope of negotiations" was subsequently undercut by ensuing decisions of the New Jersey Supreme Court. The impact of these court decisions was to weaken the effectiveness of collective bargaining by dramatically limiting labor's ability to negotiate over critical workplace issues. In 1974 the Legislature responded to the Court in admirable fashion when the New Jersey Employer-Employee Relations Act was amended with the clear intention of broadening the "scope of negotiations". However, the Supreme Court struck again in 1978 when it held that the 1974 amendments were not "clear and distinct". This brutal decision has served to this day as an impediment to collective bargaining throughout New Jersey.

Over the last decade there have been several unsuccessful legislative attempts to resolve the "scope of negotiations" controversy created by the Court. The most recent effort is before the Committee today in the form of A-3181 sponsored by Assemblyman Foy. Passage of A-3181 is of vital importance to all public employees. It will extend to their labor organizations the right to negotiate workplace issues wrongfully barred from the bargaining table by the Court. A-3181 will bring a measure of equality and democracy to employer-employee relations in the public sector as intended by the legislature in 1968 and again in 1974. It is now time for the legislature to re-state these intentions in 1990. Public employees cannot suffer another decade of narrow and limited negotiations. We must be able to bargain over all aspects of work if the collective bargaining is to be truly effective.

2x

A-3181, if enacted, will rightfully amend Chapter 100, P.L. of 1941 to establish "..an expansive system of collective negotiations concerning terms and conditions of employment where no statute specifically precludes such negotiations.." It is this expansive system that we are entitled to and that is of critical importance to the future of public sector collective bargaining. Further, A-3181 would declare as public policy in New Jersey "...that an effective balancing of the interests of employees, employers and the public in the democratic process are and can be best achieved by the provisions hereinafter set forth including negotiations on permissive subjects..."

The expanded scope of bargaining proposed under A-3181 would allow negotiations on items that are regularly included in all private sector contracts, and in public sector agreements outside of New Jersey. Mandatory subjects of collective negotiations would include all matters relating to job security such as layoffs, reductions in force, discipline, discharge and demotions. Given our state's current fiscal crisis, it should be abundantly clear why it is imperative that job security issues need to be bargained over. Other issues that A-3181 would restore to the negotiations process are: job transfers, reassignments, evaluations, promotions, workload and subcontracting. These issues legitimately belong at the bargaining table.

A-3181 also establishes a category of permissive bargaining topics. This permissive category is one which allows both labor and management to voluntarily agree to bargain on issues that are neither mandatorily negotiable or illegal. Clearly, creation of a permissive category of negotiations is in the best interest of the collective bargaining process as it will provide a mechanism for resolving mutually agreed upon and identified work disputes.

The "SCOPE" controversy has gone on far too long. It causes protracted and expensive litigation which delays and disrupts the negotiations process. PERC receives more than one hundred SCOPE cases per year that tie-up bargaining and AFSCME is demanding action on A-3181 so that bargaining rights taken away by the Courts can be re-established.

A-3181 IS THE RIGHT THING TO DO AND NOW IS THE TIME TO DO IT!

3x

New Jersey Association of School Administrators
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TESTIMONY BEFORE
THE ASSEMBLY LABOR COMMITTEE
REGARDING A-3181
SCOPE OF NEGOTIATIONS LEGISLATION

Thursday, December 6, 1990

I am James H. Murphy, Legislative Chairperson of the New Jersey Association of School Administrators and Bayonne Superintendent of Schools. During the 1980s, New Jersey and the entire nation espoused the education 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.

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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 is bad for education and will contribute nothing to New Jersey's quest for quality in educational programming and instructional improvement.

In my opinion, this bill will increase costs, decrease the quality of education, increase the number of strikes, increase litigation, and decrease accountability. Negotiations for public employees in the state of New Jersey 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.

NJASA strongly recommends that this bill not be released from committee. If the Legislature believes problems exist, it should address such problems through definitive legislation--not the collective bargaining process.

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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.

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 without 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 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.

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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 guarantee that the public is protected from union pressure, which could compromise the interests of children by forcing boards of education and management personnel to err in the bargaining process.

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, but diametrically opposed to, the public interest.

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.

7X

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 system, 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.

James H. Murphy, Chairman
NJASA Legislative Committee

8X

Legislative Viewpoint

NEW JERSEY STATE LEAGUE OF MUNICIPALITIES
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**STATEMENT BY WILLIAM G. DRESSEL, JR.,
ASSISTANT EXECUTIVE DIRECTOR OF THE
NEW JERSEY STATE LEAGUE OF MUNICIPALITIES,
IN OPPOSITION TO A-3181, WHICH
EXPANDS THE SCOPE OF PUBLIC SECTOR
COLLECTIVE NEGOTIATIONS, BEFORE THE
ASSEMBLY LABOR COMMITTEE
THURSDAY, DECEMBER 6, 1990
ROOM 368
STATE HOUSE ANNEX
TRENTON, NJ**

THE LEAGUE OF MUNICIPALITIES IS SHOCKED AND SADDENED THAT THIS LEGISLATION, WHICH WOULD EXPAND THE SCOPE OF PUBLIC SECTOR LABOR NEGOTIATIONS, IS BEING CONSIDERED AT THIS CRUCIAL JUNCTURE. THE STATE'S OWN FISCAL EQUATION HANGS IN A PERILOUS BALANCE. AND THE ADMINISTRATION'S PROMISE OF PROPERTY TAX RELIEF FOR OUR LONG-SUFFERING HOME OWNERS AND RENTERS IS THE LAST REMAINING HOOK, ON WHICH HANG THE HOPES OF MANY. WE URGE YOU NOT TO LOOSEN THE MOORINGS THAT HOLD THAT HOOK IN PLACE. WE URGE YOU TO VOTE "NO" ON THIS INITIATIVE.

IT IS INDISPUTABLE THAT TIME IS MONEY. LIKEWISE, IT IS INEVITABLE THAT THE GREATER THE NUMBER OF TOPICS THAT CAN BE DISCUSSED, THE LONGER THE NEGOTIATIONS. AND, THE LONGER THE NEGOTIATIONS --EVEN IF THOSE NEGOTIATIONS SHOULD PROVE "SUCCESSFUL" FROM THE TAXPAYER'S PERSPECTIVE -- THE MORE COSTLY THEY WILL BE.

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THIS LEGISLATION, THEREFORE, WILL DIRECTLY COST OUR TAXPAYERS MONEY. IT WILL, WITHOUT QUESTION, DIVERT SCARCE PUBLIC DOLLARS AWAY FROM THE PUBLIC'S SERVICE AND TO THE BARGAINING PROCESS.

BUT THESE DIRECT LOSSES ARE NOT THE ONLY COSTS THAT THE PUBLIC WILL SUFFER IF THIS BILL BECOMES LAW. INDIRECTLY, THE PUBLIC WILL ALSO LOSE A LARGE MEASURE OF ITS ABILITY TO MANAGE ITS OWN AFFAIRS, THROUGH ITS ELECTED REPRESENTATIVES. THE ABILITY OF THOSE, ON WHOM HAS BEEN BESTOWED THE PUBLIC'S TRUST, TO MANAGE PERSONNEL AND ALLOCATE SCARCE RESOURCES WILL BE DRAMATICALLY IMPAIRED IF THIS KIND OF LEGISLATION IS ENACTED AT THIS TIME.

ADVOCATES OF THIS PROPOSAL MAY CONTEND THAT IT WILL MERELY PERMIT THE NEGOTIATION OF MANAGEMENT POLICY ISSUES AT THE DISCRETION OF THE PARTIES AT THE TABLE. BUT, IN AN ERA OF TIGHT BUDGETS, IT IS CLEARLY RECOGNIZED BY ANYONE FAMILIAR WITH THE BARGAINING PROCESS, THAT THE PUBLIC'S REPRESENTATIVES WILL BE FORCED TO MAKE CONCESSIONS IN THESE, SO-CALLED, "PERMISSIVE" AREAS.

FURTHER, THESE CONCESSIONS, THOUGH SOME MAY BELIEVE OTHERWISE, WILL CARRY COSTS. FOR EXAMPLE, THE ROUTING OF GARBAGE TRUCKS, WHICH IS CURRENTLY GOVERNED BY CONSIDERATIONS OF THE CAPACITY OF THE TRUCKS,THE MAXIMIZATION OF THEIR UTILITY AND THE MINIMIZATION OF THE NEED FOR OVERTIME, COULD INSTEAD BE GOVERNED BY DECISIONS MADE BEHIND CLOSED DOORS AT A BARGAINING SESSION. AND EVEN THE TYPE AND NATURE OF THE TRUCKS, THEMSELVES, WHICH ARE CURRENTLY PURCHASED WITH AN EYE TOWARD EFFICIENCY AND ECONOMY, COULD SIMILARLY BECOME A SUBJECT OF SUCH PERMISSIVE NEGOTIATIONS.

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WE ALSO OPPOSE ANY ATTEMPT TO MANDATE THAT BINDING ARBITRATION BE THE TERMINAL STEP OF EVERY GRIEVANCE PROCEDURE. THIS QUESTION IS CURRENTLY DEALT WITH IN COLLECTIVE NEGOTIATIONS AND THAT IS WHERE IT SHOULD REMAIN.

IT IS NO NEWS TO ANY OF YOU THAT THE 1980'S WERE PROBABLY THE TOUGHEST FISCAL YEARS FOR MUNICIPAL GOVERNMENT IN NEW JERSEY SINCE THE GREAT DEPRESSION. AS MANDATES FROM OTHER LEVELS OF GOVERNMENT MOUNTED, THE GREAT PROMISES OF FEDERAL AND STATE REVENUE SHARING WERE ABANDONED. IN ADDITION TO THIS, THE STATE CONTINUALLY RAIDED MUNICIPAL REVENUE SOURCES SUCH AS THE PUBLIC UTILITY GROSS RECEIPTS AND FRANCHISE TAX, THE MUNICIPAL PURPOSES TAX ASSISTANCE FUND AND THE BANK STOCK TAX. DURING THAT SAME PERIOD, THE STATE ROLLED UP UNPRECEDENTED SURPLUSES. AND, THOUGH THE SURPLUSES, SADLY, ARE GONE; THE RAIDS, TRAGICALLY, CONTINUE.

THE POINT IS, MR. CHAIRMAN, THAT THESE ARE TOUGH TIMES. THIS BILL WILL ONLY MAKE THEM TOUGHER, WHILE IT WILL MOVE NEW JERSEY PUBLIC POLICY IN THE WRONG DIRECTION.

IN THE INTEREST OF TIME, MY FURTHER GENERAL COMMENTS WILL BE STATED BRIEFLY ON THE SUBJECT OF SCOPE OF NEGOTIATIONS IN THE PUBLIC SECTOR AND THEN MORE SPECIFIC COMMENTS WILL BE MADE ON THE MAJOR SECTIONS OF THE PROPOSED BILL.

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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 ASSEMBLY BILL NO. 3181. 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 WILL 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 BILL UNDER CONSIDERATION SEEKS TO INTRODUCE INTO NON-FIRE AND POLICE NEGOTIATIONS THE CATEGORY OF PERMISSIVE SUBJECTS, AS WELL AS EXPAND THE MANDATORY CATEGORY OF SUBJECTS TO ALL "...TERMS AND CONDITIONS OF EMPLOYMENT WHERE NO STATUTE SPECIFICALLY PRECLUDES SUCH NEGOTIATIONS..." WHILE LIMITING OR TOTALLY ELIMINATING THOSE SUBJECTS WHICH HAVE HERETOFORE BEEN CONSIDERED MANAGERIAL PRERQGATIVES. 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.

Rx

2. PERMIT AN EMPLOYEE TO DETERMINE THAT A NEGOTIATED GRIEVANCE PROCEDURE SUPERSEDES STATUTORY PROCEDURES FOR THE RESOLUTION OF DISPUTES, CONTROVERSIES OR GRIEVANCES.

3. REQUIRE THAT BINDING ARBITRATION BE THE TERMINAL STEP OF A GRIEVANCE AND DISCIPLINARY REVIEW PROCEDURE RATHER THAN GIVING THE PARTIES THE OPPORTUNITY OF MAKING THAT DETERMINATION THROUGH THE COLLECTIVE NEGOTIATIONS PROCESS.

4. REQUIRE THAT ALL TERMS AND CONDITIONS OF EMPLOYMENT BE NEGOTIABLE (EITHER MANDATORILY OR PERMISSIVELY) UNLESS SPECIFICALLY PROHIBITED BY STATUTE.

5. LIMIT ILLEGAL SUBJECTS FOR NEGOTIATIONS ONLY TO THOSE 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, AND 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 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 BILL UNDER CONSIDERATION WOULD LITERALLY SET THE PRESENT ORDER OF PUBLIC SECTOR COLLECTIVE NEGOTIATIONS IN NEW JERSEY ON ITS EAR.

B. THE PUBLIC SECTOR 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.

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 BILL 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. ASSEMBLY BILL NO. 3181 IN THE INTRODUCTORY PORTIONS TO THE STATUTE STATES IN PERTINENT PART 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 AND EXPANSIVE SYSTEM OF COLLECTIVE NEGOTIATIONS CONCERNING TERMS AND CONDITIONS OF EMPLOYMENT WHERE NO STATUTE SPECIFICALLY PRECLUDES SUCH NEGOTIATIONS...

IT DOES NOT APPEAR TO US THAT ANY FAIR READING OF THE NEW JERSEY CONSTITUTION LEADS TO THE BELIEF THAT RIGHTS OF EMPLOYEES CAN OR SHOULD BE PROMOTED BY AN "EXPANSIVE" COLLECTIVE NEGOTIATIONS SYSTEMS WHEREBY THERE IS A NEVER-ENDING NUMBER OF ITEMS AS SUBJECTS OVER WHICH TO NEGOTIATE.

2. THE BILL'S ATTEMPT TO BROADEN THE SCOPE OF MANDATORY SUBJECTS OF BARGAINING WOULD ONLY LEAD TO FURTHER DISPUTE AND SUCH DISPUTE WOULD UNDOUBTEDLY RESULT IN FURTHER LITIGATION AS THE SO-CALLED NEW AREAS OF BARGAINING ARE FINELY HONED BY THE PUBLIC EMPLOYMENT RELATIONS COMMISSION AND THE COURTS.

B. ASSEMBLY BILL NO. 3181 - MAJOR PROVISIONS

1. THE THRUST OF THE SUBJECTS TO BE INCLUDED AS MANDATORY SUBJECTS OF COLLECTIVE NEGOTIATIONS "INCLUDE ALL MATTERS CONCERNING COMPENSATION, HOURS OF WORK, GRIEVANCE PROCEDURES, DISCIPLINARY DISPUTES AND ALL OTHER TERMS AND CONDITIONS OF

EMPLOYMENT NOT SPECIFICALLY PROHIBITED BY STATUTE." AMONG THE ITEMS SPECIFICALLY INCLUDED AS MANDATORY SUBJECTS FOR COLLECTIVE NEGOTIATIONS ARE REDUCTIONS IN FORCE, JOB TRANSFERS AND REASSIGNMENTS, SCHOOL CLASS SIZE 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 EMPLOYEE MAY NEGOTIATE OVER THE IMPACT INCLUDING POTENTIAL SEVERANCE. THE BILL WOULD THUS INTERFERE WITH WHAT HAS ALREADY BECOME ESTABLISHED PRACTICE IN THE STATE IN THE AREA OF SUBCONTRACTING AND FURTHER INHIBIT EMPLOYERS IN THEIR ABILITY TO TRANSFER AND REASSIGN EMPLOYEES.

2. THE BILL PROVIDES FOR BINDING ARBITRATION AS THE TERMINAL STEP OF THE GRIEVANCE AND DISCIPLINARY REVIEW PROCEDURE RATHER THAN PERMITTING THE EMPLOYEES TO NEGOTIATE FREELY OVER THAT SUBJECT. FURTHERMORE, THE EMPLOYEE ALSO IS GIVEN THE RIGHT TO IGNORE ALTERNATE STATUTORY AND REVIEW MECHANISMS AND OPT FOR GRIEVANCE ARBITRATION DESPITE CONTRARY STATUTORY LANGUAGE CONTAINED IN CIVIL SERVICE AND OTHER LAWS. 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. DECADES OF LAW IN THE CIVIL SERVICE AND SCHOOL BOARD AREAS REGARDING DISPUTE RESOLUTION WOULD THUS BE RENDERED IMPOTENT AND/OR USELESS.

3. 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.

4. FINALLY, THE BILL DEFINES MANDATORY SUBJECTS FOR COLLECTIVE NEGOTIATIONS 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.

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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.

THE NEW JERSEY SUPREME COURT HAS SAID, "... THE VERY FOUNDATION OF REPRESENTATIVE DEMOCRACY WOULD BE ENDANGERED IF DECISIONS ON SIGNIFICANT MATTERS OF GOVERNMENTAL POLICY WERE LEFT TO THE PROCESS OF COLLECTIVE NEGOTIATIONS, WHERE CITIZEN PARTICIPATION IS PRECLUDED ... BECAUSE THE TRUE MANAGERS ARE THE PEOPLE. OUR DEMOCRATIC SYSTEM DEMANDS THAT GOVERNMENTAL BODIES RETAIN THEIR ACCOUNTABILITY TO THE CITIZENRY."

WE AGREE WITH THAT STATEMENT. WE URGE YOU TO VOTE "NO" ON A-3181.

THANK YOU, MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE.

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njea

New Jersey Education Association 180 W. State Street P.O. Box 1211 Trenton, NJ 08607-1211 (609) 599-4561 FAX: (609) 392-6321

Testimony by Jeannine Frisby-LaRue, Associate Director of Government Relations of NJEA on A-3181 before the Assembly Labor Committee on December 6, 1990 in Room 368, State House Annex.

Good morning. I am Jeannine Frisby-LaRue, Associate Director of Government Relations for the New Jersey Education Association which represents over 130,000 active and retired school employees and county college staff.

Mr. Chairman, let me first thank you for bringing up for deliberation by your committee A-3181, a piece of legislation that will expand the scope of negotiations for public employees. This once again demonstrates that the Legislature recognizes the need to provide more balance at the bargaining table for our members and others.

In 1968, the Legislature gave public employees the right to negotiate on the terms and conditions of employment, and for a decade public employees were able to resolve nagging issues at the bargaining table. Then, in 1978, the N.J. State Supreme Court limited public-employment negotiations to bread-and-butter issues. Public school employees and school boards no longer could make enforceable agreements on other matters.

In its 1978 decision, the court said the Legislature would have to be more specific in its language to grant bargaining rights on items other than wages and benefits.

Last year, the scope of negotiations was broadened for public school employees in several areas of discipline. Specifically, the newly-enacted law provided:

* that public school employees could negotiate aspects of extracurricular employment, except actual qualifications for persons in those assignments;

* that all discipline up to and including the withholding of increments for disciplinary reasons can be appealed through locally-negotiated grievance procedures, with binding arbitration as the final step in the procedure;

* that transfers of employees between sites for disciplinary reasons be forbidden;

* that local boards and local education associations could agree upon establishment of a schedule of fines, suspensions, and other forms of discipline through contract negotiations only.

Those areas in which I've just pointed out were problems that had been cited by our members as being of major concern. While we were successful in getting collective bargaining expanded so that these items could be brought to the negotiating table, the Association remains committed to a comprehensive broadening of the scope of bargaining.

NJEA supports A-3181 because its provisions are consistent with the premise that managers and their employees are capable of making decisions about working conditions and coming to an agreement -- even if it means that one side must say "no". This piece of legislation goes beyond those changes made last year and seek to further correct some of the problems brought about by the narrow judicial decisions.

Court decisions such as Ridgefield Park or Bernards Township seem to indicate that local school boards of education and their employees should not be trusted to make appropriate decisions about the workplace.

NJEA, however, believes that boards of education at the local decision-making level have grown over the last twenty years to recognize that a mandatory subject of bargaining is only something that either party may put on the table, but neither party must put on the table. Experience has shown us that boards

of education understand that the response "no" is a good faith bargaining position.

Assembly bill 3181 limits illegal subjects to those specifically excluded by statute and removes that preemption by regulation except as it sets a floor for benefits or compensation. The effect of such a change would mean that teachers could negotiate whether or not they were entitled to have a dictionary, teacher's text, chalk, or even the best time for conferences.

This bill further provides a listing of some specifics for negotiations, including all matters of subcontracting which impact upon an employee's terms and conditions of employment.

Finally, A-3181 defines confidential employee so that secretaries who open mail are not for that reason alone excluded from a negotiating unit.

Opponents of this bill argue that employee unions are already too strong and local school boards will "give away the store" under pressure from the unions. Opponents argue that restoration of negotiations in permissive areas will wreak havoc on our public schools.

These opponents have presented no evidence to support their contentions. They ignore the fact that these areas were open to bargaining for almost 10 years, and that the dire consequences they predict did not come to pass. To the contrary, a number of school boards and employee unions harmoniously reached productive agreements during that time.

In closing, since the Ridgefield Park decision in 1978, we have put a great deal of effort into gaining a broad expansion of the scope of negotiations and are pleased to say that we have made some gains.

Yet, many areas that are worthy to be brought to the negotiations table still remain untouched. Assembly bill 3181 is a vehicle for this Legislature to further assert its intent of allowing public employees seek to negotiate those many matters that make a system work or not work.

NJEA welcomes this open dialogue on all of these areas and looks forward to continued debate. As A-3181 moves forward, we will submit some technical amendments to ensure that further expansion of the scope of bargaining will not conflict with those changes made last year.

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I thank you for this opportunity to speak on this bill for the Association and will answer any questions you may have at this time.

Thank you.

DTC:JFL:sh
12/6/90

25X

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

TESTIMONY PRESENTED TO THE ASSEMBLY LABOR COMMITTEE AT A HEARING ON DECEMBER 5, 1990 BY THE NEW JERSEY COUNCIL OF COUNTY COLLEGES

Good morning. My name is Nancy Becker and I represent the New Jersey Council of County Colleges. The Council of County Colleges opposes A-3181, legislation sponsored by Assemblyman Foy that expands the scope of public employment negotiations.

The enactment of this bill would be cataclysmic to the county colleges: by giving away intrinsic and indispensable managerial prerogatives at a time the colleges cannot afford an additional burden, the bill would jeopardize the colleges' ability to provide high quality, affordable education.

The Council opposes A-3181 also because it would raise local property taxes, threaten the economic stability of the sector's revenue sources, and send a resounding pro-Labor signal to an unsteady business community, accelerating corporate flight from New Jersey. Further, the bill is likely to be found unconstitutional by the courts.

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The Council urges the committee to withhold support for this legislation. If this committee decides to release the bill, we ask you to exclude the county colleges by amendment. The county colleges have been exempted from previous laws that expanded the scope of public employee negotiations for reasons that remain valid. For example, when A-476 was signed into law in 1989, it exempted the county colleges.

Like A-476, A-3181 would put the special interests of public employees above those of the public and reverse existing law governing public employee negotiations. In the 1978 Ridgefield Park Decision (Ridgefield Park Education Association V. Ridgefield Park Board of Education 78 NJ 144 - 1978), the court said collective bargaining issues were either mandatory or illegal. It restricted mandatory issues to matters directly affecting the welfare of public employees that do not substantially interfere with the exercise of inherent managerial prerogatives.

The court reasoned that public employers have statutory duties as trustees of the public's welfare. The court said it would be unconstitutional to allow a "statutory managerial prerogative to be delegated through collective bargaining." Since then, the courts have identified (on a case-by-case basis) specific issues as either mandatorally negotiable or illegal.

A-3181 provides that all matters not specifically prohibited by statute would be mandatory subjects for collective negotiations in public employment. The bill would make bargaining about any subject, which is neither mandatory nor illegal, permissive.

A-3181 would destroy the integrity of the county colleges as educational institutions. For example, any academic initiative such as the Writing-Across-The-Curriculum Program could be negotiated away; class size and the number of school days could be reduced; the school calendar could be rearranged; the college curriculum and course syllabi could be weakened; and the requirements for retention, tenure and promotion could be reduced.

In recent negotiations, for example, teacher representatives asked to change the standard for sabbaticals so that seniority would replace merit, a move that would scorn the academic needs of the institution and its students. Currently, the sabbatical issue falls outside the scope of negotiations, so the public's stake in financing sabbatical leave was not negotiated away.

Other examples of items employee organizations have brought to the bargaining table include: hours of operation for campus gates; certain temperatures in classrooms; a copy machine in every office; and lower standards for promotions and tenure.

Dependent on tuition, and county and state revenues, the county colleges are public institutions led by trustees. Policy decisions must reflect the school's mission, directives from the state, student needs and priorities of state and county residents.

Maintaining administrative flexibility is a necessity for the county colleges because their policy decisions are informed by a changing set of factors, from advances in high technology to new discoveries in research. The colleges must respond daily to new conditions that cannot be anticipated in closed-door, high-pressure negotiating sessions.

Because A-3181 would require the county colleges to negotiate a much wider range of issues, this legislation would raise the costs of providing higher education. Unlike school boards and municipalities, county colleges do not have taxing authority. The county colleges simply cannot afford this legislation. 1991 will be a lean year for the colleges. Because of revenue shortfalls, the state is cutting the sector's funding for this year and perhaps next year. The sector's other revenue sources --the counties, the students, and the corporations that buy training programs -- also are feeling the strain of recession.

A-3181 would not only jeopardize the colleges' ability to provide high quality, affordable education by placing the special interests of public employees above those of the public, it also would threaten the economic stability of college's main revenue sources. Increased expenses would ultimately require higher tuition from a group of students who can least afford it. By burdening the counties' budgets, the bill would

ultimately result in an increase in property taxes across the state.

Further, the bill will cost the counties (and municipalities) more money in negotiations with their public employees. These increased costs will require yet another property tax increase. Overburdened county budgets will diminish again the potential revenue stream available to the county colleges.

Corporations are the sector's last source of revenue. In a recession, corporations often relocate to cut labor and energy costs and avoid business taxes. To survive, some companies consolidate their plants in one state; the states must compete vigorously to attract the consolidation.

A-3181 -- a boon to the labor unions -- would send a clear and powerful signal to the business community. The enactment of this pro-Labor bill will tell New Jersey's corporations that Labor is in charge and calling the shots. News that New Jersey has passed this legislation will be rapidly transmitted to states like Pennsylvania and Maryland, which are competing with New Jersey for corporate consolidations and re-locations.

Finally, because A-3181 would compromise the current scope of negotiations law and allow inherent managerial prerogatives to be delegated through collective bargaining, we believe the bill is clearly unconstitutional.

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In summary, the enactment of this bill would be disastrous for the county colleges. It would give away managerial prerogatives at a time the colleges cannot afford the burden; would jeopardize the colleges' ability to provide high quality, affordable education; would raise local property taxes; and accelerate corporate flight from New Jersey. Above all, the bill would jeopardize the colleges' ability to provide high quality, affordable education. We urge the committee to withhold support for this legislation. Failing this request, we ask you to amend the bill and release the county colleges from its grasp.

PSA

New Jersey
Principals and Supervisors Association
1479 Pennington Road, Trenton, NJ 08618
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TESTIMONY BEFORE ASSEMBLY LABOR COMMITTEE

DECEMBER 6, 1990

Good morning Mr. Chairman and members of the Committee. My name is Debra Cosgrove, Assistant Director of Governmental Relations for the New Jersey Principals and Supervisors Association. Our association represents over 5,000 public school principals, vice-principals and supervisors throughout the State of NJ. I am here today to discuss and oppose A-3181 which seeks to expand the scope of collective bargaining negotiations in our schools.

These days, the public is demanding success in our schools through three things - Accountability, Accountability, Accountability. In the face of Abbott v Burke, the uproar over the Quality Education Act, and continuing issues of budget deficits and revenue short falls, the people of New Jersey are demanding educational accountability and reform from the Administration, the educational community and you, their elected representatives. You are listening. This week, a new state school monitoring system is being voted upon. Additional accountability is being considered through such proposed legislation as a school board ethics law, or the creation of an office of Inspector General to oversee our

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educational system. As professional educators, our membership strongly agrees with you and the public that educational quality and accountability must be the rule, not the exception.

Yet, in this context, we are suddenly faced with A-3181, legislation which flies in the face of the public demand for accountability. This bill broadly expands the scope of collective bargaining in the public sector to grant a large measure of control over basic managerial decisions to public employees. Under A-3181, such managerial decisions as class size, employee assignments, the length of the school day and year, curriculum, criteria for hiring and evaluating teachers, use of teacher aides and other issues of educational policy would now be removed from the expertise of professional administrators. Similarly, these issues will be removed from public input through their voice, their locally elected school board. Such a shift is clearly another major step in the wrong direction.

As the educational leaders in schools, our members have the dual responsibility of both managing the educational programs and operation of schools and administering teacher contracts. It is our view that the creation of a new and sweeping permissive category of subjects for bargaining will be detrimental to the operation of our schools. As written, the bill reestablishes and expands the permissive category that was eliminated in the Ridgefield Park decision, limits the category of illegal subjects of bargaining and expands the mandatory category to

include negotiations on items that impact on manageral decisions. Our major objection to the bill is that the mandatory category is too broad, and the illegal category is too restricted. Furthermore, allowing locally negotiated agreements to supersede the administrative rules or regulations of the State will lead to chaos in public education in New Jersey.

By restricting the illegal category to only statutory prohibitions, too many items would become permissive subjects of negotiations. For example, there is a long list of items that, although not specifically prohibited by statute, have been held to be non-negotiable items because they involve matters of educational policy or are inherently management preogatives. Items such as the academic calendar, certain assignments of staff, class size, evaluations, staffing, employment qualifications and qualifications for salary increments and promotions have been management decisions. However if A-3181 were to become law, such items would become permissive subjects for negotiations since no statute specifically prohibits these items from negotiations. This would have the effect of eliminating the ability of publicly elected boards to establish policies and manage school districts in the interests of children and the community. This is bad public policy, since it lessens the democratic process by weakening elected boards of education. It is even worse management practice to allow employees to negotiate over how to manage the district. And it is worse yet to place the education of New Jersey's children on the bargaining table.

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Last January, the Legislature significantly modified the then existing scope law to require negotiations over the assignment of extra curricular activities, and the imposition of minor discipline. Additional restrictions were imposed on management flexibility in the areas of employee transfers, withholding of increments and discipline. These changes were not needed then. The existing system worked. We must question why the Legislature is now considering broadening the new law before we can determine its fiscal and operational impact. Clearly, with more subjects to discuss, negotiations will take longer, become more complex and cost more. We suggest a careful consideration of the overall impact and cost of this legislation, particularly in light of the many unknowns of the new funding law. We ask you to table this bill until we all understand the realities of the new funding system and the new scope law.

Thank you for allowing me to state our concerns.

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Illegal Topics

The following items have been determined to be *illegal topics of bargaining because they involve matters of educational policy or inherent management prerogatives:*

- Absenteeism and tardiness policies
- Academic calendar
- Affirmative action plans
- Application of evaluation criteria
- Assignment
- Audio-visual equipment, use of
- Budget formulation
- Class size
- Contact time for students
- Curriculum
- Decision to assign bus, cafeteria, corridor and playground supervision
- Decision to reschedule snow days in teacher vacation period
- Decision to go to split sessions
- Dress code, adoption of
- Evaluation, advance notice of observation and who evaluates
- Extracurricular activities, assignment of
- Facilities relating to the education process
- Impact[11] of nonnegotiable decisions
- Instructional materials
- Lesson plans, format of and scheduling of submission
- Number of employees and deployment of personnel
- Parent-teacher conference, decision to schedule
- Productivity studies
- Qualifications for employment
- Qualifications for increment
- Qualifications for promotion
- Sick leave, verification of
- Staffing, number of employees
- Student-related issues: discipline, grading, grievance procedure, safety, testing
- Subcontracting
- Supervision, of employees by department chairperson Transfer, decisions and criteria
- Use of teacher aides

The following items have been held to be *illegal topics of bargaining because they contravene specific statutes or regulations:*

- Composition of the bargaining team
- Decision to RIF - start of Bd.
- Discipline, procedures ending in binding arbitration for employees with protection under the tenure law or other statutory appeals procedures
- Early retirement incentives – Fair Leaves under/minus system
- Evaluation criteria - in state regs
- Extended sick leave - Statute - one use it up (case - case law's)
- "If/then" clause
- Impact of RIF on remaining teachers, and on RIFfed teachers when there is no significant increase in work load (Comp is Negotiable Here)
- Maintenance of membership clauses
- Nonrenewals - not consid disc p/c → appeal to C
- Parity
- Pensions
- RIF procedures (such as seniority, recall, and bumping rights for tenure-eligible RIFfed employees)
- Religious leave (paid), if not charged to general personal leave or vacation
- Seniority provisions inconsistent with Title 18A
- Sick leave, unlimited blanket
- Sick leave, use of for other than statutory purposes
- Student grievance procedures
- Sunshine bargaining as a precondition to negotiations
- Withholding of increments

[11]Impact was declared illegal under *Woodstown-Pilesgrove*. However, PERC has ruled in some cases that certain terms and conditions of employment related to the nonnegotiable decision may be severable from the decision itself, and thus may be negotiated. See, for example, *In re Monroe Township Bd. of Ed.*, PERC No. 85-6, 10 *NJPER* 15224, and *In re Bridgewater-Raritan Regional Bd. of Ed.*, PERC No. 81-35, 6 *NJPER* 11230.

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Mandatory Topics

As of July, 1988, court decisions and PERC determinations have held that the following are *mandatory topics of negotiations.* Remember—you must negotiate these issues but you do not have to concede unless you wish to do so.

Advisory arbitration for the application of management prerogatives to individual employees

After school teacher-only workshops

Agency shop

Commencement date of negotiations if earlier than date set by PERC

Committees on nonnegotiable topics that have merely advisory authority

Compensation

Discipline procedures consistent with statutes

Duty-free lunch

Evaluation criteria for merit pay

Evaluation procedures that do not contravene statute or administrative code

Fair dismissal procedures

Fringe benefits, including benefits for RIFfed teachers if incorporated into the contract

Grievance procedures

Hiring procedures

Holidays

Holdback of salary

Hours

Insurance, including disability income

Job security (for employees not covered by tenure)

Leaves of absence

Length of the collective bargaining agreement

Management rights clause

Maternity and child-rearing leaves

Merit pay (including evaluation criteria)

No-strike provision

Payment for unused accumulated sick leave

Past practice

Personal leave

Personnel file, access to

Physical and mental exam, beyond statutory authority

Physical facilities and working conditions, smoking in teachers' lounge

Posting procedures

Preparation periods

Promotion procedures

Reduction in force, notice provisions and compensation for remaining staff if there is a significant increase in work load.

Release time

Representation for teacher conferences, other meetings

Rules, change of

Sabbatical leaves

Safety issues

Salary guide, initial placement, credit for experience

Shifting unit work from unit employees to employees outside the unit (specifically distinguishable from the nonnegotiable topic of subcontracting)

Sick leave, above the statutory minimum

Summer session, procedures for filling positions

Teacher-pupil contact time

Teacher rights clause

Teaching periods, number of

Transfer and assignment procedures

Union business, time off for, use of prep period for

Tuition reimbursement

Vacations

Work load

Workday, length of

Work year, length of[10]

Zipper clause

[10]This is generally mandatory for public employees; however, for teachers it is mandatory only to those days in excess of the 180 minimum required for state aid.

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RELEASE FROM DON PHILIPPI, BUSINESS MANAGER

DATE: DECEMBER 3, 1990

TESTIMONY ON A-3181 S-2447

SCOPE OF NEGOTIATIONS BILL

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Honorable Members of the Assembly Labor Committee:

I am appearing here today on behalf of the International Federation of Professional and Technical Engineers, Local 195. The purpose of my appearance is to encourage this Committee to support Assembly No. 3181, the proposed amendment to the Public Employer-Employee Relations Act introduced by Assemblyman Foy.

IFPTE, Local 195 represents thousands of employees of the State of New Jersey in three large statewide units, the Operations, Maintenance and Services unit, the Crafts Unit, and the Inspection and Security Unit. Our members are employed in every State facility and perform every conceivable type of job. You will find members of Local 195 performing custodial work in the State developmental centers and psyciatric hospitals, repairing the plumbing in the State prisons, operating the cameras for the Public Broadcasing Authority, inspecting produce, operating heavy equipment on the State highways and testing applicants for driver's licenses. In fact, you will find our members providing services to the public in over three hundred different job titles and positions on behalf of the State of New Jersey. I am here to speak for these workers, to let you know why it is important to us that Assemblyman Foy's bill become law.

The reason I am here today is that we, as employees, would like the opportunity to have input into our working conditions, what is known as terms and conditions of employment. What we ask

is no different from what any other working person in this country asks, and in fact, expects in their workplace. The chance to have input, the chance to have negotiations, and the opportunity and right to reach an agreement on workplace matters which affect us.

While currently the law allows us to negotiate over "terms and conditions of employment," the actual limitation of negotiable areas is such that we are reduced to negotiating mostly over money. However, there are many more areas which affect our terms and conditions of employment, the quality of life in the workplace, in which we are not allowed any say whatsoever.

We have no input into determining our job duties and our job descriptions. Management has an absolute right to define our job duties, however rational or irrational their decisions may be. We, the employees who are doing the job, can make no decisions. We have no input into the qualifications for promotion, and our employers can decide not only the qualities they look for to effectuate a promotion, but who to promote without any type of review being available. We have absolutely no control over whether we are transferred from one worksite to another, no matter how inconvenient, no matter our seniority.

If any agency enacts regulations governing our employment, we cannot even negotiate over employment issues which would otherwise be negotiable. In short, the law allows us to negotiate only over money, money and money. All other areas are deemed "managerial prerogative" or pre-empted. This has reduced

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negotiations to a tug-of-war over money. We need Assembly Foy's bill to allow us meaningful negotiations over non-economic aspects of our employment.

The response of public employers to our request for greater input in the workplace is to come to this Committee and tell this Committee that only disaster can follow the passage of Assemblyman Foy's bill, that giving public employees the right to negotiate over their work situation will lead to public disaster. However, a review of the situation shows that this is not so.

Let us first address the fact that public employers told this Committee the very same horror stories that they are telling it now when the original Public Employer-Employee Relations Act was passed. Public employers told this Committee that the passage of a law giving public employees the right to collective negotiations over any topic would destroy their ability to provide services to the public. Public employers told this Committee that public employees were greedy selfish people who cared only about putting more and more money in their pockets while doing less and less work and being rude to the public. None of these dire predictions have come true. New Jersey is known for the high quality of services which its government provides to its citizens, and the public employees, the providers of those services, are proud of their contribution. Government did not fall apart as predictd by public employers when their employees received the right to collectively bargain over the terms and conditions of their employment, and it is no more likely to fall apart if Assemblyman Foy's bill allowing

negotiations in permissive areas passes than it was to fall apart when these same public employers predicted twenty years ago the same dire results.

However, we need not look only at the identity of objections from public employers twenty years ago when the original Public Employer-Employee Relations Act was passed and now to see that these public employers are like a broken record, the same complaints without any proof of their validity. In fact, permissive bargaining existed in this State for ten years without any of the dire results predicted by public employers.

After the Public Employer-Employee Relations Act was passed, modeled upon the National Labor Relations Act, the common assumption was that the Act allowed bargaining in the same areas as the NLRA. As pursuant to the NLRA there had been for decades both mandatory and permissive bargaining, when public employers and public employee unions bargained after the passage of the original Act, they assumed the same categories applied in New Jersey and bargained over permissive subjects. In fact, bargaining took place over permissive subjects in this State for years and agreements were reached in this State over permissive subjects for years. It was not until the New Jersey Supreme Court issued its decision in Ridgefield Park Education Association v. Ridgefield Park Board of Education, 78 N.J. 144 (1978), that public employers and public employees were forbidden to negotiate over "permissive" subjects.

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There is a long history, therefore, of negotiations over permissive subjects and we submit to this Committee that the public employers have not been able to come to this Committee and show that horror stories occurred during the time of actual experience with permissive bargaining in New Jersey. Government did not fall apart, employees continued to serve the public and productive bargaining occurred.

The Ridgefield Park decision prohibiting bargaining in permissive areas did not enhance the bargaining process. Ridgefield Park was conterproductive. Ridgefield Park resulted in a loss of flexibility in the bargaining process as well as a loss of good faith, as employers refused to abide by agreements.

Flexibility in bargaining is lost when issues on which bargaining can occur are limited. When employees can bargain on workplace issues, issues which impact on their quality of work life and on how services are delivered to the public, there is less need for employees to focus on the financial aspects of bargaining. Employees may be willing to accept a lesser raise in return for more narrowly defined job duties, they may be willing to accept a higher deductible on an insurance policy in return for a greater ability to determine when and where they will provide services. When employees can negotiate only over financial issues, of necessity, the only requests the employees can make in bargaining are for more money and greater benefits. Bargaining areas are limited and flexibility in forming an agreement is lost. Flexibility in bargaining is one of the greatest benefits that we seek through Assemblyman Foy's bill.

Another benefit of Assemblyman Foy's bill is that more good faith will occur in the bargaining process. One of the unfortunate results of Ridgefield Park was the manipulation by a number of public employers of the bargaining process. As this Committee is aware, the collective bargaining process is a give and take process, each side gives up certain demands in return for certain concessions by the other party. The negotiations process moves from one of mutual trust and respect to one of distrust when one of the parties has the right, and exercises that right, to unilaterally reputiate a part of a mutually bargained agreement after the fact. This has occurred many times since the Supreme Court decision in Ridgefield Park. A public employer would agree to a demand of a union in negotiations, the union would give up certain other demands in return for the public employer agreeing to that particular demand. Subsequent to the signing of a collective bargaining agreement, the public employer would then go to PERC and file what is known as a Scope of Negotiations Petition, a petition seeking to have a particular contractual agreement removed from the contract. If PERC determines that the subject matter of such a petition is in fact non-negotiable (which is the case with all areas of permissive negotiability), than that the provision is removed from the collective bargaining agreement. The process of bargaining is disrupted when one party can agree to a provision, sign off on it and subsequently have it removed from the agreement. Most of the areas which employers "scope" out of contracts are permissive, and would be permissible areas of bargaining under Assemblyman

Foy's proposed amendments. The passage of these amendments could increase the areas in which bargaining can occur, and will hopefully lead to more honest bargaining, and less repudiation unilaterally of agreements reached by mutual consent.

Employers opposed to Assemblyman Foy's bill will undoubtedly tell this Committee that the bill will give public employees too much power to run the government. The public employers will tell this Committee that the unions are big powerful entities whose interests are contrary to those of good government and directed solely towards economic gain. Such statements are untrue and an insult to hundreds and thousands of public employees in this State who strive everyday to do their jobs to the best of their abilities. In fact, unions are neither all powerful nor are they organizations of individuals pursuing only their self interests, not that of the common good.

It has always amazed me to hear public employers talk about the power of unions. The employers say we will force them to reach an agreement on issues which will have a negative impact upon the public. How will we do that? Let these employers tell this Committee how unions will force them to agree to things to which they do not want to agree. Will we hold guns to their head? Will we explode bombs in their cars? What will we do? How will we exercise this awesome power we allegedly have to force them to do things they do not want to do? And in fact, if we are so powerful, why do we need a bargaining bill? Wouldn't we just use this amazing power we supposedly possess and force the employers to do what we want?

Assemblyman Foy's bill is clear. We currently have the power to use the law and to have PERC order an employer to bargain on a mandatory subject of bargaining. The proposed amendments modify N.J.S.A. 34:13A-5.4a(5), the section of the law which makes it a violation of the Act to refuse to negotiate in good faith with a public employee union concerning terms and conditions of employment. That section of the Act is modified so that it violates the Act only to refuse to bargain on mandatory subjects. It is quite clear that given the language of the amendments a union would have no legal power to force negotiations on permissive subjects. Thus, our only power would be this unknown force that the public employers always talk about, this unknown power we have to force them to do things they don't want to do.

If in fact public employee unions had the power attributed to them by management, that power would have been exercised in pre-Ridgefield Park days. Employers would be able to come to this Committee with horror story after horror story of how public employee unions used this force to force them to reach an agreement on permissive areas in ways which cause a devastation. They cannot do this because the fact is, such horror stories never occurred.

It should also be noted that unions representing police and fire employees have had the power for years to negotiate over permissive subjects. If unions were so powerful and strong, and if the exercise of this power in areas of permissiv negotiability would lead to the dire results predicted b

managements, they would be able to give this Committee example after example of horror stories in the police and fire area, yet they do not do so.

Perhaps the best example of the fact that the public employee unions do not have the awesome powers attributed to them by management is the fact that we are still here before this Committee asking that you pass a bill allowing us to negotiate on permissive subjects. If we were as powerful as alleged, after Ridgefield Park was issued in 1978, twelve years ago, we would have used awesome power and strength to have this Legislature pass a bill allowing us to bargain over permissive subjects. Twelve years after Ridgefield Park, we would not still be seeking these rights, we would have long ago achieved our goal. The notion of public employee union power is a notion concocted by public employers.

It is only common sense that the people performing a particular job have the most knowledge as to how to perform the job effectively and efficiently. Public employers are well aware of this and yet will not acknowledge this fact to this Committee.

Study after study has shown that the more employees have input into how their workplace functions, the more interested they are in being productive employees. The more powerless an employee feels, the less interested that employee is in doing his best for the employer and for the public the employer serves. Assemblyman Foy's bill would increase the opportunity for public employees to participate in decision making affecting their workplace and their provision of services to the public, while

allowing the public employer the ultimate right to decide whether or not to allow public employees to participate in decision making in any permissive given area. Public employers would find employee performance enhanced as employees have a greater voice in their workplace.

Public employers will tell this Committee that public employees care only about themselves and the money they receive, not the public. These employers are sorely mistaken about public employees. As the law only allows public employees input on the economic conditions of their employment, this is the only area in which they have a guaranteed means of input to the public employer. These employers on the one hand criticize employees for being too interested in money and on the other hand seek to limit their input on decisions such that they can only have input on money.

Public employers are very interested in restricting employee input to those areas which are considered mandatorily negotiable. In forcing this restriction, they now criticize public employees for talking about and negotiating over the only areas allowed. When Assemblyman Foy's bill is passed, public employers will see public employee unions discussing in negotiations a multitude of issues which will be beneficial to the public. The public will benefit from discussions taking place between public employers and their employees on how services are provided, on the working conditions of employees, on how the public employer functions. Public employers may be surprised to see how wide ranging are the interests of their employees, if they will take the time to

listen to them. The Foy bill, by allowing negotiations on permissive subjects, would create a forum in which communications between public employers and employees improved.

Public employers will come before this Committee and talk about the cost of the Foy bill, that they cannot afford to have it passed. To the contrary, as employees can negotiate only over economic issues, there can be no give and take in which employees give up a proposal for an economic gain in return for an agreement with the employer in a non-economic area. As the areas in which agreements can be reached increases, there is more room for back and forth negotiating. There is more that an employer can offer to a union in return for the union taking a minimal economic package in settlement. Thus, the Foy bill offers the potential of cost savings to employers as areas of negotiability are increased.

This increase in the number of areas of negotiability, the number of areas in which there can be a give and take in negotiations, will hasten settlements of contracts. At this point in time, many employees must wait a year or two after the expiration of a collective bargaining agreement before a new agreement is reached. During the pendency of negotiations, their salaries remain frozen at the old level. Employees in many workplaces ranging from small municipalities to large countries are often years behind in negotiations. As the issues on which negotiations can take place increase, the areas in which demands can be dropped and agreed to increases, increading the chance of an agreement.

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Public employers will also come to this Committee and talk about public accountability, their allegation that negotiations destroy public accountability of government. Where are the instances pre-Ridgefield Park where negotiations on permissive areas led to this alleged loss of public accountability? Where are the negotiations in police and fire units in which permissive negotiations is allowable which led to this alleged loss of public accountability?

We come before this Committee to ask that public employees be given the opportunity to negotiate similar working conditions. We are not asking for the power to force an agreement on public employers. We are not seeking to take control of government from public employers. We are not seeking to destroy public accountability.

We ask that public employees be given the opportunity to have input at their place of work. We ask that you allow us to reach an agreement with public employers in certain areas, should the public employers be willing to negotiate in those areas. We ask that you allow us to expand the realm of subjects on which we can make proposals for bargaining, from economic subjects to others which also intimately affect our work each day. We do, in fact, ask that you give those of us who provide services to the public the opportunity to have input on how we can better perform in the workplace in order to provide those services.

Assemblyman Foy's bill offers us that opportunity and we urgently request that that bill be submitted to the Assembly.

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THOMAS A. EDISON STATE COLLEGE
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WILLIAM PATERSON COLLEGE OF NEW JERSEY

January 9, 1991

Mr. Gregory L. Williams
Assembly Labor Committee Aide
Office of Legislative Services
State House Annex - Room 447
CN 068
Trenton, New Jersey 08625

Dear Mr. Williams:

Enclosed please find the New Jersey State College Governing Boards Association's position statement regarding **A-3181**, the scope of negotiations bill. This statement is a written supplement to my previous remarks in opposition to **A-3181**, delivered at the Assembly Labor Committee's public hearing of December 6, 1990.

I trust GBA's position statement will be added to the record of committee deliberations, as appropriate.

Sincerely yours,

Darryl G. Greer
Executive Director

DGG:jmb

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A-3181
Scope of Negotiations

POSITION STATEMENT

The New Jersey State College Governing Boards Association (GBA) opposes A-3181, legislation intended to "clarify the law with respect to the kinds of matters which are proper subjects for negotiations in public sector employment." The state colleges believe the bill does more than simply clarify existing law; it widens significantly the scope of public sector negotiations and effectively reduces the bargaining strengths and policy authority of those selected to represent the interests of New Jersey's taxpayers.

By increasing the types of matters which are subject to negotiations, A-3181 would cause state college administrators and trustees to relinquish their policymaking authority, cause additional monetary benefits to be given to the unions, and threaten the academic integrity of the colleges. Important elements of educational policy would no longer be developed in open public meetings, but instead would be determined in back-room negotiations, closed off from the public at-large. For example, one provision of the bill would open to negotiations the process for recruiting and selecting new faculty. Such a provision is not only untimely, as many colleges face faculty replacements during this decade, but would also threaten traditional academic values by giving the bargaining unit the right to help determine who teaches.

Under the provisions of A-3181, either accountability would suffer, as administrators who are held responsible for operating the college are stripped of their traditional decision-making capabilities, or dollars would be lost, as the matters of authority are bought off the table. Either way, New Jersey citizens are unlikely to receive more efficient or higher quality public institutions, which they rightfully expect, especially in this period of fiscal duress.

So who is likely to benefit from the passage of A-3181? Clearly, the majority of taxpayers will have little to gain from such legislation, as governmental operations would become even more costly and remote. Tuition-paying students and parents would receive a double hit, since there would likely be even greater increases in the costs of attending New Jersey's public institutions of higher education. Educational administrators would have less authority over the programs and allocations which they were trained and hired to manage. Clearly, the only interest group to benefit from A-3181 are the employee unions.

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Fortunately, however, New Jersey legislators and members of the judiciary have long understood the importance of maintaining balance in public sector negotiations and the accompanying threat to the public welfare should an interest group gain an unfair advantage in the bargaining process. Also, they have come to understand that state obligations for full funding of negotiated salary programs have rarely been honored and, in fact, the administration's salary program has been completely suspended for fiscal year 1991. Rather than expanding scope of negotiations, the governor and the legislature would serve the public's interest better by meeting existing collective bargaining obligations through the full funding of negotiated salaries and benefits, which the colleges now must absorb in addition to extraordinary budget cuts. Certainly, the public interest will not be served if organizations such as the state colleges' faculty union --- which has already acquired for many of its members such benefits as a ten-month work year, sabbaticals, reduced teaching loads, and tenure rights --- were to receive a manifold increase in bargaining power. For while it is obvious that employees of the state and its public colleges should have ***a*** say in matters of public policy, they should not have ***the*** say.

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THE NEW JERSEY SUPREME COURT'S EFFORTS TO LEGISLATE A RESTRICTIVE SCOPE OF NEGOTIATIONS

A. INTRODUCTION

Presently in New Jersey collective negotiations between public employee organizations and public employers are severely restricted. Significantly, these restrictions were not imposed by either the Legislature or by the Public Employment Relations Commission. Rather, the New Jersey Supreme Court concluded that "representative democracy would be endangered" unless limitations were placed upon the subjects which elected government officials and unions could discuss at the bargaining table and upon which they could reach agreement. Assembly bill no. 3181, introduced by Assemblyman Foy on March 8, 1990, is intended to restore to employers and unions bargaining rights which were originally conferred by the Legislature and subsequently rescinded by action of the New Jersey Supreme Court.

A. 3181 recognizes that open and frank discussion on a broad range of issues of concern to employers and employee organizations alike promotes labor peace and stability. It also recognizes that elected government officials should have the authority to reach agreement over such issues where appropriate. Unlike the Supreme Court, the Legislature understands that representative democracy is preserved and strengthened, not

undermined, when elected officials have the ability to act in the public interest. The Supreme Court's assumption that elected officials do not possess the intelligence or common sense to enter into fair and reasonable contracts is both insulting and unwarranted.

In no other contractual arena are the hands of public officials bound so tightly. New Jersey town council members and county freeholders are entrusted with negotiating multi-million dollar contracts with private companies. Their counterparts in Pennsylvania, New York, Connecticut, Massachusetts, Michigan, Ohio and California, to name just a handful of other jurisdictions, negotiate over a full range of topics. Among states with statutes authorizing collective negotiations in the public sector, only in New Jersey have the courts radically curtailed the scope of bargaining. The Supreme Court, mistakenly believing that it has the right to function as a legislature when it does not approve of laws passed by the New Jersey Senate, Assembly and Governor, has effectively vetoed the 1974 amendments to the Public Employer-Employee Relations Act. (PEERA).

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B. HISTORICAL OVERVIEW

1. Public Sector Negotiations from 1968 to 1973

The New Jersey Public Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. was enacted in 1968. From 1968 through 1973 public employee organizations and public employers negotiated over a broad range of items. Elected government officials were free to enter into binding agreements affecting virtually all terms and conditions of employment. An official, confronted with a negotiations proposal that he or she deemed not to be in the public interest, was at liberty to reject the proposal. Public employers, like their counterparts in the private sector, had no problem saying no to union demands, for fiscal or other reasons.

Thus, for five years, employers and unions negotiated agreements without incident. There was no outcry from the public that their elected representatives were "giving away the store" at the negotiations table. Indeed, government officials knew that if they agreed to proposals which were either fiscally unsound, or imprudent for other policy-related reasons, they would be held accountable on election day. The public schools

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continued to function, garbage was collected, police services were provided, and fires were extinguished. Nevertheless, in 1973 the New Jersey Supreme Court handed down its infamous decision in Dunellen Board of Education v. Dunellen Education Association, 64 N.J. 17 (1973).

2. The Supreme Court's 1973 Dunellen Decision.

In Dunellen, the Supreme Court limited the right of employers and unions to negotiate over a variety of subjects, which had been designated by PERC as "permissive".[1] A permissive subject is one upon which an employer is not required to negotiate. However, an employer may discuss a permissive subject and incorporate an agreement upon such a subject into a contract with an employee organization. In finding that agreements on permissive subjects were unenforceable the Dunellen Court relied

[1]The National Labor Relations Board classifies subjects as either mandatory, permissive or illegal. NLRB v. Wooster Division of Borg-Warner, 356 U.S. 342 (1958). Permissive topics in the private sector include, the definition of the bargaining unit, the selection of a bargaining representative and internal union affairs. Illegal subjects are also narrowly defined and include provisions such as hot cargo and closed shop clauses, which directly contravene the National Labor Relations Act. All other items are grouped into the mandatory category. Most public sector jurisdictions follow this negotiations scheme.

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upon a section of the Public Employer-Employee Relations Act which provided that contractual provisions cannot "annul or modify any statute or statutes of this State." N.J.S.A. 34: 13A-8.1. According to the Court:

> In light of this provision it is our clear judicial responsibility to give continuing effect to the provisions in our Education Law (Title 18A) without, however, frustrating the goals or terms of the Employer-Employee Relations Act.

64 NJ at 25. Thus, the Court restricted the right of the board of education to negotiate over subjects addressed by Title 18A.

3. The 1974 Amendments

The legislative response to this court decision was swift. In 1974 the Legislature amended PEERA so that only pension statutes could not be modified by negotiated agreements. The Legislature also mandated that negotiated grievance procedures "shall be utilized" for any dispute covered by the terms of a collected negotiations agreement. From 1974 until 1978 employers and employee organizations continued to negotiate over both mandatory and permissive subjects, as they had prior to the Dunellen Supreme Court decision.

4. The Supreme Court Vetoed the 1974 Amendments with its 1978 Decision in Ridgefield Park

The New Jersey Supreme Court however was not impressed by the Legislature's decision to grant elected officials and unions the right to discuss and reach agreement over a wide range of issues. Nor did the Supreme Court give deference to PERC, which viewed the 1974 amendments as significant. In effect, the Supreme Court held that the Legislature's 1974 amendments were meaningless. Incredibly the Court declared that "the very foundation of representative democracy would be endangered" if elected officials and union representatives could discuss and reach agreement upon permissive subjects of negotiations.

The absurdity of the Supreme Court's decision in Ridgefield Park Education Association v. Ridgefield Park Board of Education, 78 N.J. 145 (1978) is demonstrated by the contractual language which the Court claimed would destroy representative democracy. The board of education and the teachers association had merely agreed that teachers could request an assignment change, and provided the request did not conflict with instructional requirements or the best interests of the school system, the

request would be honored. This understanding served to promote teacher morale, while permitting the board to determine how the interests of the school system would best be served. Yet the Supreme Court, intent upon striking down the 1974 PEERA amendments, ignored the tangible benefits to the educational process of this contractual provision.

C. CONCLUSION

It has been more than ten years since the New Jersey Supreme Court emasculated the Legislature's 1974 Amendments to the Public Employer-Employee Relations Act. It is time to restore some degree of normalcy to public sector negotiations. Police officers and fire fighters can presently negotiate over both mandatory and permissive subjects. Other public employees should enjoy a similar right. Elected government officials are fully able to determine which negotiations proposals have merit and which should be rejected. The contemptuous attitude exhibited by the New Jersey Supreme Court toward elected officials cannot be justified. Employers and unions in the public sector should be permitted to discuss proposals and reach agreement on a broad spectrum of subjects, as do their counterparts in the private sector and in surrounding public sector jurisdictions.