PUBLIC HEARING

before

New Jersey Legislature.

"ASSEMBLY LABOR, INDUSTRY AND PROFESSIONS COMMITTEE.

on

ASSEMBLY NO. 1448

(Legislative Recommendations of the
Public Employer-Employee Relations
Study Commission).

Held:
March 26, 1976
Senate Chamber
State House
Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Assemblyman Christopher J. Jackman (Chairman)

Assemblyman Joseph D. Patero

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1-32 :I
1A-18A :III
19A-22A:II
23A-38A:I
39A-45A:II

I N D E X

I N D E X - Continued

ALSO SUBMITTED:

ASSEMBLY, No. 1448

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 9, 1976

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

Referred to Committee on Labor, Industry and Professions

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

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

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

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

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

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

3. When used in this act:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Conventional arbitration of all unsettled items.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) The interests and welfare of the public.

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

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

(2) In comparable private employment.

(3) In public and private employment in general.

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

(d) Stipulations of the parties.

(e) The lawful authority of the employer.

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

(g) The cost of living.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

STATEMENT

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

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

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

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

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

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

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

ASSEMBLYMAN CHRISTOPHER J. JACKMAN (Chairman): Ladies and gentlemen, with your permission,I would like to call this hearing to order.

There is only one member of the Committee with me today and that is Assemblyman Patero. Then, to my left, is our legislative staff member, Daniel Ben-Asher.

We have called this hearing in response to the interest that has been generated over the State by Assembly Bill No. 1448. As many of you know, this bill encompasses the recommendations of the New Jersey Public Employer-Employee Relations Study Commission, which, if enacted, could have an impact on the State public employment relations for many years to come.

I hope that the hearing today will shed some light on this important subject.

When your name is called, please come to the front desk to give your testimony. It would be most helpful for the purpose of assembling an official transcript of this hearing, if you have a written statement to present, that you furnish copies of it to the Committee members and the hearing stenographer. Also anyone who has not already expressed an interest in speaking and wishes to do so can give his name to Mr. Ben-Asher, who is sitting at my immediate left.

In view of the number of people who have already expressed an interest in testifying today, I am going to ask everyone to not speak more than five or ten minutes. If you have a written statement, try to summarize it and the entire statement will be made part of the official record.

Assemblyman Burstein, who is the principal sponsor of this bill,is not present, but when he does come in, I will give him the courtesy of testifying.

At this time, I am going to make one or two brief statements. This bill has created a tremendous amount of interest and controversy around the State. With us this morning is a gentleman for whom I have tremendous respect. He is Dr. Richard Lester,who was Chairman of the New Jersey Public Employer-Employee Relations Study Commission. I served with Dr. Lester on this Commission. I submitted a minority report on this bill and put my name on it even though I didn't agree with it in toto. As I said at the outset, there is a tremendous amount of controversy on both sides.

So, without any further ado, I would like to introduce Dr. Richard Lester, who will make a statement.

Before Dr. Lester begins, I will announce the procedure to be followed today. We are going to recess for lunch at 12:00 o'clock and come back at 1:30. The hearing will continue until 4:30. Anybody who is not heard will be given an opportunity to appear at another date. I presently have a list of about 35 names of people who want to testify. It is possible that all will not be heard. I will try to schedule those of you present in the chamber in conformity with your requests. If I can't, I will try to schedule you as closely as I can to the time you want to be heard.

You may proceed, Dr. Lester.

R I C H A R D A. L E S T E R: Mr. Chairman, I appreciate the opportunity to appear before this Committee in connection with its consideration of Assembly Bill 1448.

The Study Commission's recommendations, embodied in this bill, are designed to respond to the specific instructions in the legislation establishing the Commission. Those instructions are extensive in scope.

The Study Commission's 145-page report explains the basis for each recommendation. I will not repeat orally the explanatory material in the report in support of specific recommendations.

In my remarks this morning, I should like to make some observations that may

help in understanding the Committee's recommendations as a whole and to clear up some apparent misunderstanding concerning the procedure in Bill 1448 for assuring settlement of impasses in negotiations.

The Commission in its year-long deliberations engaged in a fresh examination of the problems in public employment relations in New Jersey and the opportunities for improvement in such relations.

The Commission sought and seriously considered the views of many experienced practitioners in New Jersey and elsewhere, and drew on the lessons of past experience here and in other states. Input from many knowledgeable persons influenced the thinking of the Commission and the content of its recommendations.

Significant differences in conditions and diversity of views exist among the 1200-odd municipalities, counties, school districts and other governmental units in this State. Let me just add parenthetically that that is one of the reasons you get such a diversity of views because the situation may be different in each of the different units. Elements within labor and management concerned with public employment relations have, therefore, somewhat diverse and changing views regarding the range of issues that were considered by the Commission. Nevertheless we found that the parties had been engaging in fresh and constructive thinking in the light of recent experience, were receptive to new approaches to troublesome problems, and were quite conscious of the need to bear in mind the long-run public interest in constructive employment relations in the public sector in New Jersey.

In developing its recommendations, the Commission was particularly conscious of the need to take account of the diversity of conditions and the propensity for views on issues and procedures to change with circumstances and experience. Therefore, the Commission's recommendations, especially in the area of negotiations, provide for flexibility, alternative approaches and procedures, and adaptability to particular circumstances. Also they contain encouragement for the parties to assume responsibility for working out answers to problems, and furnish stimulus for the reduction and self-settlement of differences on negotiating issues.

I would especially stress the contribution that the Commission's recommendations could, as an interconnected or package set of proposals, make to the peaceful, fair, and intelligent solution of employer-employee disputes in the public sector in this State.

It may be useful if I briefly run through the procedure in Bill 1448 for the resolution of impasses in negotiations, indicating the significance of certain features and correcting some apparent misconceptions with respect to these impasse procedures.

Bill No. 1448 would make no real changes in the existing law's provisions with respect to mediation and factfinding. The new added procedure for achieving finality on pages 11 to 15 of the bill might, in practice, reduce somewhat the use of factfinding. There are some people who think it would reduce it very significantly. I think experience would determine whether that would be the case or not. There could be a quite flexible use of factfinding under the proposed provisions of the bill.

If after mediation and factfinding, differences over the terms and conditions of a new agreement continued to be unresolved, the new procedure would come into operation. Existence of the new procedure and advance planning with it in mind would undoubtedly serve, in some cases, to encourage the parties to settle their differences before that procedure would come into play.

If the negotiating parties have not achieved agreement by 60 days prior to the public employer's required budget-submission date, the parties are to notify PERC whether or not they have agreed on a terminal procedure for resolving the open items in dispute. Presumably they would have thought about that matter in advance. They are, however, given

10 days following the notification of a negotiating impasse - that is, 60 days prior to the budget-submission date - to consider the question, in the hope that during that period, during the 10 days from 60 to 50 days prior to the budget-submission date, they would be able to agree on some procedure for finality.

Six procedures for finality are set forth in the law. The parties could choose one of the six or they are free to work out a different arrangement providing it will lead to finality or assurance of settlement. Some people have missed this point, so I would emphasize it a bit.

If you look on page 11 of the bill, lines 39 to 44, it says: "Any terminal procedure mutually agreed upon by the parties shall be reduced to writing, provide for finality in resolving the issues in dispute, and shall be submitted to the commission," that is to PERC, "for approval."

". . . Terminal procedures that are approvable include, but shall not be limited to" - and perhaps there should be a comma after that - "shall not be limited to the following:" Then the six are specified there.

The parties, as I said, are free to choose one of the six or they are free to work out a different arrangement providing it will lead to finality or assurance of settlement. The new procedure encourages choice, flexibility, and assumption of responsibility for dispute settlement, by the paries themselves. They can shift from one settlement procedure to another with experience; each impasse can have its own settlement procedure. The six procedures outlined in the law are based on legislation and experience in other states.

I want to stress the freedom that the parties have under the proposed statute to work out any settlement procedure they desire. The six forms outlined in the statute are only examples based on other states' laws. They are not intended to be limiting. On the contrary, they are designed to indicate some of the possible variations that might be used.

To illustrate further possible variations, the parties could, for example, set up a panel to determine salaries by a statistical study or formula, agreeing to abide by the results of that study and formula use. Or a group of school boards might name an arbitrator for a period to rule on matters that they could not agree upon in terms of certain issues. That arbitrator would not need to be from the PERC special panel of arbitrators. The arbitrator, say, could be a former mayor or police commissioner or former judge, even a university professor or a former commissioner of education or a similar person for whom the parties and the community had respect and who is knowledgeable about that occupation in that locality. This provision of the law is intended to encourage the parties to be innovative and creative, to think about the issues in dispute and the solutions or methods of solution that suit their situation.

The approval of PERC for any one of the great variety of possible arrangements for settlement which would be on a voluntary basis is simply to make certain that the arrangement or means is not contrary to law and will ultimately result in a binding settlement.

Now, because it isn't completely clear on page 11 at the bottom there, I have a suggestion for the possible addition of one sentence that might be inserted in line 39 after the words "issues in dispute", as follows: "The services of a mediator or a factfinder may be used to assist the parties to work out and agree upon a procedure that will assure a settlement of the issues in dispute." So I would stress that flexibility in that connection.

If at the end of the 10-day period (50 days prior to the required budget-submission date), the parties are unable to agree on a terminal procedure for this

dispute, they are to so notify PERC in writing, giving an explanation for their inability and specifying the issues that remain in dispute. Both of these actions, that is both explanation of inability and specifying the issues in dispute to crystalize them, may help to clarify, even reduce, their differences.

The dispute then becomes subject to a specific form of forced-choice, final-offer arbitration. The arbitrator (or arbitrators) is to be selected from a special panel of arbitrators, under this circumstance, screened by PERC with the assistance of the proposed bipartisan Council on Public Employment Relations, set forth in the bill on pages 17 and 18, and the arbitrators on that panel having 3-year appointments.

The form of final-offer binding arbitration required by the statute if the parties cannot agree on any procedure for finality, provides that the arbitrator or arbitrators choose between each party's final offer on the economic issues as a package, and the arbitrator's choice between the final offer of each party on each noneconomic issue is made separately, on an issue-by-issue basis. "Economic issues," as defined in the statute, include those items which have a direct relation to employee income; all other issues are designated "noneconomic." The economic issues are, so to speak, the money issues that are common to most negotiations -- wages, salaries, hours in relation to earnings (that is the effect on average hourly earnings), paid vacation, paid holidays, insurances, and other direct money benefits to employees. The noneconomic benefits are more likely to be mostly those that are peculiar to the occupation or the industry, such as class size in schools or the complement of workers for performing a particular task. Negotiations involving professional types of work or semi-professional types of work are apt to involve a larger number of noneconomic issues; that is because of the nature of professional and semi-professional kinds of employment. Throughout the formal arbitration proceedings, the arbitrator (or arbitrators) is free to mediate or otherwise assist the parties to reach a mutually agreeable settlement.

Somebody has suggested, as is the case in Michigan, I believe, that the arbitrator can remand the issues to further collective bargaining; and there is nothing in the procedure that would in any way prevent that, as I see it.

In many respects, the provisions of Bill 1448 encourage peaceful settlement in a voluntary manner by the parties themselves. Contrary to some statements and resolutions, Bill 1448 would not change the Public Employment Relations Commission "from a mediation to an arbitration panel;" PERC is not given powers to make arbitration decisions. And, as just explained, the parties would have various alternatives to choose from and would have incentives for self-settlement.

There are two corrections that we failed to make in going over the draft of Bill 1448. I want to just mention them in closing. They are: (1) on page 6, line 13 of the bill, after the word "hire" and before the word "discharge" to insert "evaluate". That same phrase appears elsewhere in the bill and it somehow was inadvertently left out here. That would read, ". . . having the power to hire, evaluate, discharge, discipline, or to effectively recommend the same. . ."

(2) Then on page 8, line 84, eliminate the words "disputes, controversies or", so that it would read: "Notwithstanding any procedure for the resolution of grievances established by any other statute, . . ."

Mr. Chairman, that completes my statement. I would be pleased to respond to questions now or later on in the proceedings.

ASSEMBLYMAN JACKMAN: Thank you very much, Doctor. Are there any questions? (No questions.) You will be available. You are not going to leave, are you?

DR. LESTER: No, I will be here all day.

ASSEMBLYMAN JACKMAN: Is Judith Owens in the room? Mr. Bertolino, are you going to speak for the NJEA?

MR. BERTOLINO: Yes.

ASSEMBLYMAN JACKMAN: You know the procedure. State your name, please.

J A C K J. B E R T O L I N O:

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

I am Jack J. Bertolino, Director of Field Service for the New Jersey Education Association which represents more than 100,000 active, associate and retired school employees in New Jersey. NJEA affiliates are the sole and exclusive bargaining representatives for teachers in all but six of the state's 590 school districts. In these districts, NJEA affiliates represent over 1100 bargaining units of teachers and other school employees.

With me today is John V. Warms, NJEA Field Representative for Teacher Rights.

We welcome the opportunity to express to this Committee NJEA's concerns with respect to the recommended changes to Chapter 123 as suggested by the Public Employer-Employee Relations Study Commission and incorporated in A-1448.

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

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

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

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

In effect, this change would violate basic standards of good-faith bargaining. With the suggested changes, management could unilaterally chang working conditions. School boards could justify such an action by arguing t this right was granted through legislative intent, a principle upon which co rely heavily in making judicial decisions. Public employees would then be f to carry the burden of attempting to correct such injustices through unfair labor practice proceedings. In effect, the proposal would create disputes, not resolve them. It is difficult to understand why this bill suggests any revision of the freeze clause. The clause has not proven burdensome to school boards. It has not enfringed upon so-called management prerogatives. In fact, there is no evidence, either before PERC or in the Study Commission report, which demands consideration of such a drastic change in this essenti provision of employer-employee relations.

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

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

The statement of disagreement concerning the PERC Study Commission's report submitted by three Commission members expresses NJEA's position on th issue. It reads in part, "The parties have had only a few months to work und

this law, and no significant problems have been reported. We strongly believe the commission (PERC) should be given a reasonable period of time to determine the dimensions of the scope of negotiations under the existing legislation."

4. The proposed changes in Section 7b would limit the grievance definition to the interpretation or application of a negotiated contract (p. 7, lines 71-77). This limitation would eliminate the right to appeal the violation of policies and administrative decisions affecting employees, a benefit enjoyed by them since Chapter 303 was enacted in 1968 and reinforced by the Legislature in Chapter 123. Adoption of this provision would clearly cause unnecessary confusion. Grievance definition was a major area of dispute in the early post-Chapter 303 era. This matter was resolved through negotiation and by mutual agreement. As a result, most negotiated contracts now contain the definition as stated in law. Any modification of that clause could be interpreted as permitting -- and perhaps encouraging -- employers to make adverse administrative decisions affecting terms and conditions of employment. In such instances, employee organizations would be left powerless to utilize a contract's grievance machinery. Also, such a change would require lengthy and costly litigation to resolve grievances. The legislative intent of Chapter 123 was to resolve disputes expeditiously and fairly, not to create barriers which inhibit resolution of differences.

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

5. An outstanding deficiency in the bill is the lack of due process court procedures for public employees in strike situations. Without such a provision school boards will continue to secure instant injunctions, thereby gaining additional leverage to pressure employees into concessions. The instant injunction provides the opportunity for a school board to

circumvent collective bargaining and to utilize a judicial excuse to avoid real issues.

Injunctions continue to be issued automatically even though a specific strike does not endanger the public health or safety. The failure of this bill to provide for essential due process and day-in-court procedures only encourages management to abuse its inherent power. Unless such procedures are enacted into law, school boards will continue to utilize the courts and the injunctive process as weapons to punish teacher leaders rather than negotiate with them and to attempt to force contract settlements upon teacher associations.

NJEA is pleased to note that three PERC Study Commission members expressed their concern in the Commission's report about the issuance of automatic injunctions. In speaking to this issue, the three Commission members stated, "We would have included a recommendation that some provision be allowed for a public employee organization to have an opportunity to present arguments or evidence in court, prior to the issuance of an injunction against such organizations, based upon the application of a public employer. We do not believe injunctions should be automatically issued in the public employee area."

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

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

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

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

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

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

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

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

In summary, NJEA believes that A 1448 does little to promote equality at the bargaining table or to improve negotiation relationships between parties. If anything, the addition of certain amendments, the deletion of critical provisions, and the omission of needed improvements would weaken further an employee organization's already unequal bargaining position. Thank you very much, Mr. Chairman, for this opportunity to appear before you. We will be very pleased to answer any questions you may have.

ASSEMBLYMAN JACKMAN: I prefer to hold my questions and I will tell you why. I want to give an opportunity to as many people as possible to be heard this morning. I have some questions with regard to some of the reports I have here, but in fairness to the members who are not present this morning, there being just myself and Assemblyman Patero, I would prefer to study the statements on file with them, in conjunction with the legislative staff, and then request written answers or input from you.

MR. BERTOLINO: We would be happy to respond either in writing or verbally at any time.

ASSEMBLYMAN JACKMAN: Thank you very much.

Mr. Bruce Taylor, New Jersey School Boards Association.

B R U C E T A Y L O R: I am Bruce Taylor, Director of Labor Relations for the New Jersey School Boards Association.

I first want to thank the Chairman for his invitation to present the Association's views on Assembly Bill No. 1448.

Any change in our current Public Employment Labor Law will affect public education, which is the largest single public employer in New Jersey.

Before going any further, I would like to publicly express the Association's thanks to the members of the Study Commission upon whose report and recommendations this legislation is based. The Commission, comprised of people with varying insights, carried out their responsibilities with a professionalism and sense of public concern which is admirable. Nothing in our remarks today should lead you to conclude that we are not appreciative of the attention given to our positions by the entire Commission. I would specifically like to thank Dr. Lester, the Chairman of the Study Commission, and Dr. Weinberg, its Executive Director, for their obvious dedication to this very complex task.

Earlier this week we delivered copies of our written testimony on A 1448 to the Committee. That testimony contains a discussion of 22 NJSBA proposals with respect to any legislation enacted. Eight of those proposals deal with the issue of interest arbitration which I will address later in my oral testimony. A number of proposals involve technical recommendations and it appears that no oral commentary is needed on those matters today. For a more complete rendering of our views on A 1448, we urge you to consult our written testimony. In the interests of time, I will confine my remarks to the more significant portions of the proposed bill.

The sensible handling of labor relations problems, like most other human endeavors, does not happen instantaneously. As this Legislature indicated by its passage of Chapter 123, time provides all of us with an opportunity to gauge the success or lack of success of our laws. It was with that in mind, that the Legislature created

the Study Commission. The Study Commission recommended a series of amendments which would significantly change the course of governmental labor relations. The NJSBA is primarily concerned that the Legislature, in considering amendment to the law in this area, not forget that we are dealing with public employment and the public's rights.

The duty to negotiate in good faith concerning terms and conditions of employment is carried out by the 609 boards of education which we represent and the unions representing our employees. That is a duty which the Association supported in the legislative debate on what was to become Chapter 123. To further indicate our support of the concept of public sector collective negotiations, we have, on every public occasion, urged this Legislature to fully fund the Public Employment Relations Commission. We have also recognized the inescapable conclusion that a public law safeguarding public rights should be administered by members of the public not tied to any partisan interest. For that reason, we urge this committee to recommend passage of that portion of A 1448 which would create an all-public PERC. We find it ironic that parties with a vested interest in the law seek anything less than an impartial protection of their own rights. Opposition to this recommended change can only be based on the most short-sighted rationale. It is time that New Jersey joined other progressive states in the administration of its public sector negotiations law. The NJSBA supports full PERC funding and an all-public PERC because we realize, as you do, that the implementation of a law is often much more important than the passage of a law. Strangely, we hear little support from the unions on either of these points. We also hear little from the unions on the topic of the Governor's failure to nominate a full-time Chairman of PERC. In addition to enacting positive changes in our labor law, we would hope that changes made almost a year and a half ago by this body could be carried out.

Our concern for sound labor relations policies, we believe, is evident in our public pronouncements and our research on such topics as interest arbitration. We are concerned, perhaps frightened is a better word, that this Legislature will approach the public sector labor relations area as if it were dealing with private employers. The fact of the matter is that public employment is not analagous to private employment. The Legislature has often recognized this difference by enacting Civil Service laws, tenure protections and a whole host of other substantive benefits for public employees. Public employers deal with the public interest. They carry out obligations recognized by this State to be of overriding social importance. In no area is this clearer than in public education. This Legislature must not consider public sector labor relations legislation in a vacuum. We urge you to place any changes considered in this legislation in the context of the public responsibilities of public employers. To fail to do so can only aggravate the feeling of our citizens that their government is unresponsive to their needs.

One change contained in A 1448 which very clearly is not in the public interest would allow PERC to determine whether a matter is a required or "permissive" subject of collective negotiations. As noted before, we recognize our obligation to negotiate in good faith concerning terms and conditions of employment. These are what Chapter 123 and PERC call "required" subjects. A "permissive" subject is one which is recognized to be a managerial policy or right. Under this proposed amendment, if a public employer wanted to negotiate away those rights, it would be allowed to do so. Why not "allow" a public employer to give away those rights, if it chooses to do so? Because management rights in the public sector are our citizens' rights. The establishment of a "permissive" category of negotiations may very well lead to the waiver of the peoples' ability to govern themselves. Furthermore, in public education, the creation of a "permissive"

category endangers the very ability to create a thorough and efficient educational system. Some examples may be useful: PERC has already determined certain matters to be "permissively" negotiable even though there is no basis in Chapter 123 for it to do so. What areas may a public education employer negotiate away? Curriculum, budget, the school calendar, the number of employee positions and the expansion of school facilities are now matters about which a public employer may enter into a contract with a union. On Tuesday of this week, PERC ruled that the decision to assign teachers to supervise students was a "permissive" subject of negotiations when the safety of those students was involved. This decision quite clearly means that if the public employer doesn't mind negotiating away students' safety or if an arbitrator agrees that the employer already has, the contract with the union will be considered more important than the employer's responsibility to the public. We do not believe that the Legislature intended such a result when it passed Chapter 123 and we are confident that you do not desire such a result now. Yet, adoption of a "permissive" category will produce that result. This Legislature should not permit the temporary guardians of the public interest to give away the rights of the public. The proper management of government in a democratic society should always override short-term labor relations expediencies.

The NJSBA also urges this Committee to reject that portion of A 1448 which would impose binding arbitration of grievances upon all public sector contracts. In a free collective negotiating situation, terms and conditions of employment should not be imposed upon the parties by legislative mandate. Such mandates create an unhealthy imbalance in the negotiations process. It is also interesting to note that, if interest arbitration is enacted, the arbitrator, reviewing the entire relationship of the parties, would be empowered to direct the parties to include binding grievance arbitration in their contract. This is a far better method than a wholesale imposition of grievance arbitration upon every contract in the State. We often hear of how many private sector contracts contain binding grievance arbitration. It is said that 95 percent of private sector contracts contain binding grievance arbitration. However, less than 25 percent of all working Americans are covered by a labor contract. At the same time, over 95 percent of New Jersey's teachers, for example, are included under contracts. About half of them are covered by contracts providing grievance arbitration. Proportionately, many more public education employees are protected by binding grievance arbitration than employees in the private sector. So much for "statistics." The NJSBA will continue to oppose the legislative grant of benefits while requiring us, nevertheless, to negotiate in good faith.

There are several areas which A 1448 does not directly address and which we feel are major deficiencies in the legislation that we would hope you would consider. It is time to end the unsound practice of allowing labor organizations to represent both supervisors and non-supervisors, sometimes in the same negotiating unit. Long ago, the Congress of the United States wisely recognized that the inclusion of supervisors under the National Labor Relations Act would lead to a breakdown in an employer's ability to effectively manage his operation. In addition, the regulations governing Federal employees provide for the exclusion of supervisors from its coverage. At the very least, this Legislature should separate supervisors from non-supervisory employees in the conduct of collective bargaining. We are not saying that supervisors should not be allowed to be members of any employee organization they wish to join. We are saying that there is no logical way you can conclude that supervisors, who must implement the policies of a public employer, can do so if they are represented by the same organization which represents those whom they supervise. We direct your attention to the United

States Supreme Court's decision in Bell Aerospace. In that case, the court said: "Supervisors are management people. . . It seems wrong, and it is wrong, to subject people of this kind, who have demonstrated their initiative, their ambition and their ability to get ahead, to the leveling processes of seniority, uniformity and standardization that the Supereme Court recognizes as being fundamental principles of unionism."

The Association also requests the Legislature to end the automatic use of mediation and factfinding. The following provision currently appears in the law:

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

The Association is not opposed to a timetable to regulate the commencement of negotiations. However, the automatic institution of impasse procedures, whether needed or not, is contrary to the practice of sound collective negotiations. The success of mediation and factfinding both depend upon a willingness of one or both parties to use the techniques. The untimely use of either mediation or factfinding is a waste of public money and removes the burden for true collective bargaining from the parties themselves and transfers it to a neutral. Furthermore, as is evident in this year's round of negotiations, a mandated timetable may not only be unsuccessful but counter-productive, as well.

In response to this section of the law, PERC adopted a timetable, which allowed 30 days for negotiations and then required the parties, even if both were opposed, to use a mediator. Hundreds of public employment contract disputes automatically went to mediation. In many cases, the parties had not had sufficient time to discuss all the issues before them before a mediator intervened. The mediator was then given a 30 day period to "help" the parties reach a contract. In public education, less than 10 percent of all mediated disputes resulted in agreement, compared to a mediation settlement rate as high as 65 percent in recent years. Mediation has been a monumental disaster in New Jersey as a result of the mandated timetable. We are aware of no state in the nation which has suffered such a serious setback in the success rate of mediation from one year to the next.

The PERC timetable requires, whether or not the parties want it, that factfinding begin automatically following mediation. The factfinder then has a 30 day period to hold a hearing and issue recommendations. While all the data is not in, several facts are clear: 1) factfinders faced many, many more issues in hearings than ever before (this is due to the high mediation failure rate and the automatic institution of factfinding); and, 2) factfinding is as great a failure as mediation. This is because the successful use of factfinding requires that the parties come to the hearing with a few, well-defined issues. This year it has not been uncommon for factfinders to see thirty or forty proposals before them.

If we are truly serious about constructive labor relations, we will recognize the inherent flaw in a mandated timetable. Labor relations works best when the parties control the flow of negotiations. The unwarranted and, often, unwanted intrusion of a neutral works to disrupt that flow.

Now I will turn to interest arbitration. The Association will oppose the interest arbitration system recommended by the Study Commission and contained in A 1448. We do not do so because we are opposed to any form of finality for impasse resolution, but because we are convinced that the form recommended to the Study Commission by the NJSBA a year ago will come closer to alleviating our negotiations

problems than does A 1448's system.

As you are aware, the NJSBA is the only major employer group in the United States to endorse fair and final offer arbitration. I think it is fair to say that many of our own members as well as every other public employer in the State do not agree with our position. Many of them feel that the delegation of power to an arbitrator on initial contract terms threatens government itself. We are cognizant of those fears and fully understand their basis. We are concerned that, if a system of finality is adopted, that it very directly include a number of things: 1) arbitration must not be imposed on the parties if neither party desires arbitration; 2) the final alternative, the "forced" choice must discourage the parties from arbitration and encourage them to negotiate their own dispute; and, 3) there should be a limit on the length of an arbitrator's award so that a "losing" party won't be locked into a contract for an undue length of time. A 1448 meets none of these requirements. Even if both parties agree that negotiations are progressing to their satisfaction, this legislation would require arbitration of their alleged dispute. It is hard to imagine a provision which will do more to obstruct the goal of mutual settlement of problems. Although the "forced" choice of A 1448 (package arbitration on economic matters and issue-by-issue on non-economic matters), is superior to conventional arbitration, it would not, in our view, sufficiently encourage employers and unions to reach their own contracts through collective negotiations.

Furthermore, A 1448 places no time limit on the length of an arbitrator's award. As often as possible, the parties, not an arbitrator, should determine the terms and conditions of employment of our public employees. Allowing arbitrators to impose long term contracts on the parties does little to create harmony in public employment.

We have included in our written testimony several other modifications to an interest arbitration system which the NJSBA supports. Simply put, we are not prepared to support, work for or endorse a finality system which does not meet these requirements.

Mr. Chairman, the decisions you make on this legislation will have a lasting impact not only on public employees and employers but on all the citizens of this State.

Any legislation in this area must be designed to avoid the creation of excessive union power which overwhelms the interest of the people.

Thank you. (See page 1X)

ASSEMBLYMAN JACKMAN: Thank you, Mr. Taylor. I would be remiss if I didn't ask you one or two questions about your Association's position. In regard to the National Labor Relations Board, I assume that the board wouldn't want to be guided by the recommendations of the National Labor Relations Board, would they? Would you accept the mandate of the National Labor Relations Board? You made reference in your remarks here that you don't want ---

MR. TAYLOR: I spoke very directly to the one area of policy, which I think is a wise policy.

ASSEMBLYMAN JACKMAN: I assume you wouldn't want to be bound by any rules made by the National Labor Relations Board because under their rules you would have a right to strike. I am assuming you wouldn't go with that, would you?

MR. TAYLOR: No, I don't agree with the right to strike for public employees.

ASSEMBLYMAN JACKMAN: You make reference to the fact you don't think supervisors should be represented by the bargaining agent.

MR. TAYLOR: By the same unit that represents non-supervisors.

ASSEMBLYMAN JACKMAN: I can understand your position when you talk in terms of a school board. But what would you do in the case of a municipality where you have a Chief of Police and six Patrolmen? What would you do with that one Chief?

MR. TAYLOR: I believe supervisors who have the power to hire, fire, evaluate -

the definition of the Study Commission - should be excluded from non-supervisory bargaining units. The question of whether they should have the right to bargain is one which you already addressed in the definition of managerial executive. I think it is our position at the very least there should be a separation of supervisors and non-supervisors, even in the smallest bargaining unit.

ASSEMBLYMAN JACKMAN: I gather by this you don't even want arbitration on the basis of ---

MR. TAYLOR: Grievance arbitration?

ASSEMBLYMAN JACKMAN: Grievance arbitration.

MR. TAYLOR: We are not opposed to grievance arbitration. We are opposed to the legislative mandate of grievance arbitration. In the private sector, that has been a term and condition of employment which has been negotiated at the table. In our case of school boards in New Jersey over a relatively short history compared to the private sector, many, many boards have agreed, for example, to include binding grievance arbitration. I am quite sure many more boards will in the future. But I think it is something that should be done in the give and take of negotiations. As I pointed out, if there is an interest arbitration system, I am sure that the interest arbitrator could award grievance arbitration in a contract.

ASSEMBLYMAN JACKMAN: Am I correct in the understanding that you would be bound by final and binding arbitration?

MR. TAYLOR: I take it that we all would be bound by it.

ASSEMBLYMAN JACKMAN: You would?

MR. TAYLOR: Well, if it is passed in whatever form, we will be bound. There will be a right to appeal decisions based on the criteria the Legislature sets out.

ASSEMBLYMAN JACKMAN: Do you recommend final and binding arbitration on the parties?

MR. TAYLOR: You are talking about grievance arbitration?

ASSEMBLYMAN JACKMAN: No, final ---

MR. TAYLOR: Interest arbitration?

ASSEMBLYMAN JACKMAN: All items - the contract, for example.

MR. TAYLOR: On initial contract terms, it is our position that we support fair and final offer arbitration by package with all the modifications based on the research that we did over a year ago. I think it is still valid. The system is valid because I think it is the one system that forces the parties as much as possible to make a settlement of their own disputes without the use of an arbitrator. The success of any system that is enacted by the Legislature should not be based on the high number of arbitration awards issued, but the low number of awards issued. That is my goal and desire.

ASSEMBLYMAN JACKMAN: Thank you very much, Mr. Taylor.

MR. TAYLOR: Thank you.

William Kosakowski, President, FMBA.

W I L L I A M K O S A K O W S K I: I appear before you today as President of the New Jersey State Firemen's Mutual Benevolent Association. The FMBA is the largest group in our State representing the professional firefighter. Our attorney and working committees have spent many hours on the Study Commission's report on the PERC law and, I must say, in the inadequacies in the present amendments being proposed in Assembly Bill 1448.

The State had a group of dedicated and intelligent men on the PERC Study Commission,

who were very capable of revising the present law. The Commission's report certainly bears this out. Somewhere along the line, the report must have been misplaced. The Commission's report was an excellent one.

The FMBA appeared before the Commission at the hearings; written testimony was presented. As I understand it, the hearings were held for the purpose of allowing public employee groups to express their views on the proposed legislation. The FMBA membership is shocked to find that their suggestions have been completely ignored. We look upon A 1448 as a disaster for police and firemen. We not only feel that it does not provide the answers to the existing inadequacies but will further compound the problems.

While we appreciate the opportunity to appear before the Committee to express our views, at this time we have to wonder if we are not wasting our time. DanielBen-Asher has requested ten copies of my testimony to be submitted in writing for the official record and a verbal summary of five to ten minutes. We have gone this route before. Today, I would like to read my statement in its entirety and it will not take more than the allotted time.

A 1448 has several serious defects as far as firemen are concerned. I would like to point out a few of our objections to the bill. It would take too long to go over the entire bill. Our main objection is to the vague and ambiguous language contained in the bill. It is as though the authors purposely resorted to confusing language in order to intentionally prevent clear interpretation and thereby render the amendments useless. To say the least, the recommended changes being proposed are a complete reform for the employer.

In the Study Report, police and firemen are mentioned on a number of occasions, but when A 1448 was drafted, the police and firemen are forgotten once again. A good example is on page 3, line 59, "Supervisory Employees". The word "evaluate" has been added. The firemen had enough trouble with the supervisory section without adding fuel to the fire with the word "evaluate". In 1974, the FMBA pointed out the problem they had to contend with in this section of the law. Assemblymen Burstein and Jackman introduced legislation to resolve the problem - A 2249. This would have allowed superior officers in the Police and Fire Departments to bargain collectively in the same unit as police or firemen, as the case may be. This had been the practice for many years. In the middle and small sized municipalities, superior officers find it particularly difficult to engage in effective collective bargaining in a separate unit because of their small numbers and the high cost. A 2249 just dropped dead in the Senate. Assemblymen Burstein's and Jackman's bill stated on page 4 (on representation), "Special circumstances and except in the case of law enforcement agencies, including Police Departments and Fire Departments. . ." The proposal has been reintroduced by the Assemblymen again this session in the form of A 396. Why wasn't this in the present proposal, A 1448? The firemen and policemen are lumped into the PERC law without any consideration under A 1448. The PERC law from its inception was written for or against the teachers. Usually when an argument is presented, the first thing you do is look at the facts in the matter. The State FMBA has presented many facts pertaining to the PERC law, but evidently they have fallen on deaf ears.

On page 3, line 62, "Negotiate in good faith," the new paragraph is not clear at all. First, it states "make a genuine effort. . .", then closes with "but such obligations shall not compel either party to agree to a proposal or require the making of a concession." The statement is contradictory.

On page 5, the change in the structure of the Commission will make the Commission

a political football, eliminating the employer and employee representatives and providing full time members. The Tripartite Commission has worked well. The PERC Commission has been operating with insufficient funding. This proposal will only increase the financial burden.

On page 7, line 55, "after the effective date of this act proposed new rules or modification of existing rules", "governing" has been deleted, "changing working conditions covered by a collectively negotiated agreement shall be negotiated with the majority representative before they are established," has been added. In other words, anything that is not covered by contract, can be pushed upon the employee. This certainly has to be in conflict with good faith bargaining.

On page 7, from line 59 through 66 - this deals with good faith negotiations with respect to grievances and terms and conditions of employment and written agreements. On line 66 through 69, it is stated what the public employers shall not be required to negotiate. I like the "intrinsic managerial policy" line. This is confusing language, first class. The paragraph makes a travesty of the law. Who is to determine what, in fact, is an intrinsic managerial policy? The FMBA also has many areas they define as "intrinsic" and therefore excluded from the jurisdiction of the PERC law.

On page 11, line 31, there is the word "permissive" - permissive subjects to be negotiated by a factfinder. A factfinder cannot deal in permissive subjects if either party does not agree to it. This will only cause more impasses.

On page 14, line 137 - "The interest and welfare of the public. . ." It refers to impasses and what the mediator, factfinder, arbitrators will take into consideration. We might just as well place all public employees on referendum for increases in salaries and benefits.

As A 1448 is proposed, monopolistic is the best description for this proposal.

The PERC law was proclaimed as the answer to our problems by many in 1968. The State FMBA knew it was not and we fought against its passage. Eight years later, we are still waiting for amendments to the law that will enable it to accomplish its intended purpose. All the factfinders, mediators, arbitrators, also unfair labor charges, restraining orders and injunctions have not provided the solutions to our problems. The law must be strengthened in a way that is equitable to both the employer and the employee. There is no way the FMBA can lend their support to A 1448.

Thank you for the opportunity to address the Committee.

ASSEMBLYMAN JACKMAN: I would like to make a few comments about your statement. I can say with no fear of contradiction that it is not a waste of time for you to come here. In your statement you say you wonder if it is a waste of your time. I don't waste my time. I came here because of the many reactions from people around the State with respect to this bill. I might say that I put my name on the bill in order to have an input in it. I can assure you you are not wasting your time because everything in your statement will be taken into consideration. If you had been listening, you would have heard my remarks to the previous speaker about the supervisors to the effect that the police and firemen are more affected by that provision than the school teachers.

Now, Dr. Lester, who spoke this morning and chaired the Study Commission, has done a tremendous job and worked very diligently. I, of course, didn't agree with some of my colleagues on that Commission. The majority of them were lawyers and most of the terminology you see in this bill is lawyer oriented. I took some exception to it.

I can assure you that everything in your statement will be given the consideration it should be given. That is one of the reasons for this public hearing. If I didn't think it was important, I wouldn't waste my time because I don't get any extra pay for

sitting here and neither does my colleague.

MR. KOSAKOWSKI: Neither do I.

ASSEMBLYMAN JACKMAN: You have an interest in it and I am trying to protect that interest.

I just want you to know, Bill, without any fear of contradiction, the work that we are trying to do is going to be beneficial to everybody concerned and not one isolated group.

MR. KOSAKOWSKI: You know, Assemblyman Jackman, we are sitting on a powder keg right now. We have firemen's locals throughout the State that are on the verge of doing something very drastic. We have been telling them that we have this bill coming up and trying to assure them that there will be some kind of final and binding arbitration coming up. Then when we looked at this bill, we would much rather have seen just that section of the law changed to give us compulsory and binding arbitration. This other mumbo-jumbo in here is only going to cause obstacles along the path.

ASSEMBLYMAN PATERO: Mr. Chairman, through you, I have a few questions. What is the size of your membership?

MR. KOSAKOWSKI: We have 6,000 men that we represent. We have about 73 locals that range from a department of 10 to a department of over 500.

ASSEMBLYMAN PATERO: You have a membership of 6,000?

MR. KOSAKOWSKI: Yes.

ASSEMBLYMAN PATERO: And you are for binding arbitration?

MR. KOSAKOWSKI: We are for compulsory and binding arbitration.

ASSEMBLYMAN JACKMAN: Thank you, Bill.

MR. KOSAKOWSKI: Our attorney is here and he would like to make a brief statement. Mr. Rinaldo.

A N T H O N Y R I N A L D O: I am not going to take very long, but I would like to make a couple of points.

The first point I would like to make is: On page 28 of the Commission's report, Mr. Jackman, it says: "The Firemen's Mutual Benevolent Association of New Jersey similarly favored final and binding arbitration of impasses in their negotiations, also without specifying a particular form." I submit to you, sir, that prior to, I believe, the March 5th hearing which I think was the first hearing you had back in 1975, the FMBA, through me as their labor attorney, submitted a treatise - it wasn't very long, but it was long enough - and it got into the area of compulsory and binding arbitration. At that time, we favored a tripartite board. We did not favor the last offer arbitration which has been proposed by the Commission. So we are on record, sir, as favoring a particular form of arbitration. I would like to make that clear.

With regard to arbitration, as President Kosakowski said, yes, the FMBA is definitely in favor of binding arbitration. We felt that the Commission failed -- And we don't like to get in front of this microphone and criticize the Commission. I know how much work went into their report. I think we really appreciate the fact that you did take an in-depth study. We feel that our input wasn't grasped by the majority of the Commission. We feel that the Commission in all probability, perhaps through oversight, didn't feel the pulse beat of the State FMBA.

We are, as you have indicated and I think you have proposed legislation in this regard, public safety groups. We don't demand special attention, but we think our problems are sometimes different from the other public employee groups. With regard to withholding essential services, if we are allowed to withhold essential services, I am sure that every municipality in the State is going to be in difficulty. We weren't

asking for that; we were asking for a mechanism by which we would be treated, because of our particular positions, more fairly. We feel that the Commission's study falls very, very short of that. I am sure you are going to hear comments from Mr. Yacovino of the PBA in this regard also.

I go into towns with local FMBA groups and also local PBA groups. We have difficulties in negotiating, especially in 1975 and 1976 when I assume that everyone is feeling the economic crunch. We are faced with municipalities - and I won't name them, but they are easy to figure out - whose fair and last offer is zero or close to it. We are faced with a situation of an arbitrator coming in and taking a position either on the city's demands or city's last proposal and ours. We feel that the fair way to treat it is at least similar to the procedures we have now. We are allowed to go in with a factfinder who comes out with recommendations and, of course, we all know that these recommendations are not binding. If the factfinder, himself, or the conventional arbitration as we know it, was allowed to be final and binding, we feel that we would fare better by and large and be treated more fairly at the negotiating table, which a few of the previous speakers have mentioned. At the negotiating table are the employers getting ready for binding arbitration or are they going to negotiate with us? We feel they are going to be getting ready for the arbitration in many municipalities. I don't mean all municipalties, but many of them.

We are faced with problems concerning budget submission. The Public Employment Relations Commission has attempted to alleviate this by setting up a system by which your negotiations move within a specified period of time. But PERC is understaffed. They don't have the man-power to get into all of these municipalities. I can guarantee you that the vast majority of municipalities and public labor organizations are way past that 120- or 135-day deadline. Budget submission date is upon us; many of the municipalities do not have settlements. We will hear, "Gee, fellows, we can't do it this year. We cannot appropriate it. It is emergency appropriations. It has to go on to next year." Mr. Jackman, once it goes on to next year, they then tell us, "You can't get a raise for '77 because the taxes are going up as a result of the 1975 increase."

These are the problems that the the Firemen and Policemen face day in and day out negotiating and I am sure the other public employees do too.

I would like to make one comment on supervisors. Through your efforts and I believe Assemblyman Burstein's efforts, there has been an attempt to include supervisory personnel in that particular portion of the law. This has been taken out and nothing has been done with it. In the fire department or the fire service you may have an engine company with five men, one of which is the Captain and all of whom are a team. They work together. They have common goals and common interests. The previous PERC law, to some degree at least, attempted to provide for community of interest prior agreement. I see this all going down the drain. I see the word "evaluation" giving us another dimension. Now we had difficulty with the wording previous to the inclusion of "evaluate." We are now going to have further difficulty with it.

The "intrinsic managerial" language, the language about constitutional mandating, is going to be devastating to the public employee because it is going to be the best management rights clause you ever saw.

ASSEMBLYMAN JACKMAN: Who do you think wrote that?

MR. RINALDO: I don't know.

ASSEMBLYMAN JACKMAN: Members of your profession.

MR. RINALDO: You mean a lawyer.

ASSEMBLYMAN JACKMAN: Right.

MR. RINALDO: You don't mean a lawyer for public employees though.

ASSEMBLYMAN JACKMAN: And I want you to know that is not sarcasm.

MR. RINALDO: I submit to you, sir, it is devastating.

I have already indicated to you about the terminal procedure and I believe that these points that I have made probably will be made by other people. But I think they are of special significance to the police and fire services. Other states, New York included, have excluded police and firemen in the terminal arbitration procedures and they have come up with different ones, the tripartite boards being one of them. As a matter of fact, I also submitted legislation to the Commission on that particular issue, which either didn't get to the right person or went unnoticed. I would appreciate it if the Commission would reflect in its study that the FMBA did submit and does have a position on final and binding arbitration. Thank you for your cooperation, sir.

ASSEMBLYMAN JACKMAN: I just want to make one comment and I don't want anyone to think I am copping out or anything. But during the time I sat with the Study Commission, I unfortunately got ill. In fact, one time I got real sick and they had to have an ambulance take me home. I missed a couple of sessions which I might have helped make more productive. Many of the things which have been brought up today were discussed by the Study Commission. A lot of effort was put in by its members who represent a cross-section of the interests involved. Although I did not agree with everything, I at least had the opportunity to have some input while I was there.

The reason we are having this legislative hearing is because I thought it was important. My feeling is, and I have always felt this - of course, maybe I feel differently than the members that sit on this Committee with me, but I don't think so - that no public employee should be a second-class citizen. I don't like strikes because I don't think strikes settle anything. Somewhere along the line an arbitration award is going to be necessary. Final and binding arbitration on the basis of the highest or lowest offer is another subject matter that is confusing in my mind and I am not too keen about. Ironically, here today almost everybody is against Bill 1448. I don't know of anybody that is for the bill in its present form. We are trying to make an evaluation of it.

I don't want to see school teachers out on the street on strike, but I think at the same time they have a right to be represented properly and I think they have a right to make requests. Again, everything is governed by how much money is in the till and available. And, yes, bargaining is going to be tough for State employees this year and very possibly next year because of budget allowances and everything else. I feel we are doing a disservice if we don't properly pay our employees. I don't have all the answers. Certainly the recommendations made at this hearing will be brought to the attention of our colleagues. That is why we have legislative hearings, so that it is not necessary for you to address all eighty members of the Assembly.

I might say that I believe supervisors should be represented. I make no bones about that. That was included in the legislation that Assemblyman Burstein and I recommended. It passed our house practically unanimously and went to the Senate. The only reason it didn't pass in the Senate, I was told, is because we were having this Study Commission on PERC and rather than have several pieces of legislation, they preferred to have everything incorporated in this bill. I tried to incorporate it in the bill but I wasn't successful. It is as simple as that.

Now, we are having this hearing and I can ask my colleagues to reconsider and possibly put that in the bill so that everybody is represented legitimately.

MR. RINALDO: Thank you, Mr. Jackman.

ASSEMBLYMAN JACKMAN: Our next witness will be Gerald Dorf, Counsel, New Jersey League of Municipalities. Mr. Dorf I know you well enough to request that you not give your statement verbatim. It would be appreciated if you can limit your remarks to 15 minutes.

MR. DORF: I certainly will try, Mr. Chairman. I have no intention of reading the entire statement. We went in great detail in the statement so that you and the members of the Committee would have the opportunity of reviewing it at your leisure. I will only attempt to briefly summarize it. If it is appropriate, I may even make a few comments on what some of my predecessors before this microphone have had to say today.

ASSEMBLYMAN JACKMAN: Thank you very much.

G E R A L D L. D O R F: Mr. Chairman and members of the Committee, my name is Gerald Dorf. The only part of my statement I am going to read is the first page.

I thank you very much for affording me the opportunity to present this position paper to you. For your information, I have had approximately nineteen years of labor relations experience, representing management interests in both the private and public sectors, including, in the public sector, municipalities as well as school boards.

I am here today in my capacity as Labor Relations Counsel to the New Jersey State League of Municipalities and likewise as counsel to the League's PERC Committee. The Committee is chaired by the Honorable Herbert H. Bennett, Jr., Mayor of Ridgewood, and there is a list of the League PERC Committee members attached to my statement.

In the interest of time in view of your very full agenda, I will comment only briefly upon what the League sees as some of the major items in the bill.

First, the League, as you probably know, represents 562 municipalities in the State of New Jersey and, naturally, the League members are covered under Chapter 123, which is an amendment to the original PERC law, Chapter 303, and would, of course, be covered under Assembly Bill 1448.

In our view, we feel that certain changes that are being proposed in this bill are unwise, unwarranted, or both.

This has been a very unique year in collective bargaining in the State of New Jersey. Under the changes in the PERC law, that is Senate Bill 1087, which was incorporated in Chapter 123, PERC was directed to establish a timetable for bargaining. I did not, nor did the League, oppose a timetable for bargaining. What I did oppose then, when the Commission was considering establishing its rules, and what I do oppose now, is the totally unrealistic, unworkable timetable which in my judgment, based on the years of experience I have had in dozens of negotiations this past year, has proven to be totally counter-productive. It didn't do what it was designed to do. In fact, I think it did the reverse. Let me explain why.

The timetable sets forth the fact that after 30 days of bargaining, you are de jure in law - not in fact, - but in law you are at impasse. I have never in nineteen years and hundreds of negotiations settled a labor agreement in 30 days. I don't know very many people who have. It is totally unrealistic to say that we are going to settle contracts in 30 days. So what has happened? We have gone to impasse - we have gone to mediation. Take a look at Table 1 on page 32 of the Study Commission report and it shows a doubling of mediation. Of course, there is a doubling of mediation because the knee-jerk reaction has been, after 30 days you are automatically at impasse - therefore, you are in mediation. That is a misleading, unrealistic and, therefore, unfair statistic.

Likewise, we have had an increase in the number of factfindings, again for the same reason. A mediator would be sent in and, frankly, because of this unrealistic

timetable, PERC was required to bring in a number of mediators from out of state who, in my judgment, were not as experienced as the mediators that we have seen in the past and, therefore, I don't think as competent as the mediators we have seen in the past - and factfinders as well - and what has happened is that after two mediation sessions, you wind up in factfinding. Then after factfinding, where do you go? You are back to square one, bargaining all over again. So what happened in many negotiations was this: the parties would race through the process like running through water, if you will, and not get wet; that is, they go through mediation, they go through factfinding and then they are back to negotiations one more time. What also happened, therefore, in those negotiations, both sides realizing this was going to occur, the unions and associations would tend to come in with higher demands than they might expect and management might come in with lower proposals than it might otherwise offer and both sides as a result start further apart than they might, feeling they have to go through all these processes before they get to the real nut of negotiations. Therefore, as I say, it was counter-productive.

Likewise we have had a very unusual year in the fact that nobody, including, I guess, everyone in this room, certainly myself, has known where the dollars were coming from. I have had many negotiations in the school board and the municipal area - more so in the school board area - where negotiations have virtually been at a standstill for weeks, if not months, because how do you bargain unless you know the number of dollars you are going to have? Couple these two factors, the unrealistic timetable along with the lack of knowledge of funding, and that is why we have had the unusually large number of mediations and factfindings this year that we didn't have before because again, if you look at Table 1 of the Study Commission Report, you will find that for a four-year period, 1971, '72, '73 and '74, that the number of mediations and factfindings was virtually stagnant. There was virtually no increase. Suddenly we have this big mushrooming effect this past year and the reasons for it are as I have just stated.

I am not satisfied nor is the League satisfied that we must have a drastic change in our present procedure. I think the mediation process has worked very, very well in the past years. I think factfinding has and can continue to work reasonably well. I am really not satisfied that we must have some change. Apparently there is some area that the Study Commission went into where they felt there is this overriding need that we must have some change. As I pointed out in my comments to the Commission which you may recall, Mr. Chairman - I believe you were there at the time - I said, I don't believe we have given this PERC law enough of an opportunity to work and, because we have a few exceptions to the rule, a couple of strikes or a couple of problems in the State, that doesn't mean we have to toss the whole law out and impose finality of bargaining - that is, terminal finality of bargaining - on the parties. I think that is unwise.

It is interesting to note - and I listened with great interest to the NJEA representative - that he likewise apparently is not in favor of finality of bargaining either. I don't seem to hear the overriding groundswell from any labor representatives that they are in favor of finality of bargaining. And, if some employer groups, such as the League, which represents one of the largest employer groups in the State, are opposed to it, it would seem to me and I would hope that this Committee and ultimately the Legislature will take that into consideration. If the parties, themselves, don't seem to want it, why should we have it?

I do believe that there are certain ways in which we can strengthen the present bargaining process. I think one way would be to strengthen mediation. How can we do that? I make some comments about that beginning on page 11 of our statement. First, I think, as I have indicated, the mediation process has worked very well on balance, and

I quote Mr. Tener, the Executive Director of PERC, who is sitting to my left, in a statement that he made about a year ago to that effect. He said, "On balance, I believe that the law has worked very well in the more than six years that it has been in effect." I trust that after the passage of a year and the battles that he has been through, Mr. Tener still feels the same way.

We now provide under the PERC rules that the mediator will have two sessions in which to settle the differences between the parties. I think two sessions are unrealistic. In the past, mediators have had three session and, if necessary, if you could convince the members of the staff of the Commission, you could have a fourth session as well. Usually those sessions have resulted in settlements. Two sessions simply is not enough.

Then what we have is only one factfinding session. So you wind up frankly in factfinding this past year with 30, 40, 50 open items. The parties have hardly even discussed the matters. I truly believe if you had the three or four mediation sessions I am recommending and at least a couple of factfinding sessions, you could probably settle a heck of a lot more.

I also believe that the best neutrals that we can find ought to be assigned to mediation. I think mediation is a far more difficult and complex process than factfinding. I think one of the ways we are going to attract better mediators is to pay them more. I think the per diem that we now pay mediators in this State is low. They can earn a lot more by arbitrating or other fruitful uses of their time. I think a higher rate paid to mediators, making the going rate closer probably to $250 a day rather than the $150 we pay, will attract better mediators, and we certainly can use them.

There is a recommendation in the Study Commission Report that a Council on Public Employment Relations be established. I think that this Council can serve a useful purpose to identify additionally outstanding mediators and those that would be qualified to go into what are the most difficult negotiations that take place, and I think you know the ones I am talking about.

This year and last year in the school board area - and I do a great deal of school board negotiations - the budget submission has been in March. In the past, it was in February. The world hasn't come crashing down upon us since the budgets have been submitted a month later. I don't think the world would come to an end if the budgets were submitted in April or May either. I frankly think that if we push back the budget submission date and, as I have suggested in my last proposal, start negotiations earlier, it will give us the five or six realistic months that we will need to settle a contract. Then you can have the full use of mediation and, if necessary, factfinding to settle differences.

I just have a few more comments, Mr. Chairman.

ASSEMBLYMAN JACKMAN: All right.

MR. DORF: In the area of binding arbitration in terms of grievance settlement, I am in favor of it. In the private sector, I have never, underscore never, negotiated a contract that doesn't provide for binding arbitration on the settlement of grievances. I am absolutely in favor of it, but I don't want it imposed by the Legislature. I will be quite honest about it. As a negotiator in both the public and private sectors, I want to be able to use it as a bargaining tool. I don't want to just give it away. For instance, the Legislature several years ago - I guess it was in '67 before the passage of the original PERC law - gave away, if you will, for management dues check-off. I am not opposed to dues check-off. I am not opposed to the agency shop as a matter of fact either, nor is the League, and we have said so in many statements. But I don't

want it imposed by the Legislature. I want to be able to bargain it. I want to be able to get something for it in negotiation. I think that is a legitimate, honest position that management can defend and I certainly feel that way about it.

I listened with a great deal of interest to the NJEA representative talking in terms of a limited definition of grievance. Unfortunately - and I say, unfortunately - many, many school districts, less so municipalities, bought, if you will, the argument that was being sold by the NJEA and its representative years ago that the words of the statute were the legal definition of grievance and you had to include it in the contract. It just isn't so. I have negotiated many contracts that have definitions that differ vastly from what is in the statute because it is not a legal definition of grievance. Picture being able to bargain where, yes, we can agree to binding arbitration for grievances, provided we have a certain more limited definition of grievance. It gives both sides at the bargaining table that kind of flexibility to be able to bargain.

I do note in the Commission Report where they provide for a lead time before the binding arbitration on grievances is imposed. Well, if I were a union leader sitting at the bargaining table and management said, "Look, we have to clean up this contract now before binding arbitration is implemented," I would say, "Isn't that amusing? A year from now I am going to get it anyway by law. What incentive is there in it for me, if you will, to agree to a more narrow definition of grievance or to limit certain things in the contract?" So what you will have is an outright rejection by unions and associations of any limiting of the definition of grievance; an imposition, if this bill passes, of binding arbitration on grievance settlement; and then where do we go from there? Again I am not opposed to it philosophically. I have negotiated many contracts with it. But I want to be able to bargain that. I don't want it imposed upon me.

ASSEMBLYMAN JACKMAN: Just for my own edification, do you think there should be a maximum time on the awarding of any arbitration award?

MR. DORF: Mr. Chairman, are you referring there in terms of finality of bargaining?

ASSEMBLYMAN JACKMAN: In other words, for an arbitrator to give an award, shouldn't there be a maximum amount of time to make the award?

MR. DORF: There are two time limits I think we are talking about. Under the American Arbitration Association rules, there is a time requirement. The arbitrator must issue his award within 30 days after the close of hearing. I am certainly in favor of that. I think frankly-- and here too I find many labor agreements where there are almost no time limits for the filing of a grievance - perpetuity, if you will, or very long periods of time. I think grievances ought to be filed promptly. I think they should be processed promptly. I think arbiters' awards likewise ought to come down promptly. I think the grievance procedure has a good effect if it works through quickly. Again, in most of the agreements that I have written, we do write in a 30-day time limit for the arbiter to come down with his award and that conforms with the American Arbitration Association rules.

With respect to supervisory employees, I think - and I don't know if we are going to undo eight years of legislative history - it was unwarranted and unwise for the Legislature to include supervisory employees within the law. In the private sector, they are not included in the law. In the private sector also there is a rather broad definition of what constitutes a supervisory employee. The representative from the NJEA takes issue with including the word "evaluate" in the definition of supervisory employee. I take issue with it as well. I don't think it goes far enough. The traditional industry definition of what a supervisor is is that it is not only someone who

has the right to hire, fire, discipline and effectively recommend same, but one who directs the work. Those are the traditional industry definitions of a foreman or a supervisory employee and those are the kindsof definitions I would like to see in the statute. To me, it is the height of folly when I negotiate, for example, with a PBA group to have Lieutenants and Captains in the same unit as the people they supervise. It just does not make sense. Now, in small units, it has happened where the parties have agreed to it in advance, and we are stuck with it. I think supervisory employees ought to be in separate bargaining units. I think the definition of supervisory employee ought to be broadened. And, if possible, I would like to see no more supervisory units established and simply grandfather the present units. I realize that that may be an unrealistic request in view of eight years of history, but that is my feeling and I thought you might want to know it. I do describe it in several pages in our statement.

ASSEMBLYMAN JACKMAN: Mr. Dorf, I, of course, am in disagreement with you. You appreciate that.

MR. DORF: Yes, I can and I respect your opinion.

ASSEMBLYMAN JACKMAN: I feel that it is unfair to separate them in a situation where you have one officer and tell him he can't be represented. What union is going to represent one person? None. You know it. You have had the experience. Where there is an agreement, I can't see any logic to saying you can't do it. Unfortunately, I think it got out of context. In principle,I agree with you. I can understand it in a school system where you have 35 or 50 supervisors. But in the case of a police department or a fire department where the numbers are small, nobody is going to represent two people. It doesn't pay. You know that to be true. In many cases, you know when a Lieutenant in a police department makes recommendations for disciplinary action either to a Commissioner or Director of Police, it becomes almost a political issue. You know that; you have dealt with it.

MR. DORF: That is true.

ASSEMBLYMAN JACKMAN: Mr. Burstein and I tried to have the problem resolved by including supervisors in legislation last year. It passed the Assembly but was laid over in the Senate.

I want to ask you something else if I may. Don't you think we ought to check the competency of some of the arbitrators and mediators in whom we put our faith to find out if they are competent to make some of these awards?

MR. DORF: Mr. Chairman, I couldn't agree with you more.

Incidentally, I am glad a transcript is being made of this because about a month or two ago I addressed a management group and was unaware that there was a reporter present and got quoted totally out of context. It appeared in one of the shore papers. In fact, I'll name the paper. It was the Asbury Park Press. One of the members of the PERC staff sent a copy of it to me and said, "This doesn't sound like you. What did you really say?"

The gist of my discussion that night was about mediators. I thereafter wrote a letter to the Executive Director of PERC. The article seemed to indicate that I was saying that the PERC mediators were ineffective. What I meant to say and do say now is that some of the ad hoc neutrals that have been appointed - not the staff people for whom I have the highest regard and have so indicated both personally and in writing to

them -- that some of the ad hoc people who have been appointed because of this crush of mediation, I don't think are competent. I don't think they are either pro-labor or pro-management. I just don't think they have had enough experience and expertise to really do the job. I think maybe - and I don't have this in my statement - I have only one more point to make and I am finished -- maybe that Rutgers, as our State University, ought to be doing more in the area of training people to do this kind of work because you simply cannot take people who are either inexperienced or have only private sector experience and transfer them immediately into the public sector. There are vast differences in the public sector. There are things that don't obtain in the private sector.

ASSEMBLYMAN JACKMAN: For your edification, Mr. Dorf, I was just informed that Rutgers has instituted that type of program. So there is some training being given at Rutgers, as I understand it.

MR. DORF: I think that is a great idea. It was done some years ago. I remember I participated in a program with four or five other attorneys where we synopsized important sections of New Jersey law, like 18A:40, Title 11 and whatever. We did that in a one-day session. That was a long time ago and obviously we didn't cover a lot of people.

ASSEMBLYMAN JACKMAN: My colleague here has a question.

ASSEMBLYMAN PATERO: Would you cite an example of your objection to supervisory people being included?

MR. DORF: Let's take the PBA, and I don't mean to pick on them and I am not - it's just an example that comes to mind. Mr. Yacovino and I have known each other for a number of years. Take bargaining units where you have, for instance, Sergeants, maybe even Lieutenants, and Patrolmen in the same bargaining unit. I have had a couple of cases before PERC, in which we attempted to separate them and have a separate unit of Patrolmen, on the grounds that how does a Sergeant, for example, supervise Patrolmen who later on are going to be in the majority sitting on a negotiations committee that is going to determine his salary? How do you also, in effect, discipline those people when you are in the same bargaining unit with them? As a matter of fact, if I understand the PBA constitution, it is only Patrolmen who vote and have the right to hold office. So I think it makes a good deal of sense to have Patrolmen in separate bargaining units.

The Chairman has expressed concern, and with justification, as to what you do in the very small units. What do you do in the shore towns or towns down in South Jersey where you have six, seven or eight men in a unit? You may have to make exceptions there. But certainly when you have a police force of 25 and 30 - and I don't use those as magic numbers -- certainly when you get into that size force, you ought to have a differentiation between the Patrolmen and the officers.

ASSEMBLYMAN PATERO: Thank you very much for clearing that up.

DR. DORF: The last area I would like to comment on - and, Mr. Chairman, I do appreciate your time and your indulgence - is scope of negotiations. I don't leave it last because it is insignificant. I think it is very important.

There are a number of areas in this bill I could comment on, but I didn't want to comment on all of them; I just took the high points.

There are two major areas of this bill about which I have great concern. One is the imposition of finality to bargaining, imposed settlement by a third party; and, two, the lack of any clear definition to my mind - and here is where I take issue again with the representative of the NJEA in terms of the use of the word "intrinsic," in spelling out management rights - I think it ought to be broader than that - and the

lack of spelling out clearly management rights.

I have quoted at length in my statement, commencing at page 20, statutory provisions from a state distant to New Jersey and not an industrial state and not one of the more well-known states as far as labor law, but somehow they have drafted a statute which I think merits our consideration, and that is the State of Nevada. They spell out in great detail there management rights, management prerogatives, if you will. I think we should strongly consider doing that, especially if we are going to strongly consider some finality to bargaining. Picture the situation of management where there are decisions now coming down from PERC that say this may be an area that you don't have to bargain over, but you have to bargain over its impact. What does that mean? You can go ahead presumably and lay off people, but you have to bargain over the impact. The remaining people will say, "We are working harder so we ought to get paid more." Presumably you buy that argument and pay them more. What dollars have you saved by laying off people if you are now giving them to other individuals? So by extending this area of what is negotiable in terms of the impact rule - and I did about a 25-page paper on it, which I am not going to read to you today, but I think I will send to the Committee for its consideration -- I think we have to clearly spell out certain areas of management rights that are prohibited subjects of bargaining because governmental officials are only temporary keepers of the public purse, if you will. Mayors, school board members - they come and they go. You can have those officials bargaining away rights of the citizenry and I think it would be a mistake.

If I own a business in the private sector and I want to give the store away, the only one I am going to hurt is myself and maybe my stockholders. But, if I am a mayor or a municipal official or a school board official and I bargain away because I am under pressure certain things that I ought not to bargain away in view of the fact I am told it is a permissive subject of bargaining, or I have to bargain over the impact, it is given away forever for the people of that town.

If you really are asking me: Do we have to protect some governmental officials from themselves? I think the answer is yes. And we have to protect them from strong unions that are going to foist certain things upon them by spelling out clearly in the law those areas of management rights that are prohibited subjects of bargaining.

If there are any other questions of the Chairman or the members of the Committee, I would be delighted to answer them and I thank you very much on behalf of the League for your indulgence and your time.

ASSEMBLYMAN JACKMAN: Thank you, Mr. Dorf.

(See page 47X for written statement submitted by Mr. Dorf.)

ASSEMBLYMAN JACKMAN: Mr. Tener, would you be able to complete your statement within 15 minutes?

MR. TENER: I can come very close to it.

ASSEMBLYMAN JACKMAN: All right. This will be the last speaker this morning and we will come back at 1:30. Mr. Tener.

J E F F R E Y B. T E N E R: Thank you. I will submit to you later this afternoon copies of a statement that is being typed in final form at this time.

Mr. Chairman and members of the Assembly Labor Committee: My name is Jeffrey B. Tener. I am the Executive Director of the Public Employment Relations Commission. I welcome and appreciate the opportunity to appear before you as you commence deliberations regarding the legislative proposal which emanated from the Public Employer-Employee Relations Study Commission. That report was presented to the Governor and the Legislature

on February 2, 1976 after more than a year of preparation. I too, would like to commend the Study Commission chaired by Dean Lester and which counted two members of this Committee, Assemblymen Jackman and Littell, among its members, for what I regard as an outstanding and comprehensive study of public sector labor relations. This area, of course, is highly complex and inherently controversial and it is my impression that the Study Commission approached its task with an open mind and conducted itself even-handedly throughout the period of its existence.

I will skip several pages of background information on the law and get right to the proposals in the legislation.

Given the tri-partite nature of the Public Employment Relations Commission, it is not surprising that the Public Employment Relations Commission is not unanimous on all issues. I shall indicate to you those proposals on which the Commission (PERC) has taken a position and with which the Commission is in agreement. With respect to several of the proposals, I shall express my personal opinion. I will make it clear whether I am expressing the position of the Commission or my own views in this testimony. Individual members of the Commission or spokesmen from the organizations with which they are associated will or have presented already the views of those organizations. I, of course, do not presume to speak for any of those organizations.

In my prepared text, Mr. Chairman, I have indicated a position, if any, of the Commission or my own views regarding each of the proposed items contained in the Study Commission legislation. I think I will skip some of those in this statement and just indicate those on which I can indicate something affirmative perhaps or what I think will be most constructive.

The Study Commission recommended that employees of bi-state agencies be included under the definition of "public employers", as that term is defined in the Act. PERC is in favor of extending the definition of "public employer" to include bi-state agencies, if that inclusion is consistent with the provisions of the compacts creating those bi-state agencies.

The present statute provides that the "assistant superintendent", singular, is to be excluded as a managerial executive in school districts. That situation leads to some confusion in that in a number of school districts there is more than one assistant superintendent. I would suggest that if that kind of language remains in the statute at all, the term "assistant superintendent" should be changed to "assistant superintendents", so as to exclude all assistant superintendents in school districts and remove that ambiguity.

The Study Commission has recommended that all employees of the Public Employment Relations Commission be considered as confidential employees. While I believe that employees of the Commission should not be included in negotiating units which include other employees or be represented by employee organizations which represent other employees, I do not believe that employees of the Commission should be denied the protections of the Act. I believe that the same purpose as that which I am certain was intended by the Study Commission could be accomplished by adding in Section 7 (h) on line 245 of page 16 of the Assembly bill, that employees of the Division of Public Employment Relations Commission shall not be represented by an employee organization that represents other employees. The employees of the Commission do not want to be denied the rights of organization.

The Public Employment Relations Commission would not oppose the definition of the term "supervisory employees" in the section on definitions. Having said that, however, I haven't said very much because the Commission as a body is not in agreement

on an appropriate definition of the term "supervisory employees."

The Study Commission has proposed the inclusion of a definition of the term "negotiate in good faith" in the definition section of the bill. I would just like to comment that the definition proposed by the Study Commission is almost identical to the definition of that term contained in the National Labor Relations Act and seems to me to be consistent with the decisions of the Commission in unfair practice cases issued to date. However, the Commission has not indicated its support for the inclusion of a definition of that term in the statute.

One recommendation of the Study Commission which I think is an important one relates to the appointment of counsel by the Public Employment Relations Commission. The Commission would support this proposed amendment. The amendment, incidentally, would simply conform the law to existing practice. While the Commission at the present time employs its own counsel and has enjoyed complete discretion in selecting counsel, I believe that it would enhance the appearance of independence of the Commission if the law specifically provided for the appointment by the Commission of counsel. This appearance of independence is very important for the Commission if it is to continue to enjoy acceptability as a truly neutral agency.

The Study Commission has proposed that the present tri-partite commission, Public Employment Relations Commission, be replaced by a three-member, full-time commission appointed by the Governor for terms of six years. The Public Employment Relations Commission is by no means unanimous on the issue of the structure of the Public Employment Relations Commission. In July 1973, the Commission voted by a 5 to 1 margin to adopt a position calling for the creation of a 9-member commission with five public voting members and four non-voting advisory members, of which two would represent the interests of public employers and two would represent the interests of public employee organizations. I do not believe that the Commission would take a similar position today. I would like to point out that, because of the Conflicts of Interest Law, Commissioners Hipp and Hurwitz, for example, are not able to participate or vote on matters relating to education. That situation should not be permitted to continue in my judgment.

A major area covered by the Study Commission recommendation relates to the language beginning "proposed new rules or modifications of existing rules." That section is one which has been identified by a number of speakers as of great interest to the parties. It is controversial. The Public Employment Relations Commission again, as a Commission, has not taken a unified position with respect to that language.

With respect to binding arbitration of grievances, the Commission has gone on record supporting the concept of binding arbitration of grievances.

The Commission has not expressed itself with respect to other matters covered by the Study Commission proposal regarding a change in the statutory definition of "grievance" and "grievance procedure," so I don't know what the Commission's position is in that particular area. But the Commission, at least, is sympathetic to the idea of binding arbitration of grievances.

The Study Commission has recommended that a party alleging a violation of the Act - that is, filing an unfair practice charge - should file a complaint as opposed to a charge in such cases. As I indicated in testimony to the Study Commission, I believe that it is awkward for an agency, such as PERC, which is called upon to assist the parties in achieving voluntary agreements, to issue complaints in unfair practice cases. Particularly in view of the fact that the charging party under the New Jersey statutes prosecutes the complaint, I believe that it would be better for PERC to simply hear and decide the matter without being called upon to issue complaints. This problem

can be avoided in several ways. In New York State the charging party simply prosecutes the charge and the charge is never converted into a complaint. That is the way the Public Employment Relations Commission in New Jersey operated prior to the Cooper decision in 1970, in which the State Supreme Court indicated that PERC lacked enforcement authority. In Wisconsin and Michigan, two other states with extensive experience in public-sector labor relations, the charging parties file things that are called complaints, as opposed to charges. So in those two states, it is not necessary to convert a charge into a complaint. A complaint is filed and then the charging party prosecutes the complaint. Either of those two methods would overcome the problem, it seems to me. I would support the recommendation of the Study Commission in that area.

The Study Commission has recommended that PERC be given the exclusive power to make determinations as to whether matters in dispute are within the scope of collective negotiations. They have also recommended that the Commission specify whether or not a subject is a required or permissive subject of collective negotiations. While the Commission has taken no position on those matters, it is my opinion that the jurisdiction of the Commission should be exclusive in the area of scope of negotiations determinations in order to assist in the development of a consistent body of law in this area. All such decisions, of course, are subject to appeal in the Appellate Division of the Superior Court. I might note that the Commission's rules and decisions recognize the existence of permissive and mandatory subjects for collective negotiation.

Undoubtedly, the most important area addressed by the Study Commission relates to impasse procedures. Although there was only one strike of teachers in 1974-75 and only two strikes of teachers in 1973-74, there have been approximately fifteen strikes of teachers in this school year. Accordingly, the subject of impasse procedures has received considerable attention of late.

The present impasse procedure provided by the law calls for mediation and, failing agreement through mediation, factfinding with recommendations for settlement. These processes are to take place within periods of time established by the Commission and related to public employers' required budget submission dates. There is no finality associated with the process. In the absence of a voluntary agreement between the parties, no one is empowered to impose a settlement upon the parties nor are public employees authorized to strike in an effort to persuade the employer to make a more favorable offer.

At least partly because of the frustrations associated with this process, manifested to at least an extent by strikes of public employees, the Study Commission undertook to develop a system which would, as a last resort, provide for finality. The proposal which they have recommended calls for a form of final offer arbitration. The arbitrator would be required to choose between the final offer of one party on economic issues as a package and between the final offer of the parties on non-economic items in dispute on an issue-by-issue basis.

The Public Employment Relations Commission has not taken a position regarding impasse procedures. However, the Commission has indicated an interest in final offer arbitration as a means of resolving disputes, although I do want to indicate that it has not endorsed that mechanism.

The Study Commission has included within the section relating to impasse procedures several other provisions with which the Commission is in agreement. The Study Commission has recommended, and the Commission endorses, a provision permitting the Commission to intervene in disputes on its own motion. Also, the Commission supports the concept, as recommended by the Study Commission, of protecting the confidentiality

of information given to individuals who are serving in a mediatory capacity.

I might indicate to you, as mentioned earlier by Mr. Dorf, that there has been a tremendous increase in the demand for mediation and factfinding services. In fiscal year 1974, we received 390 requests for mediators and 110 requests for factfinders. In fiscal year 1975, there were 610 requests for mediators and 230 requests for factfinders. This year to date, we have assigned over 825 mediators and over 425 factfinders. The proportion of cases which has been resolved in mediation during that period has declined from approximately three of four in 1974 to one out of two in fiscal year 1975, and to two out of five in this fiscal year. However, I would be reluctant to draw conclusions from those figures alone. I think that a number of factors are responsible. The negotiations timetable which the Commission has adopted, I don't believe is certainly single-handedly responsible for either the increase in the number of requests for mediators and factfinders or for the decrease in the apparent effectiveness of factfinding. The Commission has always honored requests from both parties - I am talking about the negotiations timetable now - that a mediator or a factfinder not be assigned to work with the parties if both of them agree that they did not want a mediator or a factfinder at that time. So the parties have always been able to get out from under mediation and factfinding at their joint request.

My personal feeling is that the single largest factor leading to the increase in the requests for mediation and factfinding has been associated with the general economic situation and also a continuing expansion in the number of employees who are represented in negotiating units.

I would also like to endorse the proposal of the Study Commission that would mandate somewhat of an expanded burden for the Institute of Management and Labor Relations at Rutgers. The Study Commission has recommended that data collection and analysis as well as the training of neutrals, mediators, factfinders and arbitrators, be specifically included in the statute. While it is my impression that the Institute has, in fact, been providing those services in the past, I certainly see no harm in spelling them out in the statute and recognize that, particularly, if there is some form of final offer arbitration at the last step of the impasse procedure, there will be a greater need for both data and trained and experienced neutrals than there is at the present time.

Mr. Chairman, I would like to thank you for giving me the opportunity to discuss these matters with you. The complexity of the subject matter makes your task extremely difficult. If I can assist you by providing information regarding the Commission's experience in the past seven years or in any other way, I will be delighted to do so. I would also be happy to try to answer any questions that the Committee may have. Thank you.

(Written statement submitted by Mr. Tener can be found beginning on page 70X.)

ASSEMBLYMAN JACKMAN: Jeffrey, thank you very much. You can rest asured that, based upon your expertise, you will be called upon by this Committee.

I just wanted to make one observation and ask one question. Do you think there is a need for a full-time Commission?

MR. TENER: I can function either way. The Commission can function either way, Mr. Chairman.

ASSEMBLYMAN JACKMAN: I am talking now about your Commission members being full time.

MR. TENER: It seems to me that if there were a change to a full-time Commission member structure, what would happen would be that functions presently performed, such as

my own as Executive Director of the Commission, would be taken over and assumed by those then full-time members of the Commission. I would assume that the same would be true with respect to other existing functions performed by present employees of the Commission who are members of the staff. I don't frankly see the effect of the change as being extreme one way or the other. I think it would result in a restructuring from the Commission's internal operating point of view simply in a restructuring and redefinition of the lines of the authority. But I don't see it as having a tremendous effect on the way the Commission operates with a couple of major exceptions. One real difficulty that the Commission has now because of its part-time nature is simply that it is not available to meet on a daily basis. Sometimes problemsarise that require almost immediate attention and deserve almost immediate attention. If the Commission members were full time, obviously they would be in a position to accord expedited consideration to those situations where that is required. What happens now, of course, is I guess more or less by default the Commission has been compelled to delegate me authority that it would otherwise not be willing to delegate to somebody other than the Commission. But it is necessary to do that at the present time given the structure.

I think also that the Commission could perhaps more expeditiously issue decisions in certain cases - unfair practice cases, scope of negotiations cases - if there were a full-time Commission because members of the Commission could serve as hearing examiners themselves in those cases where time was of critical importance and, thereby, skip the intermediate step of having it go to a hearing examiner who would issue a report and recommendations and then there are a lot of inherent due process delays built into that sort of a situation that could be skirted if the Commission members directly heard and decided such cases.

ASSEMBLYMAN JACKMAN: I have some other questions, but I will hold them until I have an opportunity to go into it further with you when my other colleagues are present. I think you could give us some good sound advice.

I noticed Mr. Burstein came in. I know he is a busy man. He is a lawyer. I was going to recess for lunch, but out of courtesy to you, I won't, so you can have an opportunity to make a statement. But, if you wish, I will recess and we can come back at 1:30. We will do whatever you desire.

ASSEMBLYMAN BURSTEIN: I appreciate that, Mr. Chairman, but 1:30 is fine with me.

ASSEMBLYMAN JACKMAN: Thank you. We will recess until 1:30.

(Recess for Lunch)

AFTERNOON SESSION

ASSEMBLYMAN JACKMAN: The meeting is called to order.

Assemblyman Burstein.

A S S E M B L Y M A N A L B E R T B U R S T E I N: Thank you, Mr. Chairman. I regret I don't have a prepared statement to submit to you. I didn't have the time to do one. But I will keep my remarks brief and try not to be repetitive. I have tried to get a feel for what has gone on before you this morning in the way of testimony to the Committee. I will attempt to highlight some of the things that I deem important about this bill, Mr. Chairman.

As the sponsor of the bill, I say with some pride that it is the product of many minds and a good deal of effort,over a lengthy period of time. I am sure that you, having been a part of that same Commission and having read the report, know full well what the underlying work was that resulted in Assembly Bill 1448.

Going beyond that, let me say, without trying to sound too pompous about it, that I have a strong feeling that I, as well as those who have worked on this bill and those of us in the Legislature, represent the public interest. You have heard a great deal - as I am told - today from those who have special interests and they are perfectly ligitimate in presenting their views concerning the bill to this Committee for consideration. But the on-going public interest is something that only we, as legislators - who are somewhat outside the immediate pale of work in the field, either on the management or on the labor side of these issues - can view objectively and make comment upon objectively in a way that,I think,there is some consideration by the Committee in its ultimate determination regarding the release or non-release of the bill for ultimate floor vote.

That public interest is derived from the fact that the people, generally, are entitled to have a system set up whereby those who are in direct contact with one another at the negotiating table have a means and a structure whereby they can settle their problems in a way that does not adversely impact upon that public interest. And although New Jersey has not suffered some of the same kinds of results that a number of other states have throughout the country, we nevertheless are in a period where there is increasing friction in the area of public employee relations; increasing strikes - as the statistics that were discussed today reveal - and increasing difficulty in arriving at accommodation between contending parties. The main thrust of this bill is to provide that kind of structure which does protect the public interest, does allow for a certain balance between the contending parties, and an equanimity with respect to the matter of resolving disputes.

The critical portions of this bill - if I may highlight them very quickly - as I view them are those portions that, number one, relate to the creation of a full-time board and, secondly, create a system of selection by the parties for resolving impasses - and if not selected by the parties, the ultimate disposition, by statute, of the impasse itself.

With regard to the full-time board, it seems to me that the present system does not work satisfactorily. We have the anomaly of those members on the board - and specifically we can focus on a few whose names have already been mentioned in testimony today - such as Dr. Hurwitz and Dr. Hipp, who represent opposite ends of the pole in the teaching field - of which I have some acquaintance - and when it comes to a matter involving a dispute between a Board of Education and a teacher's group, they have to retire from the field and not give the benefit of their expertise to their fellow commissioners. That kind of an anomaly cannot be allowed to continue. It

would seem to me that the best way of doing this is by the creation of this full-time board and,as the corollary to that full-time board, council of advisors that is likewise inserted as one part of this statute. Those two bodies, working in a harmonious relationship, can get the kind of expertise that would be necessary and that can be provided by people like Dr. Hipp and Dr. Hurwitz when it comes to a field of their specialization. They cannot do so now. At least they cannot do so legally. So, that is one area that I think is very important for Committee consideration together with the fact that by having a full-time board, it does relieve a number of the problems - the two major ones, at least, that were mentioned by Mr. Tener this morning in his testimony - that can be cured by having available the kind of full-time help, and expert help, that would be entailed at the salary level and with the kind of tenure provisions that this bill contemplates for three full-time members. I strongly urge the Committee to give that consideration and to adopt it.

The other, of course, is the section in the bill - rather extended in its nature - that deals with the very complex series of availabilities, as it relates to solving impasses. As is clear from a reading of the bill, what we have attempted to do is to allow the parties themselves, in the first instance, to select the method that they want to use in the resolution of an impasse and if they cannot do so, then to do it by means of this modified final offer arbitration system, whereby the economic package is taken as one whole and an arbitrator will then decide the non-economic issues on an issue-by-issue basis. This too represents a compromise among a number of systems that are in use in other states throughout the nation. We think that it is a system that can work, and can work effectively and it represents, to me at least, the core of what we are trying to achieve.

Chapter 123 of the Laws of 1974 - I guess it was - left open the question of how to resolve impasse procedures. That gave way to the creations of a commission that made the study. The two bills were adopted at the same time. And it was done purposely that way so that we could give extended consideration to the manner in which we could resolve impasses. To leave it to the parties alone begets controversy and begets strife and that is precisely the point at which the public interest begins to suffer. Which brings me back to the original point I was trying to make and that is, the bill in its central fashion is attempting to protect that public interest from harm. I think that is what we have achieved by means of the structure now created and now before you.

Other parts of the bill, of course - the more technical features - have been commented upon by other speakers and I won't go into them. But there is one other aspect that is not in the bill but is a part of the Commission report that I would like to refer to and that relates to the fact that one matter that still requires careful looking-over is the overlay - or the overlapping - among the various current sections of the statute, such as Civil Service in Title 11, municipalities and counties in Title 40 a., and the education law in Title 18 a., each of which contains matters that overlap on any kind of public employee relations law that may be adopted. Even if we simply stay with the structure we have today and don't move A-1448 - which I hope is not the case - what has been recommended by the Commission is the creation of a new study board that will go into the matter of this overlapping because there are anomalies that do exist within current statutes and that do affect working conditions and terms of employment and they ought to be looked at in the light of the Public Employee Relations Act, as we now have it, or as it would be amended if A-1448 were to be adopted. I would strongly urge that there be something done in that regard. I intend to introduce a bill creating that Commission, which I would hope comes before

your Committee, Mr. Chairman, and that it ultimately be given favorable consideration.

Let me say one final word with respect to the earlier testimony today, coming from some of the special interest groups. I can well understand that there may be bits and pieces of this bill that they can find fault with. I daresay that there is no bill in the public employee relations field that could find unanimous favor anyplace in the country, nor can the inventiveness of man have created, out of this Commission or anywhere else, a bill that would have gotten unanimity, unless we said something so innocuous that it didn't mean anything whatsoever.

As a consequence of that it seems to me this Committee must understand that the negative posture that may have imposed itself upon the Committee in this morning's testimony is something that is expected because they were picking out those portions of the bill that they didn't like. What the Commission has tried to do is to structure a statute that is in balance and that, consequently, is not to the liking of everyone that views it. I am sure that there are many parts of this bill and many parts of the structure that has been created that could be found acceptable by the special interest groups that have testified here today.

What I wish to urge upon the Committee, therefore, is, in giving fair consideration to A-1448, that they not overly give too much consequence to the many objections and the varied objections that one may find addressed to the terms of the bill, but rather to look at it as an entire picture, as an entire whole, because that is the only way we will ever get the service of the public interest, by means of a delicate balancing of the various and competing interests that exist within the State in the field of public employer/employee relations. Thank you, sir.

ASSEMBLYMAN JACKMAN: Thank you, Mr. Burstein. I have no questions but I would like to make just one or two observations. The reason for this hearing, Albert - and I guess you know this - is the fact that we have been getting notice throughout the State. I think you hit the nail on the head. The bill is not, in its entirety, going to please each and every individual. We know that.

However, there seems to be some objection on both sides, for example with binding arbitration. In the majority of the cases they don't want it. Maybe in isolated cases one or two do want it. So, I am thinking in terms of reconciling these differences rather than having a Jackman and a Burstein on the floor of the Assembly fighting one another on individual passages of the bill. I would like to see if we can reconcile some of the differences and try and come up with something that will be acceptable.

ASSEMBLYMAN BURSTEIN: I appreciate that, Mr. Chairman. There is one thing I would like to add to that, however. I can recognize that there may even be some kind of unanimity as between management and segments of labor, as it relates to a displeasure with the binding arbitration feature of the bill. But that is precisely where I think the public interest has to be served.

There are two central issues, as I view it - and I just want to reiterate for a brief moment - in the bill. One is that recreation, or reconstitution of the board and the other is the provision for impasse procedures by means of a binding selection process. Those are the two things I think are absolutely essential.

There are other areas that may be compromised. I am not saying that this is - to use our favorite phrase - "written in stone." It is not. There are many areas of compromise, I am sure. But those are two central matters that I think are not necessarily susceptible to compromise.

ASSEMBLYMAN JACKMAN: Thank you very much.

ASSEMBLYMAN BURSTEIN: Thank you, sir.

ASSEMBLYMAN JACKMAN: Mr. Yacovino.

P H I L I P Y A C O V I N O: Gentlemen, as President of the New Jersey State Policemen's Benevolent Association, representing virtually all law enforcement in New Jersey, I appear before you today to express my very real reservations about A-1448.

At the outset permit me to note the good news and the bad news.

First, the good news: The PERC Study Commission and this body have made, and are making, sincere and conscientious efforts to bring stability to public employment in New Jersey. The bad news is that they have failed.

It is unfortunate indeed that the Study Commission became the captive of those management spokesmen who crawl out of the woodwork every few years to vote for Warren G. Harding and who sought to utilize the Study Commission as a podium for their provincial and parochial views. The P.B.S., admittedly, also has a view to express and it too is based on self-interest. But we have expressed it with balance and moderation. That is why I went before the Study Commission last year and stated the opposition of the State P.B.A. to granting the right to strike by public employees. I did so because the P.B.A. truly hoped that the Commission would recommend changes which would signal the end to the frustrations that public employment in general and police and fire officers in particular have suffered in recent years.

Instead, the proposed legislation offers virtually nothing to public employees. Sheer tokenism, its only benefit is a binding arbitration concept of dubious value. For that concept, together with other amendments, contains too many "sleepers." The proposed changes, on balance, are a minus for public employees and they suggest that my moderation of last year was ingenious, so much so that reconsideration of the P.B.A.'s views is warranted.

My main concerns are as follows: 1. We previously requested that police and fire organizations be allowed to represent superior officers and rank and file officers in the same unit. We submitted a letter to the Study Commission detailing the persuasive reasons why this amendment was necessary if superior officers were not to be economicaly disenfranchised. Our request went virtually ignored. Accordingly, the P.B.A. and the F.M.B.A. will oppose, to the end, any and all legislation which does not contain a modicum or relief for superior officers. On this and the following issue, we could not be more adamant.

2. We oppose, and vigorously, the proposed amendments to the so-called "freeze" clause. Under the present clause, new or existing working conditions cannot be changed without negotiations. This clause has been a mainstay to collective bargaining negotiations. The amendment, whereby only working conditions covered by a contract cannot be changed, is meaningless at best and intellectually dishonest at worse. In short, it is a joke. Its authors know, or should know, that changes of contract conditions are per se wrongful and that an arbitrator can easily rememdy such changes. The Legislature is not needed to remedy such wrongs. The existing language quite properly serves also to prevent changes during negotiations and changes during organizational efforts. The status quo should be retained as in Senator Greenberg's bill, S-1140, which is the one saving grace of that bill.

3. We are opposed to the last best offer concept as proposed. While the suggested amendments may encourage the parties to engage in meaningful negotiations prior to arbitration, its overall effect, once arbitration is reached, will be devastating. The last best offer concept as to economic issues in a package is counterproductive. One party will do very well and the other party will do very badly. Brinksmanship is not the answer. Alternatives which are palatable to the P.B.A. are the following: (A) conventional arbitration; (B) last best offer with the decision on all issues to be made on an issue-by-issue basis; (C) the present proposal as contained

in A-1148, under Section 6 b. and 4 b., which provides that the factfinder's proposals on economic issues can be selected by the arbitrator; or (D) let PERC decide which of the methods contained in 6 b. and 3 will govern. The last suggestion is the real answer for eventually PERC will be able to test the various alternatives in the crucible of experience. The present approach will tie all of us down to a potentially bad marriage for a long, long while.

4. On the subject of the obligation to negotiate, the amendments state that public employees will not be required to negotiate "concerning matters of intrinsic managerial policy or function." That language is far too broad and much too vague. It is far better to leave it up to PERC to decide whether a matter is a mandatory or permissive subject of bargaining in much the same way that the NLRB makes such determinations.

5. Under proposed Section 6.1.c., the parties are left to their own devices to fashion a complaint which becomes the operative instrument. It is far better for PERC to issue the formal complaint, as it does now, and as the NLRB functions in the private sector. PERC's experience and expertise can then come to bear to insure uniformity of procedure. The present proposal disguises its proponents' desire to turn the process into chaos.

Before I finish, gentlemen, as you know, as head of the State P.B.A.'s 19,000 members, I am having a rough time trying to hold the same attitude we have held for many years concerning the no strike clause we have and trying to keep that concept in the P.B.A.'s system. But in recent weeks it has come to my attention that the attitude of my P.B.A.'s has been changing. I will cite one case in one town where if the P.B.A. didn't sign the contract they weren't going to get their back pay. I thought that was a form of blackmail and through the efforts of the State P.B.A. and the P.B.A. delegate of that town, we averted a strike. I am sure that you, Mr. Chairman, and the Legislature are well enough aware of what is going on and I am hoping that with your expertise in this field you can maybe get something done where this won't happen as far as the policemen are concerned because it is a matter of grave concern as far as I am concerned - as far as being the head of this organization and trying to keep my people down and away from striking. I can foresee this in the near future if something isn't done to help the matters that are going on today.

Thank you for listening to this person who is interested, quite simply, in seeing that equal justice becomes a reality for police officers too.

ASSEMBLYMAN JACKMAN: Thank you, Mr. Yacovino. I just want to make one observation. I am sure that your P.B.A. recognizes the fact that nothing is gained by strike.

MR. JACOVINO: I realize that.

ASSEMBLYMAN JACKMAN: That is my feeling. It is hoped that we can adjust some of the so-called differences that exist today. Just in retrospect, I think it was mentioned this morning that the tightening of budgets seems to be the criteria today. There is no question in my mind that the public employee is going through some trying times.

Some of the officials are fair-minded and some are not. If you feel an official is not fair, I think it should be brought to the public's attention to let them know that you think he is unfair. You will find that, in many cases, the public is receptive to a legitimate complaint. I don't believe that any public official has the right to deny anybody the right to sit down and discuss their problems. I think that, within reason, some of the demands have to be recognized.

I think that you, as an expert in your field and a respected individual in the State who represents many thousands of workers, realize too that we are going through some very trying times. I don't think legislation is the entire answer. I think, in many cases, good faith is important and if we can establish that feeling I think maybe ninety percent of our differences are going to be reconciled. Thank you, Mr. Yacovino.

MR. YACOVINO: I agree with you, Mr. Jackman, but the thing is, I think today policemen and the public employees, in some areas, are being blackmailed by the municipalities - "If you don't sign this contract, we are going to lay off 'x' amount of policemen." They are not hurting the policemen themselves by doing this - I am talking about the police department - they are hurting the taxpayer who is constantly paying the freight for us policemen to do the job for them. And when they start laying off policemen and their taxes keep going up, they are short-changing the public. Whether I bring it out before you here or bring it out in the newspapers, it is a fact. They are only short-changing the people that are taxpayers in the town by saying they are going to lay off men because they don't have the money and, yet, the taxes keep going up.

I don't know whether people are aware of it or not but once you start laying off policemen or firemen you are cutting off essential services and you are doing it at a time when the crime rate is going up. You know, you can play figures with crime, just like anything else. But, with crime going up today they use this as a basis for the fact that they are going to have to lay off policemen or firemen if they think our contracts amount to too much. I mean that is a form of blackmail. That is why I say I am having a hard time keeping the no strike philosophy of the P.B.A. Being a veteran policeman of 27 years, I was indoctrinated with the "no strike" philosophy and I am having a hard time. Don't forget, the change in the attitudes of the younger policemen and the younger people today makes it rougher for us who head the organizations to keep them down and keep them from doing something that might be foolish. Yet, they might have the right to do it.

ASSEMBLYMAN JACKMAN: Thank you, Mr. Yacovino.

I made a commitment this morning, because of his schedule, to hear Mayor Holland next.

M A Y O R A R T H U R H O L L A N D: Thank you, Mr. Chairman.

ASSEMBLYMAN JACKMAN: Do you have a prepared statement, Mr. Holland?

MAYOR HOLLAND: No, I haven't. I wanted to make just brief comments. The first one is in support of the various changes that are proposed - the clarification of language, specifically your definition of managerial rights and narrowing the definition of a grievance, etc. My only exception, really, to what is proposed has to do with, to a great extent, the heart of the matter and that is, compulsory, binding arbitration. It is appropriate in a way that I follow Mr. Yacovino because I too over the years have been opposed to strikes by public employees. I will perhaps go further than most, in that I don't believe any public employee has the right to strike.

I have also always held, however, until the last year or so that any public official who takes that stand has an obligation to offer a reasonable alternative and for me that has always been compulsory, binding arbitration, especially the best and final offer type. We have reached the point, however, in the old central cities where we simply can't commit ourselves even to final offer compulsory binding arbitration because frequently there is just a cut down the middle and our alternative to accepting that would be - as we had to, informally, exercise this past year - layoffs, which are extremely non-desirable in a city where the demands for services, especially police

protection, are increasing.

In a way I have come here to negotiate - not with you, you have already done your job - and that is to say that if this government, this Legislature and the Governor, can achieve some significant tax reform then I go back to my previous stand of advocating compulsory, binding arbitration. I think that is the reasonable alternative in the public sector.

We have had to lay off 59 policemen and approximately 100 blue and white collar workers. The firemen agreed to sacrifices which they and we were reluctant to agree to in the interest of avoiding layoffs. And our employees are still the lowest paid in our region, as compared with school board, township, county, State and federal. Yet, when we have a situation in which we rely on our tax base - real property - for almost 40% of our revenue - and that has been declining in the last several years - and when you have 13% inflation, based on the Philadelphia CPI, and when we lose, as we did - and here I must be critical of everyone at the State level - $366 thousand in sales tax revenue and other cuts in state aid and cuts in federal aid, we can't realistically commit ourselves to something that we don't have the capacity to follow through on.

So, I oppose the compulsory, binding arbitration provision with the qualification that if the Senate will do what you have done - and I hope go on from there to a more comprehensive tax reform, and the Governor has indicated he will sign that bill - then I support all that is before you.

ASSEMBLYMAN JACKMAN: Thank you, Mayor.

Mayor Holland, just one quick observation. I realize your problem and you know my legislative background and, of course, you know my vocation. I am always willing and try to be receptive to problems, so much so that I voted for the income tax. I haven't heard too many people give vocal assent to the income tax, however. They sit on their hands. They twist their arms and fingers and they say, "We have no money, let's fire somebody or lay them off, or do something." They will accept any money that goes into their towns but they don't care how it got there or whether someone was willing to accept the responsibility for providing it. I am sure you will agree in principle with me. I voted for the income tax and I voted for it for a specific reason: because I thought there was a need. I thought it would alleviate some of the problems that you have in an old city with your tax structure. I thought that it would be helpful. I am looking forward to rejuvenating these cities, but we can't do it alone. I am going to be very critical, Mayor. I think that some of the mayors who were wringing their hands and getting frightened should be very vocal in support of the legislators who are espousing this income tax and putting money back into the cities. But I don't hear too many vocal mayors.

MAYOR HOLLAND: I agree with you. In my case, as Mr. Yocavino knows, I have, as he has, led the fight for tax reform. We were members of the coalition for tax reform. I have been mayor, off and on, since 1969. There was a time when I was the only mayor, as far as I know, in this State who advocated categorically and unequivocally an income tax. It is the only tax which has the capacity, the expansion quality, etc., to meet the State's and the municipalities needs.

We resolved, by the way, in Trenton, in the past year - without compulsory, binding arbitration and without a strike - our difficulties with the help of PERC, in that we did accept the recommendations of the factfinder. So, I have that as a base on which to make my presentation today.

But, I agree. We have done everything we can to enlist the support of all the organizations in this State in behalf of tax reform. I must say there was probably the most unique gathering of organizations this past year that we have ever seen in the

State, where you had organizations which normally are opposed, joining in the fight for tax reform. And, of course, most encouraging is the recent Eagleton Poll which shows for the first time, so far as they know, that a majority of the people - even against this background of confusion that we have had - favor an income tax.

I serve as Chairman of the Legislative Action Committee for the New Jersey Conference of Mayors. I have had difficulty, first, in getting that Legislative Action Committee, believe it or not, which is made up almost exclusively of urban aid municipality mayors, to go on record. We did, finally, go on record in favor of an income tax. I had trouble getting the Board and finally got them. I can't say, even at this stage - we are working on it, we are meeting on Monday - that the whole Conference will take this stand because, just as the Legislature is, our organization is reflective of a lot of constituencies. I recognize and appreciate your leadership in what is, admittedly, a very difficult undertaking.

ASSEMBLYMAN JACKMAN: Thank you very much, Mayor.

There is one other observation I wanted to make and I think, in principle, we are in agreement. I don't think we can afford the luxury of laying off police and firemen in the City of Trenton or any of these cities.

MAYOR HOLLAND: Ironically, I was the one who led the way with the mayors in getting the Safe and Clean Neighborhoods Program through. We were the first City in the State to put the policemen back on the street. So, it was ironic that we had to lay off those policemen - some of them. Half of the force is still on. And I would, given this opportunity, urge you to do everything possible to keep that Safe Neighborhoods Program going. It is essential and it has proved to be successful.

ASSEMBLYMAN JACKMAN: Thank you very much, Mayor.

Michael Herbert, President of the American Federation of State, County and Municipal Employees.

M I C H A E L H E R B E R T: Assemblyman Jackman, thank you for the opportunity to be here today to present the views of the American Federation of State, County, and Municipal Employees. I am attorney at law in the State of New Jersey and our firm represents what has been known as AFSCME, which presently represents approximately 12,000 employees throughout the State, both in State, municipal and county service.

I know that the day has been rather long and you have heard a lot of, perhaps, lengthy presentations. I intend to be very brief. I have a statement which I would like to have entered into the record by the Associate Director of Council I of AFSCME, which sets forth the position of the organization on this bill.

Basically, we believe that the bill that is presented for consideration reflects a great deal of hard work, a great deal of effort on the part of a lot of people, including the Commission, which should be commended for its efforts. However, we have to respectfully urge that it not be adopted in its present form. There are a number of major deficiencies in the bill, as we see it.

The primary one, of course, is the elimination of what we deem to be perhaps the most important protection given to public employees by the original law, back in 1968, and that is the prevention against a unilateral change in working conditions - rules changes that affect or modify terms and conditions of employees, public employees. I know that I have been involved in a great deal of litigation over the past few years, involving the law, and we have been greeted with one disappointment after another. The courts initially determined, back around six years ago, that the Public Employment Relations Commission did not have unfair labor practice jurisdiction. We still have some difficulty accepting that but that occurred. Then we had the so-called "Dunellen Trilogy Cases" which went on to say that a broad spectrum of matters which are clearly,

in our judgment, terms and conditions of employment, were outside of the scope of negotiation. We had the Turnpike employees case which we again found to our disappointment that the courts, very restrictively, construed the legislation saying, in effect, that an agency shop could not be negotiated.

The bill that is presently before you takes away the one protection which the courts have affirmed - at least the Supreme Court of this State did in the Association of State College Faculty case - and that is, the protection that is given the public employees wherein during the term of their representation the public employer isn't going to come along and adopt entirely new work rules which change hours, which increase work load, which sends somebody 50 miles away to another work location, which impinge upon his outside employment opportunities, and a variety of other areas.

Now, Section 5 of the proposal would eliminate that. It would provide that there can be unilateral adoption of new work rules, unless there are provisions that are covered in the contract. We believe that is an unrealistic position because obviously what is going to happen - and this is based upon very hard experience - is that the public employers who have the money are simply just going to hold off and make sure there aren't contract provisions covering these items. They will simply wait until the ink is on the page and then those changes will be adopted. I am not saying that we are paranoiac or convinced of bad faith on the part of the public employer, but I think it stands to reason that that is what is going to be happening.

Certainly the provision concerning binding arbitration, as to contract grievances is a step in the right direction. However, we note that that could be contracted away by the parties. And, again, given the fact that public employees in this State do not have, as they do in the private sector, an equal status - because they don't have the right to strike, they don't have power that is given to unions in the private sector - it is going to be obvious what is going to happen and that is, there is going to be insistance by the public employers that we exclude binding arbitration as far as contract grievance is concerned.

So, we want to have, if we have a provision for binding arbitration, that it not be discretionary, as far as the contracting process is concerned.

As far as the impasse resolution, which is the major element of this law, is concerned, it certainly shows a great deal of tug and pull and a lot of hard work but we find that it is overly complex, unwieldy, and while it is a step in the right direction to have a neutral party somehow in the process to deal with - as I am sure you know, Assemblyman, from your experience in the labor area - interminable negotiations, that go on not for months but for years. We would prefer to have traditional arbitration, where there isn't a last, best offer and, certainly, if there were a last, best offer we would not want to have it on a package basis as far as the economic conditions are concerned.

Last, Mr. Chairman, I want to express our very deep concern about the absence in this legislation of a provision for an agency shop. We see no reason whatsoever why a public employee organization should not have the same rights in the State of New Jersey, which is not a Right to Work State, as other organizations by allowing them to at least require people whom they are obligated to represent to pay something for these services. We have situations where - I know with our organization - thousands and thousands of dollars are spent each month and each year to represent people who don't pay any union dues and who scoff at the idea of paying union dues. But when it comes to picking up a paycheck which includes the increased benefits, then it is a different story. Of course, obviously, under both the present statute and labor law, generally, if we refuse to represent these people we would be subjecting ourselves to a claim of unfair treatment.

I know that one can argue that it was not within the original charge of the Public Employment Relations Study Commission to deal with the question of agency shop but there are a lot of elements in this bill that I think seem to be outside the framework of the original charter of that Commission as well. I think that it would be fair, particularly if you are talking about the continuation of not having the right to strike. Some balance must be given to allow organizations to have the kind of strength that they need in this State and I think it would only be fair to have some sort of service fee to cover the services that are provided for all members of a unit, regardless of whether or not they are union members.

With that, Mr. Chairman, I close my statement. (see page

ASSEMBLYMAN JACKMAN: Thank you very much.

Every once in a while I am going to fit in a young lady. I haven't heard from the female sex yet and they have been sitting here since early this morning. Carol Graves.

C A R O L G R A V E S: I am Carol Graves, President of the Newark Teachers' Union, American Federation of Teachers, AFL-CIO.

I came primarily to address myself not to the specifics of A-1448 but to give a general overview of why I feel 1087 should be given a chance. Quite naturally, I am in opposition to 1448 and I can state that as representative of the Newark Teachers' Union I oppose compulsory arbitration - and I am speaking for teachers - the compulsory, binding arbitration which has been suggested. I feel that although the bill does not address itself to the right to strike, I must say to the legislators who consistently say that we do not have the right to strike, that as an American and as a working woman, no one can take that right away from me, regardless of whether I am a public employee or whether I am a housewife.

I think when those issues are clear we can go back and look at 1087. Now, as I recall it was passed in 1974 and at that time it was an improvement upon what we already had. In the less than two years since it was enacted, severe economic problems have beset most of the communities in the country, particularly large cities. And because of the economic atmosphere the right climate did not exist for 1087 to be seen in a light to determine whether it was going to be able to solve problems or not.

In 1965 and in 1966 I did participate in strikes. In 1970 and in 1971 I also participated in strikes. And, most recently, I participated in one in 1976. But, in 1976, because of 1087 - the way it is presently written - it was of a very short duration and there was indication on the part of the Board of Education that there was a need for them to negotiate in good faith. Therefore, I reject the concept of good faith, which is implied in 1448. Good faith can only exist when there is pressure - equal pressure - on both sides. If we are to believe that we don't have the right to strike then there must be something that will make boards of education negotiate in good faith, and that is with the threat of some kind of penalty, which is already in 1087 - in the Unfair Labor Practices, which I feel has put pressure on Boards where they need the pressure.

Now, there is a difference between those of us who deal with Boards of Education as divisions of municipal government and those unions and other organizations which deal directly with municipalities, in that on Boards of Education the members rotate and the faces change and they are not, in many instances, elected officials, nor do they have any experience in negotiations or quite understand their responsibilities as public representatives. I think that perhaps the sponsors of the bill are either ignorant of or have not taken into consideration the nature of the "employer" - in this instance, Boards of Education - and their whole concept of labor-management relations.

Perhaps while the bill cannot do this, the School Boards Association certainly ought to consider some kind of course for Board members. They are desperately in need of it. Cities can go into chaos, and this does happen in many instances when public employees go on strike.

But, also, when employees do strike, the penalties are harsh. I want to review with you our recent strike. The law was in effect and ultimately we did have mediators in at the very end and they were there through the four or five days we were on strike. I believe, in retrospect, that their presence there was helpful. I think that without 1087 that would not have been possible.

I think if 1448 were to go into law, we would revert back to the pre-1087 days. Now, in Newark we have never gone on strike for money. None of our strikes have ever been for a monetary issue, which leads us into the whole area of managerial prerogative, which is a real "sacred cow" to some of our public officials. Managerial prerogative, to me - and I have had the experience - means to change the rules whenever you decide, for whatever reason you decide - change them one day, change them back the next day. To me, that is managerial prerogative. That is what we are talking about when we also speak of narrowing the scope of negotiations.

I think that because communities differ, the unions differ in the particular locality. We are dealing with people and that seems to be the biggest problem in public employment locations. Prerogative should be kept on the local level. I am totally opposed - as are many of my colleagues - to legislating so many things. Binding arbitration - I believe that should be a matter to be negotiated at the local level. If you are a union, and are worth being called a union, I think that is what you ought to be able to negotiate with your local leadership. But, in the absence of that, I think that might be the one area - and I am talking about binding arbitration of grievances, not the compulsory, binding arbitration of a contract dispute--

I also oppose forced mediation and factfinding. You have to realize that you cannot force things on people who are unwilling to accept them. I think that is where the turmoil lies in the public sector. The ideas which were put forth here are purely managerial. I really see nothing there for the employee. And it leads me to suspect that more and more harassment, rather than occurring at the local level, is attempting to be legislated here in Trenton. I oppose that. I oppose it from municipal leaders and I oppose it from the legislators in Trenton.

What are some of the things we can do? I would suggest that 1448 is untimely. There has been no indication that 1087 does not work. It is untimely because the financial problems that have beset communities have given the false impression that 1087 is not sufficient. I would suggest that an economic climate more conducive to looking at 1087 and then seriously weighing what changes are needed.

I listened to Gerald Dorf this morning and I found him very interesting since he was the negotiator in Newark. Many of the things he said, most certainly for different reasons, I agreed with. The time table would be counterproductive, counterproductive in terms of the Boards of Education just waiting it out for the time to come around with the frustrated employees hoping that they can meet the deadline before they have to work without a contract. We don't work without a contract in Newark. Probably as long as I am President we will not work without a contract because we have specific problems there. I don't think that they are unique to Newark. I think there are more exacerbated because of the size of the City and the other problems that the City has. But I will give you one of the reasons for this, it is because of the attitudes of many of our Board members, superintendents included. Our superintendent, even after this contract was negotiated, made the statement - and our contract expires June 30, 1978 - that, "Well,

we will have all summer to reach agreement." Well, I dare say, we have two and one-half years to reach that agreement. That is why a timetable does not lend itself to a situation that involves teachers and the Board.

I will give you another "hot off the press item." I think why our strike ended this particular time is because the courts were not so gentle on our Board of Education and I would like to see that happen in other districts. As a matter of fact, they made agreements and they refused to abide by them. We were in court this morning and the Board of Education was given a specific length of time to comply or they would be fined $50 for every day that they failed to honor a particular section. This, ladies and gentlemen, is what many, in their minds, want for managerial prerogative - to do, with impunity, whatever their whims tell them to do. And I don't think that I am being as harsh as I would like to be, out of respect for the individuals sitting here. I would like to be much harsher to the people who sponsor legislation and speak against public employees as though it is a slave-master relationship. If, in fact, there is any relationship it is between the public and those who vote on those bills - the public servant - that is, the men and women who occupy these seats when this legislature is in session. You too are public servants and therefore you must take a feel of the public. I feel that I and the 6,000 individuals represented by the Newark Teachers' Union must express ourselves in ways other than in the streets.

Now, one final thing on the public that you as representatives of the public should know - one of the significant factors to note in the short duration of our recent strike is that the public was in support of us. The citizens of Newark supported us. We worked, I would think, since 1971. They understand fully well the politics involved in public employer-employee relationships and this time they refused to be used by politicians to go against public employees. So, I say thank 1087 for that.

One final word on that. If I had the power to sit here, or at least speak as an elected official, I would suggest that the School Boards Association and the legislators really find out what the people are thinking, without the help of anti-public employee reporters. There is a significant difference between being anti and being pro. If we are pro the public then we are duty-bound to do everything to protect the public. But if we are anti-public-employee, as most of this legislation - this recent legislation - seems to be, then you are opening up a hornet's nest all over again. You are opening up in public employee-employer relations an area which takes us backwards rather than forward and I think that all of the strikes which have occurred in New Jersey since 1974 were merely because contracts expired at the worst possible time and out of frustration people did walk out, because no one likes to strike. But, as I said, without that right, strikes are going to occur because no one is really listening to the public employee.

I think once the individuals who have the power and the authority and are accountable listen to the testimony and come up with something that will add to 1087 and not detract from it, most of our problems will be over. Thank you.

ASSEMBLYMAN JACKMAN: Carol, thank you very much. I just want to make another observation, Carol. I know of your work. I think I am expressing the opinion of my colleagues and myself. You are a responsible labor representative. I want you to know that. We recognize your expertise. That is one of the reasons we have called this hearing, so we can get input. Unfortunately, we don't see one another that often and out of sight, sometimes, is out of mind.

I am sure you will agree with me in principle that nobody gaines by a strike. I don't want to see a school teacher out on the street any more than I want to see a school teacher in jail. And I don't think that we have brilliant enough

minds here in Trenton, or even in this country of ours, to make people like one another, or negotiate legitimately with one another. But, hopefully, we can reconcile some of our differences. I don't know if we are going to be able to reconcile these differences by law but, hopefully, we are going to be able to at least make a meaningful effort to do it.

I just want to, again, make reference to a gentleman who is sitting in the room with us - Dr. Lester. Dr. Lester spent many, many hours and many, many days working in conjunction with others trying to put this thing together so that it will be, hopefully, beneficial to all sides.

We know that we are not going to come up with an answer that is going to please everybody. Ironically - and the thing that I am a little confused by - it seems like almost everybody that has testified here today don't like 1448 for one reason or another. Hopefully, we can get the people who don't like it and the people who do like it and put them all together and maybe come up with an answer that may be acceptable by at least 90%. As I see it today - and I am sure Dr. Lester is listening to this - it seems to me that the majority of the people who have testified today don't like some section of that bill. If you put all the sections they don't like together after everybody has made their comments, you get the impression that the whole bill is no good. This is my own observation.

Hopefully we can get some answers, Carol.

MS. GRAVES: Chris, I had a thought and I am not quite sure how the Committee would deal with this, it seems that public employee-employer legislation really is directed - and I am talking about the "anti" legislation - at teachers. I think this is unfair to teachers but I also think it is unfair to other public employees. There seems to be a peculiar animosity and hostility by public officials towards teachers.

ASSEMBLYMAN JACKMAN: Do you know why, Carol? I can give you an answer to that, and I am going back to my days. They figure the teacher is only a part-time employee, number one. They use this. I want you to know it. It is there. You know it. You have dealt with it. They have that three month vacation - or two and one-half month vacation and they still get paid. This seems to be one of the problems.

I have to be very honest with you. Back in my day there was a value on a school teacher. Today there doesn't seem to be. Back in my day, if I got a rap in the mouth and if I ever went home and told my father, I got another rap. Today you hit a kid and you wind up going to court for assault and battery.

MS. GRAVES: I don't want to belabor this or debate this. That wasn't the intent of my remark, to debate whether individuals feel teachers are worth it or not. The point I was trying to make was, perhaps all of this legislation wouldn't be necessary if the individuals who do make the law would exhibit some kind of sensitivity so as not to sock in all other public employees to get at teachers. If they sat under somebody's desk in the first grade and that is motivating them-- When you take the clerical workers, the policemen, the firemen, etc., their problems are different; they are not the same as the teachers' problems. That attitude should not prevail among those individuals who we, out of respect, must look towards to guide us.

ASSEMBLYMAN JACKMAN: Thank you very much, Carol.

Mr. Forst.

F R A N C I S F O R S T: You know, Assemblyman Jackman, to follow Carol Graves, makes me pale in comparison and that is not intended to be a pun. The truth of the matter is, she says things in such a way as to get us all to understand what she is saying. Sometimes I say things in such a way that nobody seems to know what we want. I guess that is just a use of the language. I sat here and couldn't help but see

Carol Graves, in her quiteness, paint the problem very clearly.

I can't help but point to two things that Assemblyman Burstein said about the different testimonies and what is in the public interest, suggesting, perhaps, that if the employers are against this bill and the employees are against this bill, then we should impose the bill upon them, in the public interest. I cerainly hope that wasn't the conclusion Mr. Burstein was making.

Secondly, he said we should get the broad picture. I certainly appreciated that because that is what I had written down here about the broad picture. He mentions in the beginning the makeup of the Public Employment Relations Commission, which is of great concern to me but which, ultimately, is not the negotiations as they exist. And then he mentions the impasse procedures at the end and talks about how good they are.

ASSEMBLYMAN JACKMAN: Excuse me. I wanted to give this to Dr. Lester. Again, I want to apologize for interrupting you but I had the pleasure of going through your report before. If you remember, you gave me a copy of this at a hearing - or a meeting - that we had. I want to make just one statement for the record. This is a very concise report and the reason I gave it to Dr. Lester is, I want him to check into it because you refer specifically, right through it, to the entire subject matter. I thought it was a good job and I wanted to compliment you on it.

MR. FORST: Thank you, Assemblyman.

I want to go back to the public interest that Assemblyman Burstein addressed himself to. He suggested that a tripartite commission, because it had input from the employer and the employee, was not in the public interest but that a three-man neutral party would be. That's good; that's like John Philip Sousa playing the Star-Spangled Banner. Then he says at the end that there should be no strikes and impasses and that we should have binding arbitration and that's like Kate Smith singing God Bless America.

In between his bill, though, is the most pornographic movie I have ever seen and that's what he hasn't addressed himself to. I am shocked, in fact, that so many things have been ignored in this bill which apparently the people who put him in either don't know what the historical prospective is or do know what it is but are ignoring the significance.

I consider A-1448 an abomination with no redeeming value and if we were to sit here and suggest, as we do, that some employers are for it and that some are against and some employee organizations are for it and some are against it, then I think the sum is the same sum as we had in the old joke of depression days about the rabbit stew with a little horse in it - one rabbit and one horse. Because as far as I am concerned the employer objections are generally only to the impasse areas and some of the settlement procedures. But the employee organizations' objections, and mine particularly, are at the guts of the bill.

Those of us who were around - as I was - in the early stages of the development of the first legislation, and prior to the development of the first legislation, have had some experiences that are most important in this bill. For example, if we were to take the provision that appears in here and suggest the management rights clause does not destroy the bill, then they don't remember the historical prospective because in 1963, or 1964, the New Jersey Turnpike employees, then under Local 723 of the Teamsters Union, took a strike vote. They didn't go on strike yet, but they took a strike vote against the Turnpike Authority and the Turnpike enjoined them before the Honorable John B. Wick in Camden and in April of 1964, the Honorable John B. Wick agreed with the Turnpike Authority. The Turnpike Authority's position was the exact position that this language portends to be a managerial right. They said that you cannot take away our statutory powers or even, indeed, modify them and you cannot take

our prerogatives away from us to make ultimate decisions because we are empowered to make those decisions under the statute which creates us. The Turnpike Authority argument before Judge John B. Wick was identical. They said that it is our right to determine the wages and benefits of workers and even through they have a union and the right to have a union under Article I, Paragraph 19 of the Constitution, which says, "Persons in public employment shall have a right to present grievances and proposals", the ultimate decision, and the absolute decision, is ours. And Judge John B. Wick agreed with them. He said the Turnpike Authority can listen to proposals but they don't have to make a concession. They can listen to the grievances but they don't have to agree with them. And they don't only have to listen to the grievances of the majority, or the proposals of the majority, but they also have to listen to all groups.

Now, we remember that Chapter 303 says that we could have exclusive representation and we are familiar with Lello v. The Firefighters. But the basic premise would go right back to the employer under this provision, that anything that is intrinsic managerial policy or function or the statutory mandate, even though it is a term and condition of employment is non-negotiable. Well, that is the ballgame, Chris. That's it. Because the Turnpike claimed that even wages and benefits were their managerial function - the exact language - and that they had a statutory mandate to make that determination. I don't hear Al Burstein, or anybody else, saying that is the intention of this bill, but the language is very, very clear - very clear.

When you give somebody the right to negotiate but neither party has to make a concession, all you are doing is "jawboning" - that's all you are doing. If the managerial right or function is the final authority and they don't have to negotiate terms or conditions of employment to fall within that function, then what is negotiable? Nothing. Nothing is negotiable. It is as clear and as simple as that.

I don't care, you could have 99 lawyers come here and say that is not what was intended. When you adopt this law and the first lawyer goes into court for some employer, he will let you know what it was intended to say. In the meantime, we will have the greatest refusals to negotiate on the basis of managerial prerogative, their functions and their policies.

There are other items that are very important in here. I just had a great experience with Exxon. I, traditionally, went to Exxon to negotiate a contract for their workers and I asked for binding arbitration with a single arbitrator. And the great Exxon Corporation, across the table, said to me, "You don't think I would ever submit a question to binding arbitration with one arbitrator who may not know anything about our business or who may only give us an opportunity to present our case and then, on his own,make a decision, do you?" Exxon believes in a three-man arbitration board. They think there should be, on that arbitration board, a member from Exxon who can give that arbitrator not only in their presentation to him but as he is deliberating and as he is drafting and as he is making that decision, some concepts of Exxon and they are willing to concede, equally, that the employee organization should also have a representative. They propose that the employer have one representative on the arbitration panel, the union should have one representative, and the two of them select the third party for arbitration. That is what our tripartite commission is.

You don't think, for one minute, just because we have a right to present our case before a neutral party and we could participate in the discussion and deliberation of the decision, and even in the wording of that decision, that we would have any confidence in it, do you? We are no different from the Exxon Corporation when it comes to determining our livelihood and our future - no confidence in an all public body, no confidence. And when Al Burstein talked about his operation with the school board and the board of education, he didn't mention anything about the neutral

parties, who were supposedly neutral on our Commission. They are no more neutral than anybody else who comes out of management. All three of them come out of management. They are management attorneys. They are labor relations experts on the management side. That doesn't mean that they aren't effective or they are not capable. They are not even good. It certainly causes questions and causes employee organizations to doubt the ability or the wisdom of the appointment of a supposedly public - all public agency, because history has shown us, in New Jersey, that we don't have it. The public members are, in fact, not public; they represent a special interest.

So, if we had a different experience, perhaps, over the last seven or eight years, where the Governors did, in fact, appoint neutrals in the truest sense, we might have reason to trust them. We have no reason to trust them, and we have no reason to trust them now that we have seen their actions over the past years, where they have appointed only management people as neutrals.

I must point out that while you try to do these things in a calm and deliberate fashion and show people that you are not emotional when you sit here on an even keel - if you can - this bill cannot serve the public interest, or any other interest. It has taken away so many things from the negotiation process and in the end it gives nothing because if you start from the very beginning and you make so many things non-negotiable - as this does - and then it goes into arbitration and says the arbitrator only has the right to decide on those things which are negotiable, this bill is a laugh. It is almost a joke as far as the important things in it are concerned. As far as technical amendments - fine. As far as, maybe, concepts toward resolving impasses - everybody has a right to their own opinion. But the guts of this bill is an abomination. It is pornographic. It glorifies all the sins of poor collective bargaining.

If I wasn't tired from negotiating with my firemen in Jamesburg, I might have enough enthusiasm to go behond that. But if you even recall the public hearing the Labor Committee held before 1087, the testimony of the New Jersey Highway Authority--Mr. Gallagher - he came in and he said, "We can't grant binding arbitration. We can't permit it because we are under statutory mandate to make the ultimate decisions. We cannot, by law, give over to an arbitrator that which we were empowered with under our statutory mandate." If you adopt this law, nothing is arbitable - nothing. And who is kidding who about that? If that was Mr. Gallagher's position, with his lawyers and his attorney, he is right. He is right, it is their statutory mandate to establish budgets, set up the operation of the Highway Authority, operate that road and do it with the revenues that are available, subject to having to negotiate the terms and conditions of employment. The PERC Bill modified his statutory requirement. But when they went into court to try to change that, when they went to the court and got some soft judges to say, "Well, it is not quite that clear, in fact the law says nothing contained herein shall annul or modify any other statute or statutes", the court started to agree with Gallagher so that eventually if Gallagher was permitted to keep going in the courts, again, nothing would be negotiable. So, we amended that in 1087 and we put the word "pension" in there and now only pension laws are not annuled or modified. And Al Burstein didn't say it, but he knows it. He knows that this 1087, Chapter 123 of the Public Laws of 1974 did annul and modify some of those other laws, it did and it did so effectively. So, the right to negotiate the terms and conditions of employment is a paramount right of the unions who represent the workers.

Chris, I could go on and on but this law stinks so bad that I don't think you can save this bill. You can't save the thoughts that went in here. You have to start from scratch and build some productive, good legislation to enhance our position.

ASSEMBLYMAN JACKMAN: Francis, let me again thank you. I know you have done a good job. I have had the opportunity to go over your criticisms.

In defense of my colleague, Mr. Burstein--

MR. FORST: Don't defend him publicly, Chris.

ASSEMBLYMAN JACKMAN: I must say to you, in all fairness, he is a lawyer. We don't agree on many things but I must say, in all sincerity, that if anybody is more dedicated than Al Burstein in that Legislature, I don't know of them.

MR. FORST: The Governor is dedicated.

ASSEMBLYMAN JACKMAN: But I want to tell you that anything he has done, he tried to do what he thought was right for the public and for the people he represents in this State, like we all do.

MR. FORST: I agree.

ASSEMBLYMAN JACKMAN: We don't represent just a district, we represent the whole State.

MR. FORST: I agree that his opinions are bad, that he is sincerely wrong and that he isn't even worthy of reelection because he has a limited thought process.

ASSEMBLYMAN JACKMAN: Francis, you said that; I did not say that.

MR. FORST: Well, certainly I'm going to say it; you gave me the opportunity to say it.

ASSEMBLYMAN JACKMAN: You said that, Francis, I didn't. I don't think he needs any defending. What I was just trying to get across, Francis, is, I can tell you that your suggestions will be given evaluation, like everybody else's. I must say, in all fairness, again, that you have done a good job and, hopefully, when we discuss this further with the rest of my colleagues, we will be able to make some adjustments that will be beneficial to everybody concerned.

You see, I believe that the public doesn't want to give everything away nor do they want everything in their favor either. We are all the public, in a sense. I appreciate the job you try to do in representing your people. And, incidentally, for your edification, Francis, you should know that I have 27,000 members that I represent in this State in the industrial field and you know, numberwise, they are just as jealous of you, as I am, and the conditions you may get as you may be jealous of the conditions I get. But, hopefully, we are going to have some answers, Francis. I hope so anyway.

MR. FORST: Let me just add one more comment about that. I have discussed, in the past, all areas of teaching. I think there is a misunderstanding on the part of a lot of people concerning teachers. As you pointed out, and as I was brought up, teachers were held in very high esteem and because they were, school boards paid them rather well and they had rather good working conditions. And then along came World War II and the G.I. Bill of Rights and everybody else got an education, and industry produced and I found myself, in my field of engineering, that engineers looked down on teachers. When the boom was on, the cost plus operations of industry, they looked down their nose at teachers. They said, "Why don't they get a job?" They used to tell the kinds, "If he was any good, why doesn't he go out and get a job in industry?" This is the first time -- we haven't had a long time for teachers to make a come-back. Chapter 303 was adopted in 1968. It didn't become effective until 1969. We were still working out on rules in 1969 and then we had three years of a wage-price freeze where they couldn't expand more than five and one-half percent without justification.

If you count '70, '71, '72, '73, '74 and '75, you count six years, two of which we had a wage-price freeze and two of which we had an economic crises in the

State of New Jersey. They haven't had that great an impact. They just happen to be the whipping boys for the economic impact. Teachers deserve what they get.

ASSEMBLYMAN JACKMAN: Thank you, Francis. (see page 91X.)

ASSEMBLYMAN JACKMAN: Dr. Sandra Walther, Executive Director of the Rutgers Council of AAUP Chapters and Executive Secretary of the New Jersey Association of Collective Bargaining Agents.

Doctor, with your permission, you don't have to read this entire speech if you don't want to. If you would just refer to it, I would appreciate it. Whatever you want to do, I will accept. But I can assure you, if you don't read it all, it will be included as part of the record, and it will be fully digested by the members of this Commission.

D R. S A N D R A S. W A L T H E R: Well, I think the written mode and the oral mode don't quite mesh. This is something meant to read, and I think it would be just as easy to tell you what points I am stressing in there, and I hope as it is read people will pay close attention.

Well, first of all, I would like to explain why I am here. I am the Executive Director of the Rutgers AAUP, which is the bargaining agent for the faculty,teaching and graduate assistants,at the University. I am also the professional staff support to a thing called the Association of Collective Bargaining Agents, which means I am also involved in the negotiations at the New Jersey Institute of Technology and the College of Medicine and Dentistry.

What I would first like to stress is that negotiations at these three institutions have been going on since November, 1974, for a contract that should have begun July 1, 1975. We have been through the whole bit currently available to us under the law. We went to impasse in August. We went through mediation. We went through fact-finding. We received a recommendation from the fact-finder in early October, and we had two bargaining sessions this week, and we are still bargaining. The obvious defect that we would like very much to see rectified is,what do you do for an encore after you have gone through what is currently legally available?

Now, before I give you the comments on our feelings about A-1448, I would like to preface the remarks by saying that in principle we believe that the same rights accorded to our profession in the private sector should be available to us in the public sector, unless there are compelling reasons to the contrary. I have bargained both in private and public sector higher education, and frankly as far as our professional services and our impact on the people we serve, I really can't tell the difference. Therefore, our ultimate hope is that legislation will be moving closer and closer in conformity with what federal law permits for employees in appropriate positions that are comparable to private employment. Given that backdrop, we have to be or are willing to be realistic and pragmatic. And in assessing what A-1448 has to offer as an encore, we are prepared to live with legislation that would provide an encore in the form of some kind of arbitration provided that the mechanisms do really give a true balance of power. I think what my statement attempts to stress here is that we truly feel that we are second class citizens; that we are bargaining at a severe disadvantage. We can be nice guys and girls as we have been for 14 or 15 months, pulling out all the legal options, taking every possible avenue that we can to keep negotiations moving forward, but realistically, there comes the time where we simply spin our wheels, and unless we can motivate the people we bargain with to wrap up the contract, we find ourselves forced, really, to give up more than we get in return in order to wrap up. There is no advantage to an administration to have a contract. There is, of course, an extreme advantage for us. So it is that imbalance that we think is right now so severe that it makes one wonder if it is worth investing the time, money, and effort in going through a bargaining process that looks a little bit more like a charade than a bona fide relationship.

Now, then, the bill at least offers the possibility of a new mechanism, and we would be willing to try that mechanism. However, in assessing whether this bill is moving us in the direction that we ultimately desire, namely, in conformity with private sector employment, we find that the way A-1448 is framed, there really is some serious retrograde motion in there. And the specific points that we find just totally unacceptable are the adjustments, Section 5 of the bill, amending Sections 7a, line 53 through 57, and further on in that section, 66 through 69, and I am sure you have that section well thumbed.

Let me see if perhaps the experiences we have had at the three institutions might give you additional information as to why those sections in the laws that exist are in our mind preferrable to the language recommended in A-1448. As we read it, it looks as if the amended language really puts a zipper clause in the law, requiring everything that you anticipate to be a potential problem in work conditions has to really be brought to the table and sown up in a contract. Now, we think there are two really severe problems with that.

One, it would prolong negotiations, even in a worse way, worse than we are already think that the thought of bringing absolutely every possible condition to the table, and getting an agreement on it is just about unworkable. We have, of course, tried to do this in the traditional time-honored manner, putting in a past practice clause, which is usually responded to in the time-honored manner of give me a laundry list. So that anything in the law that really says, if it is not in your contract, you have no protection about it, we think, would really be an unconstructive context in which to carry out negotiations.

Secondly, we don't think that you always come out with the best contract trying to anticipate every possible contingency. And here again, I think our personal experience this year would be helpful. We, at the three institutions, are facing potential massive budget cuts for next year. I say potential, because we may not know until - as we didn't know until last year - mid-August. Those cuts, if they come,will necessarily impact on the number of staff and on our workload. Yet, without knowing exactly what those contingencies are going to be like, it is very difficult to frame reasonable and workable provisions in the contract. If the law would tell us that if it were not in the contract because we couldn't frame a reasonable way of handling it, that we had just lost our rights to protect our constituents against any managerial change, this would, I think, sort of blow collective negotiations right off the map. That is our first concern, that it is impractical. Secondly, I think it would force the bargaining environment - this is not that different from the first point -- It would force a much more rigid approach to problems so that you always had to have a formal resolution, and undercut the ability that we feel we have at our institutions where faculty and administrators, being professionals of the same kind with the same sorts of credentials, frequently find that they can solve problems informally.

Now, you might say, well, as long as you can do it now, well, why not continue to have the permissive context. I think our answer to that is that it never hurts to have good will enforceable and that therefore we would feel far more comfortable being assured that if the good will to continue these informal ways of solving problems were for some reason to fail, that the law still would be there to support that effort. I think the thing to stress again here is that when we get into such problems, there is really no way to solve them without cooperation, and somehow when people know they are going to have to cooperate, this seems to work as a little better motivation to make sure it happens.

The second major problem then with the amendments as A-1448 presents them is the management rights language in lines 66 through 69. And, I think if you don't mind, I will read what I wrote there, since I think it may say it more succinctly than "ad hocing" it. "We see the inclusion of management rights language in the law as inviting far more problems than it could possibly resolve. In the first place, implying that there are matters of 'intrinsic managerial policy or function' without giving operational definitions, could encourage management to rely on this phrase to limit the scope of negotiations. Such claims, challenged by the employee organization, would lead to prolonged scope of negotiations proceedings where the clarification of this vague phrase would have to be undertaken. The phrase in the law would not contribute to that clarification. It causes problems and solves none. But it would have the serious defect of appearing to have some meaning and provoke endless, unconstructive philosophizing." And having taught philosophy for ten years, I feel obliged to make that observation.

"It is a dangerous piece of window dressing, and invites a rigid and adversarial approach to negotiability adjudication. We believe that the scope of negotiability is necessarily a fluid area and must be resolved on a case by case basis. The concept of 'managerial policy' and the concept of a 'term and condition of employment' continually develop and evolve. As different kinds of employees, professionals and non-professionals, achieve representation rights, the concepts become richer, more well defined, yet not rigid. This is again especially true in our experience in higher education where our traditional collegial structures and practices and our recently acquired rights under collective bargaining are evolving into a new relationship which preserves both elements. We do not believe collective negotiations should straight-jacket employers and employees by defining their relations in such gross terms that the historical realities of different professions are submerged."

I might add to that, we in the Rutgers University Administration endured about nine months of scope of negotiations determination this year, having some 10 to 14 items in dispute. The decision rendered by PERC in January never used the word "intrinsic" or "inherent managerial policy" but has spent about 35 pages drawing as careful lines as it could between what was a permissive area and what was necessarily a subject of bargaining because of its impact. We think that was a far more constructive way to handle the question of just what belongs to management and what belongs to employees. And I must say that we discovered that we didn't even seem to have inherent terms and conditions of employment, so that even that phrase --- Just in passing, we thought we could safely bargain about the summer salaries of the people in our unit, only to discover that we could quibble about whether the faculty who teach all year are still in the unit when they teach in the summer. So that even such a clear thing seems to have a hair that somebody can consult a case on and split. But we would rather live with that, because at least you can argue on a case by case basis, and not, you know, have to waste time spouting these slogans back and forth to each other. I think the problem with that phrase is that it is, at best, a slogan, and at worst, a downright red flag.

The third area that my remarks address, where we see the bill is deficient, again, goes back to the sense of trying to achieve parity with the public's private sector, and that is the issue of agency shop. We think that A-524 that was submitted and considered in the last legislative session was a very fair bill, because all it really did was accord public employees the right to negotiate about this issue of union security, which our colleagues in the private sector have. We think the issue of the rights and wrongs of having some agency service the provision, the substance of those issues can only be discussed intelligently at the individual tables. And for the law to take a kind of moral stand on

that is simply, again, inappropriate. If the University Administration wants to take the moral pitch in the name of the rights of individual faculty members, all right, we would like to hear it, but we would like to have the opportunity to hear it at our own table and not have to argue it with people who really are very far removed from the actual negotiations process.

The last comment that I would like to make, then, is that it is that retrograde motion in the limiting scope and the introduction of management right language that would give us severe reservations about this bill. We are willing to experiment with an attempt to find an equitable terminal procedure, and we think in looking at the way the procedures are framed that we see enough there to hope that the thing can work. One or two reservations there, one, the ability to appeal the arbitration award based on intrinsic evidence, we do fear that that is going to be a route taken more frequently by employers claiming that the public interest cannot afford these outrageous demands. We think, frankly, employee organizations will not be able to afford - unless you give us agency shop - to take that kind of a route. Still, if the mechanisms are workable, if they do provide a true balancing of interest and power, we would be willing to try it with the understanding that we can always come back and claim it wasn't strong enough and ask for the right to strike.

One final comment, then, on the way in which the mandated procedure is defined. By having the economic issues required to be treated as a single package, while the non-economic issues would be treated on a one on one basis, we think that raises some problems about defining the economic and the non-economic issues, and that that can cause a prolonging, again, of the process because it would be very critical to win the right classification on the right item. We, therefore, suggest that the mandated procedure be issue by issue, and not a single package on the economic area. Thank you. (Written statement appears on page 96X in the Appendix.)

ASSEMBLYMAN JACKMAN: Doctor, thank you very much. Our next witness will be Mr. Edward Schultz, Communication Workers of America.

E D W A R D S C H U L T Z: Thank you, Chairman Jackman.

I am Ed Schultz, International Representative of the Communication Workers of America, AFL-CIO. We represent approximately 5,000 public employees in the State of New Jersey. I would like to make the following comments:

First, I would like to make an over-all observation of A 1448. As we see it, it is supposedly the product of the study provision of Chapter 123, P. L. 1974. Unfortunately, Chapter 123 of P. L. 1974 has not yet been given a chance to succeed. The ink is hardly dry and we need to give it a much greater time period to observe its practicability before recommending new changes in the law. If we don't do this, we may be opening a Pandora's box to a lawyer's haven for further litigation and establish some negotiations that don't need to take place.

A 1448 tries to put some finality to collective bargaining by submitting negotiations to binding arbitration. It is trying to find a solution of finality in collective bargaining of public employment without the strike. This problem still remains a very important national unsolved problem. I don't know that anyone has come up with an answer to that problem. Maybe under some circumstances and in specific instances when you have narrowed the definition of public employees, there are some public employees who can effectively strike and not create any greater public disturbance than, for example, when the steel industry goes on strike. We are all upset by that. There are some people, such as policemen and firemen, for whom a strike is not feasible at all. Maybe in some instances binding arbitration will hold that power for the public employee law. But, right now, I do not think that 1448 has been studied in depth enough to be practical at this time.

However, what this bill has done is effectively weaken the power of employee representatives to negotiate terms and conditions of employment; and, after all, effective negotiations by both parties is what collective bargaining is all about.

Some specific objections that we find in the new bill: On page 3, line 59, there is an attempt to further define what a supervisor is. We feel that the present definition of supervisor is sufficient and that this definition needs no further clarification.

"Evaluation," which is put in the new definition, is frequently part of the non-supervisory employee's function and should not be included in the definition of a supervisor.

On page 3, lines 62 to 69 are extremely poor definitions of good faith collective bargaining. They open the door to long-term legal hassles over what the definition of what an unfair labor provision is. In the meantime, it lets the public employer return to the old pre-PERC days - and I am like Frank, I remember them well - when the employer could meet and not move anywhere whatsoever in negotiations. When you include in the definition of unfair labor practices such clauses as "a genuine effort," that leaves the door open to a long legal interpretation of who is making a genuine effort and neither party is compelled to move in bargaining. You have really made a mockery of the whole unfair bargaining aspect, which 1087 tried to correct when it was passed.

We should continue to allow charges of unfair bargaining to be determined on their merits before the hearing officer who is listening to the charges.

On page 4, lines 19 to 34, you have placed in the law an administrative policy of hiring necessary legal counsel. I am pleased to say that the Public Employment Relations Commission has already initiated, without this being placed in the law, this policy. It is, therefore, unnecessary to place such provision in the law.

On page 5, lines 15 through 55, you are altering the makeup of the Commission to three full-time commissioners. You have eliminated the public employee representative

and the public employer representative from the makeup of the Commission. The contributions of both the employee and employer representatives from the very beginning of public employment law in New Jersey to the present have played a most important role. It is frequently to these members that the public turns for invaluable advice and information. It is, after all, these persons who have the experience in negotiating and resolving public employee problems. I look over the past history and think of the advice and help that Tom Parsonnet, Frank Forst, Mr. Hurowitz and Mr. Hipp have given to the public sector people.

Any representatives chosen for the Commission may try to be totally impartial; but, try as they may, they have a specific life experience and that life experience biases the way they feel. If you try to create divergent views by having at least a Democrat and a Republican on the Commission, it will make no difference in resolving that bias.

You are trying to create three full-time commissioners when you have not yet fulfilled the requirement under the present law of a full-time commissioner.

On page 7, lines 55 to 57, you eliminate the present guarantee that employers will not unilaterally change working conditions. All working conditions of public employees cannot be negotiated into the contract. You cannot allow the employer to revert to the pre-collective bargaining days when the employer could unilaterally change working conditions without negotiations. Eliminating this part from the law, the new language will make the employer more hesitant to place all terms and conditions of employment into the negotiated contract.

On page 7, lines 59 through 66, you are deleting from the law the guarantee of reducing an agreement into a written contract; and, in so doing, you are going to bring back the days of going forever and ever and ever in negotiations without ever reaching an agreement.

On page 7, lines 66 through 69, you are restricting matters of intrinsic managerial policy from negotiations and you are placing new vague limitations on negotiations. Labor management experts throughout the country cannot agree on what intrinsic values mean. The experts, however, agree that the conditions of the work place will more and more become bargaining items in efforts to overcome new problems of worker alienation.

On page 7 - I haven't the lines - you are eliminating "policies, agreements and administrative policies from the grievance procedure. If you eliminate these points from a negotiated grievance procedure, you will be providing a vehicle of subterfuge for the employer to be effective on the redress of the employees' grievances. You have to have these policies, agreements and administrative policies in the definition of what is grievable; otherwise, the grievance procedure will be limited to the contract and you will make it so much harder to negotiate an effective and fair agreement, and the contract will have little meaning in content.

On page 7, line 79, you are stating that you should now have binding arbitration as the final step of the grievance procedure and that part of the Act is good.

On page 9, lines 39 to 56, the new language weakens the ability of the Public Employment Relations Commission to enforce meaningfully its decision-making powers in unfair labor practices, and the old language in 1087 should remain.

From the bottom of page 11 to the top of page 15 is the section that tries to go into binding arbitration on the contract, itself, as a final solution. There may be some points of binding arbitration, as I previously said, that will apply to certain segments of the public sector, but it cannot be negotiated as is and there needs to be much further study given to this aspect. Until we have such study and we

have further advancement of collective bargaining in New Jersey, we should go with 1087 as it is.

I want to state if you were to put binding arbitration as the final step of collective bargaining in New Jersey, you would have to create a much greater administrative resource for the Public Employment Relations Commission. It is useless to pass laws if you don't effectively provide the financial funds to enforce them. As it is, PERC, like all other public agencies, is feeling the economic crunch that New Jersey is facing and this is the wrong time and the wrong place to pass a law that will add greater administrative costs if it is to be effectively administered.

ASSEMBLYMAN JACKMAN: Thank you very much, Mr. Schultz.

James Auerbach will be the next witness.

J I M A U E R B A C H: I am Jim Auerbach, President of the New Jersey State Federation of Teachers.

I would like to make a couple of observations before I read by testimony today about the last few speakers and their testimony. It is with considerable personal satisfaction that I noted that several of the last speakers have not merely referred to one part here or one part there, as Assemblyman Burstein was suggesting before, that they would oppose in A 1448, but that they have opposed the bill on balance, the vast majority of that bill, as either inappropriate or unfair or, to use Frank Forst's term, an abomination, a term which I used to Mr. Ben-Asher yesterday in speaking to him about the bill and our own assessment of this bill.

Another observation about some of the testimony earlier this morning - some people suggested that the number of strikes in New Jersey, teachers' strikes in particular, were cause for alarm, that the alarm bell should be going off and public employee legislation should be in some way modified to restrict the rights of public employees as a result. I think it should be noted very clearly that 15 teachers' strikes mean, even if that number were tripled or quadrupled, that the vast majority of collective bargaining experiences in New Jersey this year and certainly in years past have been settled peacably; and,even if that number were much higher, that still would be true; and that the present legislation should either be left as is or the rights of public employees should be strengthened, since it appears to be working fairly well under existing legislation.

Although there are numerous areas of the report and the proposed bill which could be addressed, I have chosen to concentrate on three main topics for discussion: First, the impasse and arbitration provisions which are recommended by the report and proposed for enactment in the bill; secondly, the weakening of employee rights which would result if the recommendations in the report were enacted; and, third, the discussion in the report concerning the change in the structure of the Public Employment Relations Commission to a three-member, full-time panel and the discussion of a proposed Labor Part of the Superior Court, Chancery Division, which hasn't been mentioned in any of the testimony today, I believe.

First, the impasse and arbitration provisions: The study report and the proposed bill set forth a lengthy, detailed scenario for the resolution of impasse in negotiation following the conclusion of mediation. The drastic change from the present procedure which would result cannot be overstated. Considered in a vacuum, the impasse and arbitration procedures are detailed, orderly and specific. But when considered from a practical point of view, the proposed changes in the present system suggest that the system has failed, and that the progress which has been made under that system should be surrendered in favor of an untried system which is more cumbersome, more costly, and will

in the end be less successful.

In effect, the new system is predicated upon the premise that the present system does not work. This premise must be rejected, and, consequently, so must the new system. Clearly, the proposed new system makes a mockery of the term collective negotiations. With the statutory arbitration provisions hanging over the heads of the negotiators, neither side can be expected to do the hard bargaining and make the concessions which are always required to reach an agreement. Instead, the new system encourages disagreement. Once the parties have progressed into the arbitration procedures, there is little incentive for the public employer to agree to a "terminal procedure", because the statute would provide one. It would be easy for the parties to become hung up over questions, such as, which are economic and which are non-economic issues, which are required subjects for negotiations and which are not required.

The procedure outlined a list of factors to be considered by the arbitrator in reaching a final decision. Leaving aside whether those factors provide fairness to both sides, the statute provides that failure to apply those factors would be grounds for an appeal to the Superior Court. It should be evident that the system is cumbersome, costly, lengthy, and not in keeping with the progress which has been made in the public employment sector since 1968.

If there is any difficulty in the present system, it results from denying to public employee organizations the full complement of bargaining tools available in the private sector. We cannot state this as a position of the American Federation of Teachers too strongly. Public employees are denied the right to negotiate on all issues which affect their working conditions, and are denied the tool of last resort - the strike. Rather than seeking to junk the present system for a new one which has the numerous disadvantages cited above, any legislative initiatives ought to be in the direction of remedying these defects in the present sytem. Even with these defects, the present system has worked reasonably well; correction of these defects will be a major improvement. Junking the system and starting a new one proposed by the study report and Assembly No. 1448 would be a step in the wrong direction.

As to the weakening of employee rights which would occur if this bill were passed, aside from the arbitration provisions, the study report recommends and the Burstein Bill proposes several changes in the language of the New Jersey Employer-Employee Relations Act which would result in a weakening of the rights presently enjoyed by public employees.

The proposed changes in wording significantly weaken the requirement in the present Act that proposed new rules or modifications of existing rules governing working conditions shall be negotiated with the bargaining agent of public employees before they are established. The new wording would limit this new obligation on the employer to propose new rules or modifications of existing rules which change working conditions covered under a collectively negotiated agreement. The study report provides no rationale, logical or otherwise, to indicate why such a limitation is required.

It is also proposed to add a new provision stating that public employers are not to be required to negotiate any term or condition of employment concerning matters of managerial policy or that contravene a constitutional or statutory mandate. Such a provision has been considered previously by the legislature, and has been rejected. Although it might be argued that this provision does no more than codify the present state of the law, as has been expressed by the Supreme Court, it is nevertheless a signal that the trend of recent enactments and decisions by the Public Employment Relations Commission should be reversed. The recent Rutgers decision just referred to in earlier testimony of the Commission establishes a tripartite concept for collective

negotiations in the public employment sector - mandatory, permissive, and illegal. Enactment of this proposed language in the Act would seriously undermine the concept of a permissive category, which the study report concedes is advantageous.

The definition of the term "negotiate in good faith" which is proposed for enactment as N.J.S.A. 34:13A-3 (i) is especially abhorrent. To state that the obligation to negotiate in good faith would not compel either party to agree to a proposal or require making of a concession is contrary to the development of that term through history. The United States Supreme Court has ruled that when a party comes to the negotiating table with a pre-determined resolve not to agree and not to make concessions that it is not negotiating in good faith. The effect of this definition would be to limit a refusal to negotiate in good faith simply to a refusal to attend a negotiating session or sit down with a bargaining agent. Seen this way, the obligation becomes meaningless as a statutory tool to encourage collective negotiations between public employers and public employees.

In regard to a proposal for a full-time commission and a Labor Part of the Superior Court, there appears to be little reason for changing the structure of the Public Relations Commission as it presently exists to a three-member, full-time body. Since the members of the restructured Commission would be appointed by the Governor, the functioning of the Commission is likely to become involved in political trends which, quite possibly, will deprive the Commission of the opportunity to develop a body of law which will serve as a guide to public employers and employees and hopefully prevent needless controversy and litigation. Maintaining the present structure would insure each side in the collective negotiations process - employers and employees - that its point of view would be represented on the Commission.

Inasmuch as the proposal provides for paying the full-time members a salary equal to that of a trial judge of the Superior Court, these monies would be better invested in the appointment of judges who would serve on a Labor Part of the Superior Court, Chancery Division.

The advantages of creating a Labor Part are several. Firstly, the field of public employment has opened a large area of litigation in recent years. Should some or all of the proposals made by the study commission report be enacted, the likelihood for increased litigation would be substantially increased, especially if some form of arbitration as final resolution is enacted. As the Burstein Bill is presently formulated, litigation is greatly encouraged. The vague standards and large number of factors which must be considered would give either party a substantial number of grounds for appeal in almost any negotiation.

Additionally, objectivity, impartiality, and independence are traditional judicial attributes, and the courts would be better suited to develop and maintain a body of law which could act as a constant guide to parties involved in negotiations.

This is not to endorse completely the Labor Part proposal which is contained in the study commission report. There appears to be no reason to make filing with the commission a preliminary step to a court hearing. Under this setup, the commission should be restricted to representation and certification functions, and to mediation and factfinding procedures.

Clearly, if the proposal for a Labor Part is followed, there would be even less reason for restructuring the commission to a full-time basis. Considered in this light, it appears preferable to forego the restructuring of the commission, and to push forward with the establishment of the Labor Part. Given the substantial increase in litigation in recent years on this subject, the need for a coherent and consistent body

of law in this sector, and the benefits to be accorded by this Labor Part, such a proposal should be endorsed.

In summary, except for the Labor Part suggestion, there is little in the study commission report and Assembly 1448 which would improve upon the present system of collective negotiations in the public employment sector as presently exists. If improvement is to be made in the current system, there are other steps which could be more profitably pursued.

I would just add one final observation along with others who have said it before me, that as far as the American Federation of Teachers in this State is concerned, the right to strike is a human right of all workers, public or private.

ASSEMBLYMAN JACKMAN: Thank you, Mr. Auerbach.

James Cottingham is next.

J A M E S W. C O T T I N G H A M: Thank you, Assemblyman Jackman. We would like to thank you for this opportunity to testify on Assembly Bill 1448. Before I start out, I would like to commend the Commission members for all of the work that they have put into this proposal. We don't agree with everything in it, but there are some points that we agree with and some points we disagree with. Maybe that indicates that they have struck some kind of a balance between the positions of management and labor.

The first point that we would like to make is that the definition of managerial executives should be amended by deletion of the phrase ". . . except that in any school district this term shall include only the superintendent or other chief administrator, and the assistant superintendents of the district." This amendment would broaden the definition of managerial executive and permit public employers to develop a true management team. At the present time, this has been interpreted to very narrlowly construe who can be classified as a managerial executive and excluded from collective bargaining.

2. We believe the factfinding and arbitration should be paid for by the parties to the dispute. Assembly Bill 1448 provides on page 11, lines 32 and 33, that the cost of factfinding should be borne by the Commission. Since this was introduced in S 1087, the costs to the State for factfinding have escalated very sharply, and not only has it created an additional financial burden on the State, but it has created problems for both public employers and public employees because there is a tremendous backlog and you may need a factfinder before one can be appointed.

In addition, we recommend that the fee paid to mediators, factfinders and arbitrators should be raised from $150 a day to $250 a day. This would encourage qualified people to work in New Jersey. At the present time other states do pay people at a higher rate and we find that some of the best qualified people are saying they no longer find it in their personal interest to work in New Jersey.

3. Mediation should not become automatic until at least 60 days after the onset of negotiations rather than the existing 30-day period. This would give people a longer time to actually negotiate a contract without having a third party involved, but it would not preclude the parties from requesting mediation sooner than the 60-day time limit.

4. Arbitrators should not be permitted to mediate a dispute. Here we are referring to, if we should go to compulsory arbitration of impasses, we do not believe that they should be allowed to mediate a dispute while they are participating in an arbitration. We believe that the roles must be mutually exclusive, although we would agree that negotiations could continue during the arbitration process. We just want the arbitrator excluded from it so that he doesn't become a prejudiced party and can remain neutral.

5. We strongly support the proposal on page 5, lines 15 to 36, that the Public

Employment Relations Commission be reconstituted with three full-time members appointed by the Governor.

6. We support the definition of a grievance on page 7, lines 70 to 75. We believe that this is a substantial improvement.

7. Binding arbitration of grievances should continue to be permissive, subject to negotiations between the parties. Most of the colleges in the State do now have binding arbitration of grievances, but this is something which they have elected to do at the bargaining table. We do not believe that it should be legislatively mandated, but rather be something which the parties can negotiate over.

8. The bill's recognition of certain matters of intrinsic managerial policy or function also represents progress in properly defining what should be negotiable. We support the statement on page 7, lines 66 to 69, in this regard.

9. The definition of good faith negotiations on page 3 is also a positive development from our perspective.

At this point the Association is not prepared to either support or oppose the bill's proposal for mandatory arbitration of impasses. Our position with regard to that proposal will be influenced by what the Committee decides to do with respect to the nine issues cited above.

Thank you. I would be happy to answer any questions you may have.

ASSEMBLYMAN JACKMAN: Every time I hear that word intrinsic, I get a little worried because you agree with it and the opposition doesn't agree. That one word seems to be sticking out all the time.

It seems to me that in most instances both sides want the 60 days instead of the 30 days. So you are hitting a happy medium there. I am very happy to hear you mention the fact that the Study Commission tried to do a decent job. And I am very happy that Dr. Lester is still with us. I am going to make available to him all the statements that were given to me here today so that he can make some judgments on them. But again, Mr. Cottingham, thank you very much for your statement.

Mr. Edgar Samman.

R A N D A L L C. F L A G E R: I am Randall C. Flager. I am here testifying on behalf of our Executive Director, Edgar G. Samman, who has prepared a statement that I would like to read.

I would just like to preface my remarks by saying, the New Jersey State Employees Association represents 28,000 State employees, 14,000 of which are in the clerical unit, 8,000 of which are professional, and 6,000 are primary-level supervisors. We have the largest union in State service and have more members than any other organization in State government.

Although I will hereafter set forth certain disagreements of the SEA concerning certain aspects of the bill, nevertheless at the outset I would like to emphasize that SEA strongly supports the provisions providing a terminal point for collective negotiations through binding arbitration. It is common knowledge that public employee representatives must engage in collective negotiations with at least one hand tied behind their backs, since they are denied the right to strike. Unfortunately, it appears that those public employee groups which exercise this right, albeit illegally, nevertheless obtain more benefits than those employee groups which comply with the law and do not strike. It seems certain that fairness mandates a terminal point of binding arbitration. I will address myself more clearly to this aspect of the matter hereafter, since although I agree with the establishment of a terminal point, I have some differences with the bill regarding the method for binding arbitration.

There are other areas of the bill which are also praiseworthy. I note that bi-state agencies are to be included. In the past, SEA has had difficulty in assisting individuals employed by bi-state agencies and it is praiseworthy that these agencies are now being included within the protections of the Employer-Employee Relations Act. Further, the proposed change in the composition of the Commission appears to be commendable provided that quality individuals with a professional background in labor relations are selected for the Commission. We only hope that Commission members will be professional and fair and impartial. It is particularly important that this be true with regard to the Chairman, who is to be the Chief Executive Officer and Administrator. Up to the present time the Executive Directors of the Commission have been professional and in the main, fair and impartial. We hope that professionalism and impartiality are maintained. Further, we believe that the change in the unfair practice procedure providing for issuance of a notice of the hearing upon the filing of a complaint represents a useful elimination of the previous cumbersome action of having complaints issued by the Commission. In addition, providing the Commission with specific subpoena power and otherwise clearly delineating its power is an important improvement. It is also noteworthy that provision has been made for the analysis and collection of data regarding public employee matters.

As noted above, although SEA agrees strongly with the in-

stitution of binding arbitration in matters of collective negotiation, it disagrees with the method which has been selected for the terminal point for such negotiations. The method contemplated by Assembly No. 1448 provides for distinguishing between binding arbitration of economic issues and binding arbitration of other issues. As for economic issues, the last offers of each side are to be lumped together in a single package, and the arbitration award is to be confined to the last offer of the employer as set forth in the "package" or the last offer of the employee group, as set forth in the "package". In other words, economic matters will not be determined on an issue by issue basis. On the other hand, non-economic matters will be determined on such a basis. Our primary concern is the distinction between economic and non-economic matters.

We feel that all matters, whether economic or not should be treated on an issue by issue basis. The reason for this is that needless time will be wasted trying to determine which issues fit into the "economic" or "non-economic" categories. Negotations have a history of tending to be prolonged. This prolongation helps neither side. Accordingly, if "final offer" arbitration is to be used, it should be on an issue by issue basis as to all matters.

However, the "final offer" method seems to be counter-productive and might unnecessarily limit the arbitrator or arbitrators in reaching a just decision. It seems to me that straight

arbitration on all issues which are at impasse should be the method to be used for the terminal point for collective negotiations. Otherwise there is a "roulette wheel" atmosphere created in what should be an impartial analysis of the situation.

Equally important is the effort of the new bill to limit the scope of negotiations. Specifically, I refer to the amendments to 34:13A-5.3. These amendments are set forth on Page 7 of the draft bill. The existing provisions have not caused undue problems. At present, proposed new rules or modifications of existing rules governing working conditions must be negotiated with the majority representative before they are established. The bill seeks to change this and to limit these matters solely to working conditions "covered by a collectively negotiated agreement". This seriously limits one of the few protections in the present Act afforded to employees. Frequently, particularly where the employee representative is involved with large units of employees, it is difficult for the employee representative to be familiar with all significant rules covering working conditions. It should be noted that in state employment, employee representatives such as SEA represent groups of employees which contain in a single unit as much as 14,000 employees. I would just point out, as an aside, that out of these 14,000, there may be three, four, five or six hundred different titles as well. It seems only fair that there should be a requirement for negotiations regarding all proposed new rules or

modifications of existing rules changing working conditions and that this should not be combined with those items which are "covered by a collectively negotiated agreement". Accordingly, I strongly urge that this or any other scope of negotiating provisions not be changed.

Another item of major importance is the failure of the bill to make any reference to payment of a service fee either through agency shop or otherwise. The passage of the bill will impose new burdens upon employee representatives and there should be, as a result of the bill, large numbers of new arbitrations. All employees who are representated should be obliged to make a payment to their public employee representative for services rendered. At present, as is well known, many employees do not become members of the exclusive representatives and, as a result, have a "free ride". In addition, the public employer representative has the full resources of the state behind it and is, accordingly, at a distinct advantage in being able to present its views. Fairness mandates that agency shop or some other service fee method should be established.

I strongly object to the exclusion from the protection of the present Act of employees of the Public Employment Relations Commission. We have been faced over the years with efforts to exclude employees of many state groups. Although on its face it would appear that employees of the Commission are "confidential", this is really not the case. Many of these employees are performing duties

of a minor clerical nature and need representation. The exclusion in question would establish a bad precedent and we ask that it be deleted. It could also lead to efforts to automatically exclude other individuals or groups. We are now engaged in litigation as a result of efforts of the judiciary to exclude all employees under its control. These efforts are unnecessary and the existing protections for "confidential" employees satisfactorily handle this problem.

We note that a definition of "supervisory employees" has been added. Although it is clear that such employees are still entitled to the protection of the Act nevertheless it should be made clear that this definition does not in any way affect the right of such employees to be protected.

Further, it is unfortunate that no reference is made in the Act to the present right of public employers to obtain injunctions against public employee organizations automatically. At the very least such organizations should have the opportunity to present arguments or evidence prior to the issuance of such injunctions.

I respectfully note once again that SEA strongly supports the adoption of a terminal point of binding arbitration for collective negotiations.

Respectfully Submitted,

EDGAR G. SAMMAN
Executive Director,
New Jersey State Employees Assn.

I would just like to make a couple brief comments. We find the bill in its present form unacceptable. What the State Employees' Association is looking for is legalizing the right to strike, binding arbitration in the way we have stated, and agency shop. We feel most of the rest of the bill would be unnecessary if those three provisions were added to the law. And we want to thank you for the opportunity to testify.

ASSEMBLYMAN JACKMAN: I agree with you. You are asking utopia. Don't misunderstand my remarks when I say it, but that is utopia. If we could just get the agency shop alone -- you know we passed it in the Assembly. It went over to the Senate and died a natural death.

MR. FLAGER: Yes, we know.

ASSEMBLYMAN JACKMAN: We are denying certain rights. In principle, I agree with you. Thank you very much.

Mr. Gross.

E R N E S T G R O S S: Thank you for the opportunity to talk to you about this bill. My name is Ernest Gross. I am Chairman of the Public Education Department in the Institute of Management - Labor Relations at Rutgers. In addition to my formal teaching, I spend almost all of my time in the public sector field. I have some misgivings about portions of this bill. I am not going to repeat things that you have heard. But there is one thing that I haven't heard all day and I think it is terribly important. I am going to turn specifically to it first and then I will go back.

Looking at page 14, in the terminal step, the interest arbitration aspects of this bill, there is an attempt to set up objective criteria. Now, of course, that is very important because I have no doubt the Legislature can mandate to municipalities, school districts, etc., that they can arrive at economic settlements in this fashion, through arbitration. Whether or not they can mandate it to themselves, is a constitutional problem that I leave to the Legislature because I have some question as to what would happen if an arbitrator, even if he went to the last fair offer aspect of the final provisions, were to say in a State employee unit, "This is . . ." -- Suppose the arbitrator picked the employees' package and we had a balanced budget aspect of the Constitution. Does the Legislature say, "We will bind ourself"? Of course, the Legislature can treat municipal school employees differently. One of the problems we have - although it is too late to start talking about it now - is that this bill tries to treat all public employees as if they are fungible. It is not so and I will refer to some important portions a little later.

But to come back to the objective criteria, this bill is to take effect within 30 to 60 days. We have how many? 1500 units in the State. I don't know how many will be in negotiations in 30 to 60 days. I don't know how soon we will get into arbitration. I don't know how anyone thinks that a comparison of wages, salaries, hours - I am looking at page 14, line 137 on down - and conditions of employment of other employees performing the same or similar services, is a simple matter. It is a very subtle and complicated matter. As a matter of fact, just offhand, I defy anybody to suggest a simple way to compare a State Trooper's salary with somebody. I will even go further. Let's compare State Troopers in New Jersey with State Troopers in Pennsylvania or New York. Well, you can't do it by looking at their contracts. In order to compare salaries, we would have to evaluate and create bench marks to evaluate the value, say, of the fringe benefits. How much is a pension worth in one state? What kind of housing allowances are there? - and so forth.

The bill does try to grapple with this quite obviously on page 17 by mandating for the Institute to provide for objective collection, analysis, and publication of data.

I don't doubt for a moment that the University can do it. Let me just say very quickly, I am not here, and I would not be authorized, to negotiate for the University with the Legislature, nor am I a spokesman for Budget. But, nevertheless, if the Legislature seriously wants this bill to go into operation in 30 to 60 days and wants to have the Institution of Management - Labor Relations gather the objective criteria required --

ASSEMBLYMAN JACKMAN: We had better give you the money

MR. GROSS: (Continuing) -- it has to give us the money. Of course, I don't have to tell you what is happening to our budget now. So it is a very difficult problem and I would suggest very seriously that one of the things that ought to be done is a request should come from the Committee to the University for a formal presention or informal, as the case may be, giving a cost estimate of what really is involved in gathering all of the data.

I would also suggest technically that on page 14, where we list the criteria, it ought to require that the arbitrators be required to take the objective criteria as developed under the bill, in addition to such criteria as the parties wish to urge. You see it says that this is the criteria; separately, it says that the Institute will develop it. But there is no requirement for an arbitrator in this regard. In other words, it wouldn't be bad to have a body of accepted criteria about which it could be said "This is fairly gathered." I don't think we should limit the process by saying, "You can only use the official writ, but I think we should say you should use that. Then the parties should have an opportunity to go beyond it. But the more important thing is, if you want this done and if you want it done in 30 to 60 days, which I don't think you can get done - but ultimately we could do a good piece of it - it would require a substantial infusion of money.

Let me go on to some things that personally are troublesome to me - just some brief comments. I will write this up, if you wish, sir, and submit it.

ASSEMBLYMAN JACKMAN: We'd appreciate that.

MR. GROSS: We have heard a lot about the term, negotiate in good faith, on page 3, the last sentence reading, ". . . shall not compel either party to agree to a proposal or require the making of a concession." With all due respect, I think all of the speakers misunderstand it. The language is precisely the same as the language in the National Labor Relations Act. It has never stopped negotiations nor has it ever stopped the NLRB from finding negotiations were either in good faith or weren't in good faith. What it has done, however, is prevented the NLRB from entering remedial orders, forcing a party to accept a proposal. That is the H. K. Porter case. The way 1087 reads, I have sort of a private feeling that PERC conceivably would have jurisdiction to order a party which is not bargaining in good faith to accept a proposal. This is a policy matter which I could live with. It is one of the nice things of being insulated in a university. I can live with it either way, but I mention it.

But something that I think is very difficult is the grievance-arbitration procedure because what we now will have in this bill is mandatory grievance-arbitration procedure as the single method of resolving disputes, grievance contracts, etc. We also have a terminal step where, for example, a discharge clause - no employee can be discharged except for just cause - could be put into a contract. At this point, I ask this question: Does the Legislature intend, if a school board is going to discipline or discharge a tenured teacher and there is a discipline clause in the contract and we now have mandatory binding arbitration -- does the Legislature intend that that tenured teacher cannot go to the Commissioner? If the Legislature intends that, then I respectfully suggest, say so, and save a lot of litigation, because we have an inherent conflict

if arbitration is the sole method of going up.

Let me take the next step. On page 7 at the top, lines 41 and 42, we repeat the language, "Nothing herein shall be construed to deny to any individual employee his rights under Civil Service laws or regulations." I have been grappling for several years with the question of whether a right is a benefit. You see, the statutes from 303 on have never said that the Civil Service rules and regulations are sacred; they have simply said the employee's civil service rights are. Does that mean we are talking about the disciplinary, the appeal procedure, or are we talking about all of the statutory rights, benefits, limitations, and all the other things? But if we assume it is the broader one, the rights and benefits are much the same. That means that in any contract where there is a civil service coverage - State, county, municipal - we will have a mandatory arbitration procedure. That will be the sole method of resolving disputes. And we have a discipline clause. An employee is disciplined. Are we now saying that those we are taking away? I don't think we mean that. Therefore, there is an inherent conflict. I think that should be resolved in the statute because my test is this: The Legislature has determined that it is the public policy of this State for public employees and public employers to resolve terms, conditions of employment and grievances through collective negotiations. Then the test is that anything that helps the process is good and anything that hinders the process is bad. Litigation, which just ties up the process, therefore, is not good.

I hate to rap the lawyers. Everybody likes to do that. But that is irrelevant. The fact is that litigation that hinders the process is not good. We have inherent problems here.

There is another inherent problem, and no one has really addressed themselves to it, but it has troubled me for some years; and, that is, that although we hear a lot about management rights and inherent management rights, there are very few genuine management rights cases that have ever gone up. I can think of one, maybe two. Almost every case that we have in the trial courts right up to the Supreme Court ---

ASSEMBLYMAN JACKMAN: --- are employees' rights.

MR. GROSS: No, no. What they are are situations, primarily boards of education, where they have negotiated something that colorably fits into the grievance procedure, and the litigation is always an attempt to stay arbitration. It is a contract administration problem.

I don't know that PERC has a legal right to find things as permissive. I don't know that, but I am not going to argue that. That is going to be tested in the courts. I don't know if PERC is correct under its statute, with all due respect, but that is their business.

Here is what I do see in the statute - and this is going to be my last comment because I feel others should have an opportunity to speak - that by speaking to this intrinsic management function or constitutional and statutory rights, we are now creating two kinds of management rights, because I think it is beyond argument that any statute or constitutional provision establishing a public agency creates certain rights, certain parameters. What this bill now says is, separate and apart from the statute, because there is an "or" there, which is a disjunctive - separate and apart from the statutory or constitutional parameters, there is an inherent right. That's all intrinsic. There is an inherent right in the function. The mere fact that it is management, there is an inherent right there. And we also now have in this bill a right of appeal from management right negotiation questions. But, first of all, if it is a statutory proposition, may a public employer and a public employee group get together and waive a statute or waive

the Constitution? I have misgivings about that.

So I think the statute, if it is going to keep the present language, should make a distinction between the two and say, if it is going to have any permissive bargaining rights, the permissive rights should only go to the nonstatutory nonconstitutional ones. That is one part of it.

The other part of it, of course, is again a question of judgment, degree, etc. If a statute says you can do such and so, you should have the right to do it. And if a statute says you can't, you can't. Is there genuinely something inherent as separate and apart from statute? That is what we are doing now. We are creating something new.

I think I will close because, as we all know, the mind cannot absorb more than the rear end can endure, and there are others here. If you have any questions, I will be delighted to be of service.

ASSEMBLYMAN JACKMAN: I don't have any questions. I listened very attentively to you. I think some of the points you raised are well taken. I wish you would reduce your remarks to writing so that my colleagues will have the benefit of your input. I appreciate your remarks very much. Thank you.

ASSEMBLYMAN JACKMAN: I will take Marcoantonio Lacatena now.

M A R C O A N T O N I O L A C A T E N A: Thank you. I am Marcoantonio Lacatena, the President of the Council of New Jersey State College Locals, the American Federation of Teachers.

We are here today to discuss possible changes in the laws governing collective bargaining in the public sector in the State of New Jersey. Any such discussion must begin with a consideration of the right of the public employees to strike. This right is absolute and flows from the right of any one to withhold his or her labor voluntarily in a free society. The present laws in the State of New Jersey regarding the right of public employees to strike flows from the common law doctrine which forbids strikes against the sovereign. This conception is an anachronism in today's world.

There is no difference between employees of private utilities and employees of public utilities or between refuse collectors who happen to be employed by the government and workers performing the idential function who are employed in the private sector. There is no difference between college professors employed by Farleigh Dickinson University and college professors employed by the State colleges. Yet, under current common law, one group of employees has the right to strike and the other supposedly has not. The fact that a person happens to work for the public is no reason why that person must be compelled to bear any special share of the general public's responsibility or, through forced contribution of his or her labor, to support the public welfare in ways which other citizens are not required to do. Nor does the mere fact that the employer happens to be a public entity deprive an employee of his or her right to participate collectively in the determination of the terms and conditions of his or her employment.

Public employers are formidable employers indeed, possessing vast legal and social authority frequently backed by the force of law. The capacity of the public employer for unilateral action is enormous. Public employers characteristically assert that they possess authority created by law which cannot be delegated or shared. They all too frequently simply refuse to negotiate terms and conditions of employment with employee representatives.

Only the right to strike can redress the enormous imbalance in the power relationship between public employers and public employee representatives. Absent a determination on the part of the public employee representative to

exercise the right to strike, collective negotiations in the public sector are all too often reduced to a farce. Recognition of the right to strike, on the other hand, permits the give-and-take between equals which is the essence of true collective bargaining.

The Public Employer-Employee Relations Study Commission has recommended interest arbitration in the event of impasse with the arbitrator empowered to choose the last best offer of either side. This is no solution for the problem of power imbalance. The AFT is fundamentally opposed to compulsory interest arbitration. It irrevocably distorts the process of free collective negotiations. The parties maneuver with an eye to the arbitrator rather than seeking mutually satisfactory resolutions to their problems. The ability of each party to establish its own priorities is destroyed. An agreement imposed from outside is not accepted by the parties as a thing of their own creation in which each has a stake. Dissatisfaction festers. Finally, there is no confidence among public employees that truly neutral and independent arbitrators can be found in the public sector. The political and economic stakes are too high when large municipalities, counties, and the State itself are parties.

Assembly Bill 1448, moreover, proposes several measures which seriously erode the presently existing rights of public employees to bargain collectively.

1. The requirement that "proposed new rules or modifications of existing rules governing working conditions shall be negotiated. . . before they are established" has been eliminated.

2. The collective bargaining laws are subordinated to the other laws of the State.

3. Public employers are no longer required to negotiate matters concerning intrinsic managerial policy or function, even though a term or condition of employment may be directly involved. Given our experience with the State and other public employee Unions' experience with other governing bodies, there is no doubt that this provision is simply an annulment of the whole collective bargaining law.

4. A-1448 stringently limits the area of arbitrability to "the interpretation or application of the provisions of a negotiated agreement," entirely omitting the myriad of other regulations, rules, policies, and practices which affect the terms and conditions of employment of every employee.

There are serious difficulties in bargaining with the State as a public employer over and above the difficulties of bargaining with other public bodies. The State makes the laws governing itself. Moreover, the status of the Public Employees Relations Commission as an agency of the State makes it difficult to assure, or generate confidence in, its independence from the employer. Even though nominally independent of the executives, PERC nonetheless is subordinate to the executive in both budgetary and appointment matters.

We know from our own experience with the State that the tripartite relationship between the Executive Office of the Governor as the public employer, the policy-making Board, or agency, and the Civil Service structure has not yet crystalized so as to permit the State's representative at the bargaining table to have full authority to reach an agreement with public employees. The decision-making apparatus remains too diffuse and uncordinated. The separate entities retain their separate authorities and their separate abilities to subvert agreements even after they are reached.

The AFT recommends a special Study Commission to examine this problem.

Finally, all negotiations with public employers involve the appropriation of funds. Ultimately the authority to appropriate funds resides with the legislature or other public bodies, and this authority cannot be delegated in advance to the bargaining team. This means that all agreements in the public sector are of a tentative nature until funds are appropriated. Our current experience, in which the legislature has exhibited reluctance to honor commitments of the Governor made at the bargaining table, has served to undermine the entire collective bargaining process and has created on the part of public employees a distrust of the legislature's commitment to collective bargaining. The legislature must understand that any reluctance to honor negotiated agreements creates grave structural instability in the relationship of the State with its employee.

We call upon the legislature, in considering both A-1448 and the appropriation of funds, to honor the State's commitments to consider the long-range implications of its actions. The State of New Jersey has been fortunate in having employees who are hard working, capable, and dedicated despite the fact that their rights to participate democratically in decisions concerning the terms and conditions of their employment have often been denied. In this time of fiscal crisis there are momentous decisions which must be made and if those who are directly affected are denied the right to participate in those decisions fully and effectively, the result will be chaos, disillusionment, and the loss of the productivity and efficiency which only a voluntary commitment on the part of the employees to service and excellence can bring.

ASSEMBLYMAN JACKMAN: Thank you very much. I would just like to make one observation. I think the Legislature did accept their responsibility. Didn't we meet the responsibility on their wages?

MR. LACATENA: I think you did after the public employees kind of felt they were the ball in a fifteen inning game.

ASSEMBLYMAN JACKMAN: I was under the impression that the Assembly passed it and then sent it to the Senate.

MR. LACATENA: I said the Legislature. I should have said the Senate.

ASSEMBLYMAN JACKMAN: Yes. Thank you. I call the last witness, and I apologize for making you wait. Mr. Martin R. Pachman.

M A R T I N R. P A C H M A N: First let me say, after hearing some of the other speakers discuss the amount of litigation this bill would engender, I was tempted to change the position statement that I had previously prepared out of personal interest, but I decided not to do that.

My name is Martin R. Pachman. I serve as Special Labor Counsel to Mayor Paul Jordon of the City of Jersey City, and I am here on behalf of the City and its constituent agencies with respect to presenting a position regarding A-1448.

Mr. Chairman, due to the lateness of the hour, I will not read the prepared text, but I would like to speak somewhat extemporaneously with regard to the position of the City of Jersey City concerning this bill. I think first it should be noted that we are perhaps one of the few public employers in the State of New Jersey that has experience with interest arbitration. We have voluntarily entered into interest arbitration agreements with a number of our public safety bargaining units, and indeed are currently expecting just such an award with regard to our rank and file police unit. Notwithstanding, however, our general acceptance of the concept of interest arbitration, we feel we must respectfully urge that this bill not be enacted into law. We take that position not because of the interest arbitration feature of the bill in and of itself. It is our view, however, that by virtue of the gloss of some case line decisions coming out of the public employment relations commission, interest arbitration at this point in time would be a severe and unacceptable delegation of authority away from elected public officials.

Before I go further, I would like to indicate a personal view with regard to the setting of the public interest. We have heard today many speakers indicate public employers misuse the public interest and raise that argument for political reasons or other

reasons, and it must be stated that even if we assume that the public interest is somtimes utilized as a red flag or is not truly represented by public employers as elected officials, they at least are periodically in the position of being called to task for misuses of the public interest. Now, labor organizations, as we know, are primarily interest groups designed to procure greater wages and other benefits for their membership, and that is their appropriate role. But I must submit as well that if the public interest is to be turned over for interpretation, either to public officials who must face that same citizenry at the polls periodically, or to private interest groups who are not at the call of the public at all, our feeling is that that public interest must be in the hands of the public employers.

Now, what do we talk of when we talk of public interest? We talk of -- I will not use the term inherent -- we talk of management prerogatives which involve the carrying out of the decision making concerning basic policies for the level of services and allocations of resources to best serve the citizenry. Now, under these recent cases from the Public Employment Relations Commission, two theories have come about. The first says that there is a permissive area of negotiations. And I respectfully agree with Professor Gross who indicated that he has some severe doubts as to PERC's ability to impose such a theory. Because as a practical matter, a permissive subject of negotiations is merely one which PERC is saying is negotiable if you agree to negotiate it. I submit to you that everything is negotiable if you agree to negotiate it. There is no difference, as a practical matter, in the give and take at the bargaining table between a mandatory and permissive subject of negotiations. What the practical effect of PERC's decision is, is that where the power at the bargaining table permits the union to insist that a management prerogative be placed within the agreement, then that is exactly what will happen.

It seems to me an indefensible attack on logic to start with the premise that says there are management prerogatives which, by their nature, public officials must have the right to make decisions about without negotiating them, and then say, however, if you wish to give away that kind of right, you may.

The second theory which we feel very, very strongly about has to do with the annunciation of a concept that says, even if you refrain from negotiating on a "management prerogative" the impact of that decision is negotiable. We believe that this is a distinction without a difference. In a real situation - and I will quote from a Rutgers decision put forth by the Commission - the issue was one of staffing, should staff be maintained at a particular level. There was a demand on the table that staffing be maintained at a particular level. PERC ruled two things. One, they said it is permissive; therefore, as a practical matter, it is not negotiable unless the union is strong enough to make it negotiable. However, even if you prevail and it is not negotiable, and you change staffing, the workload change is negotiable. That is to say, it is impassed. Using that same example set forth by the Commission, let us assume a Board of Education, given the economic crisis which exists today, determines that it must reduce staff by some percentage, let's say 10% in order to effect economies. While they can make that decision while sitting in the Board Office, PERC says, the impact of that decision, the implementation of that decision is subject to the right to bargain. What would be more logical, then, would be for the employee organization to come forth and say those of us who remain are working 10% harder; therefore, we demand a 10% increase in remuneration. Now, at least under the current state of law the employer has an opportunity to negotiate with regard to what level of remuneration, if any, is appropriate.

With the imposition of the legislation currently before you, sir, we respectfully submit that even that ability to say no would be taken away. The heart of the decision to

lay off people was because of the economic situation in which a Board of Education finds itself. To then say that that same economic impact is negotiable is, I would submit, to play "slight of mouth." If the demand is placed in the framework of workload that is negotiable, but if it is placed in the framework of staffing that is not negotiable, that is nonsense. That is chicanery. That is the provision of a hollow right to public employers to carry out their obligations under law.

Let me give another example which came to light only this week. In a decision of the Public Employment Relations Commission involving the Board of Education of the Borough of Tenafly, the issue was how to provide for safety of students. PERC ruled, and I will read from page 6, "Where the safety and security of the students in its charge may be enhanced, the Board's discretion as exercised herein may not be subjected unless the Board agrees to the requirement of collective negotiations." Again, this shows the permi aspect of this kind of decision. It is negotiable if you agree, that is to say that if the people on the other side of the table are strong enough to force you to agree to it, then it is negoatiable.

Now, I do not say, and it is not my position that people should negotiate things which they do not intend to live up to, but at the same time, if, as the Supreme Court indicated most clearly in the Dunellen trilogy, there are management prerogatives, then when those are negotiated away in error or however, they are void ab initio, because that is indeed what happened in the Dunellen case. The court ruled that that which was contained in that contract was unenforceable by arbitration. But outside the scope of the contract, whatever rights those individuals had might be litigated before the Commissioner of Education. But it was not a proper subject for bargaining, and it is our position that the permissive theory overlaid with the impact theory, as they are currently enunciated, make it impossible for a public employer with regard to his obligations to agree to the ultimate decision being taken out of his hands. We feel we must retain minimally the right to say no, the cost is too high.

When we talk about situations, as was discussed in Tenafly, for the safety of the students, we must be able to say we will provide for the safety of our students, and we will not do it at the cost of some other essential factor to the operation of a school district or a municipality.

Let me give you one example that is close to home. In the City of Jersey City eight months ago we reorganized our Police Department. The original organization was decades old. During that period of time, the population had shifted. Crime patterns had changed and evolved, and it was necessary to reorganize that Department. We reorganized it geographically, and we reorganized it in terms of distribution of manpower. One of the labor organizations with which we deal has currently filed a grievance claiming that the reorganization of that Department is a grievable matter under grievance arbitration. We do not believe that the method by which public safety is delivered to the citizenry is the kind of decision that ought to be shared by a limited interest group. We think that is the kind of decision that must be made - must be made - by the elected officials of a municipality who, if they decide wrongly, can be thrown out of office. We are prepared to stand on our decisions.

With this bill enacted into law, the concept of interest arbitration, I would submit to you, could well make that kind of subject negotiable, albeit permissively, but negotiable nonetheless, and certainly the impact of a decision to reorganize the police department would be the subject of negotiations. And I say to you that any labor organization worth its salt that doesn't like the decision initially will find sufficient impasse at sufficient costs to make the implementation of that decision a practical

impossibility. We do not believe this is proper. We do not believe it is the intention of the Legislature to so hamstring the municipalities in their ability to carry out their constitutional mandates to provide for the public safety, and we do not believe that this committee and the Legislature, the Assembly, should permit this kind of attack on inherent policy decisions to become law. Thank you very much. (Written statement appears in the Appendix on page .)

ASSEMBLYMAN JACKMAN: Thank you very much. Thank you for your indulgence, and I appreciate your comments.

The meeting will then be adjourned.

* * * * *

Testimony
of the
New Jersey School Boards Association

before the

Labor, Industry and Professions Committee
of the
New Jersey Assembly

March 26, 1976

Attached is the written testimony of the New Jersey School Boards Association on Assembly Bill No. 1448.

The testimony is in two parts: (1) discussion of 22 NJSBA proposals with respect to any legislation enacted; and, (2) a copy of legislation as it would appear if the Association's proposals were adopted through amendment of A-1448 by the Legislature.

Discussion of Association proposals indicate by symbol where in the copy of our proposed legislation the change discussed would occur. For example:

*NJSBA Proposal *1* (P-2)*

Our proposal **1** would involve a change in the law as it appears on page 2 of our proposed legislation. Turn to page 2 of the proposed legislation, go down the left-hand column until you see the notation **1**. This is where our proposed change would occur.

NJSBA PROPOSALS
With Respect
To A-1448

NJSBA Proposal *1* (P-2,5)

The Association seeks to end the discrepancy in treatment among local school districts and other public employers with respect to the definition of "managerial executives."

The current law excludes "managerial executives" from coverage of the statute. However, in school districts, "managerial executives" are defined as only including superintendents, other chief school administrators and the assistant superintendent. The Legislature recognized, when it enacted Chapter 123, P.L. 1974, that it was necessary for public employers to have the unfettered loyalty of some management personnel in order to carry out the public employer's obligations. "Managerial executives" in all other areas of public employment are defined as "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." Yet, in the case of the State's largest public employer, public education, "managerial executives" are defined by job title, not job duties. Such a definition is inconsistent with sound labor relations functioning and seriously limits the ability of local school districts to encourage progressive management techniques. The need to exclude all or some supervisory employees has long been recognized under the National Labor Relations Act, the Executive Order governing Federal employee labor relations and most state laws in this area. The requirements of New Jersey's school districts certainly are no less than those of other public employers in the State. In fact, the new responsibilities of Chapter 212, P.L. 1975, make an end to this discrepancy more urgent than ever.

*NJSBA Proposal *2* (P-3)*

The Association endorses the definition of "good faith bargaining" contained in A-1448, as proposed by the Study Commission. That definition is similar to the definition of "good faith bargaining" used in the private sector for 40 years. The definition proposed is a reaffirmation of the Public Employment Relations Commission's interpretation of "good faith bargaining" to date.

NJSBA Proposal *3* (P-3)

While the Association supports the recommendation that the Public Employment Relations Commission be clearly removed from the aegis of the Attorney General, it appears that a literal reading of this section of A-1448 might require PERC's counsel to give PERC's employees legal advice on non-PERC related matters. Such a possibility is eliminated by the inclusion of the phrase "arising out of their employment" in three places in the section.

*NJSBA Proposal *4* (P-4,5)*

A-1448 includes the Study Commission recommendation that the Public Employment Relations Commission be composed of three, full-time public members. As we stated in our testimony before the Study Commission on April 30, 1975: "Simply stated, we believe that a public law, enforcing public rights, should not be swayed by partisan interests." That concept has been accepted time and again by states establishing public sector labor relations commissions and by the Congress in the establishment of the National Labor Relations Board.

We find it ironic that parties with a vested interest in the law seek anything less than an impartial protection of their own rights. Opposition to this recommended change can only be based on the most short-sighted rationale. It is time that New Jersey joined other progressive states in the administration of its public sector negotiations law.

NJSBA Proposal *5* (P-5)

In A-1448, "supervisory employee" is defined as an employee having the power to "hire, evaluate, discipline, discharge or to effectively recommend the same."

The Association supports this definition. However, while the Study Commission recommended "the necessary amending adjustments that are required in the statute," (see Study Commission Report at page 65) the submitted bill does not incorporate the recommended change at this point. We would suggest the elimination of the redundant definition of "supervisory employee."

*NJSBA Proposal *6* (P-5)*

We believe it is critical for this Legislature to address the growing problem of governmental management. The current law, contrary to long-standing labor relations practice, not only allows supervisors to negotiate collectively but allows some of them to be represented by employee organizations that represent employees whom these same supervisors must direct on a daily basis.

Although we continue to advocate the exclusion of all supervisory employees from coverage of the statute, we believe that the Legislature, at the very least, should guarantee the separation of supervisory and non-supervisory labor organizations. The proposal of the Association would eliminate the "grandfather" clause which currently allows some supervisory employees to be represented by non-supervisory employee organizations where, basically, they had been represented by that organization prior to 1968.

It should also be noted that the waiver clause is not a typical "grandfather" clause in that it protects job titles rather than job occupants themselves.

The following example should indicate the possible problems resulting from the waiver clause: A statewide representative of an employee organization processes an employee grievance which must be reviewed by a school principal, who is represented in collective negotiations by that same statewide representative. The potential for conflict is obvious.

The effect of our proposal would not prohibit any supervisory employees from becoming or continuing membership in any non-supervisory employee organization. Our proposal would only bar the right of a non-supervisory employee organization from representing supervisors for the purposes of collective negotiations.

NJSBA Proposal *7* (P-6)

The Association recommends that the word "proposed," currently in the law, be deleted in order to permit the governing body to make public proposals of new regulations for the purpose of encouraging citizen participation prior to making a final determination of new rules or modifications of those rules.

The effect of this proposal would not eliminate the public employer's obligation to bargain with employee organizations prior to changing terms and conditions of employment. The unfair practice section of the law has been interpreted by PERC to require such negotiations.

Permitting a public employee to *propose* new rules prior to negotiation with the employee organization enables the public employer to obtain necessary economic data and taxpayer input prior to making decisions concerning the desirability of making changes in operations. It should be noted that there is a distinction between the "proposal" of a rule and the "adoption" of a rule. The law, as it stands, does not make this distinction.

NJSBA Proposal *8* (P-6)

In its Report, the Study Commission stated: "The Study Commission recommends that there be no barriers to the negotiation and implementation of multi-year collective agreements." (See Study Commission Report at page 68).

Despite the intention of the Study Commission, such a clarification is not contained in A-1448. Perhaps, this is because serious consideration is being given to A-331, endorsed by the Association, which would accomplish the recommendation of the Study Commission as it applies to school districts. Whether or not the clarification is made through A-1448 or A-331, we believe it essential that it be made. As we testified last year before the Study Commission: "Since it is clear that the parties are well served by the stability and harmony which evolves from multi-year contracts, we believe that any impediment which prevents the parties from voluntarily entering into such agreements should be removed."

*NJSBA Proposal *9* (P-7)*

The Association is strongly opposed to the mandated inclusion of binding arbitration in grievance procedures.

Traditionally, binding arbitration of grievances has been a right won at the bargaining table. This portion of the bill would remove that possibility. In a free collective bargaining situation, terms and conditions of employment should not be imposed upon the parties by legislative mandate. The passing of legislature guarantees of substantive terms and conditions of employment, such as binding grievance arbitration, creates an unhealthy imbalance in the negotiations process. Such mandates, by their nature, do not take into account the historical relationship between individual parties and the past conduct of bargaining.

Much is made of the fact that more than 90% of private sector contracts contain binding arbitration of grievances and that a lesser percentage of public sector contracts contain that provision. Some things should be kept in mind: 1)private sector employees have bargained for forty years; New Jersey public employees for eight years; 2) private sector employees not covered by binding grievance arbitration have few procedural protections; New Jersey public employees have well-defined, expansive rights under both Civil Service and education law; 3) in any interest arbitration system enacted by the Legislature, the interest arbitrator, considering the total needs of both parties, may award binding arbitration of grievances; this is not possible in the private sector; and, 4) more public employees are currently covered by binding grievance arbitration than widely believed; for example, about 50% of all teachers in the State are covered by grievance procedures which terminate in binding arbitration.

NJSBA Proposal *10* (P-7)

The Study Commission noted that grievances "may be adjudicable under several procedures and statutes." (See Study Commission Report at page 42).

The language contained in A-1448 concerning the "utilization of only one grievance procedure," is confusing. The Association requests this Committee to clarify the intention of the Legislature in this amendment.

The Study Commission recommends that the Public Employment Relations Commission be given the authority to determine whether a matter is a "required or permissive" subject of collective negotiations.

We oppose this unwarranted delegation of discretion with respect to basic policy decision-making. The conduct of labor relations should always be subsidiary to the proper management of government within the goals of governmental agencies set in law. The change recommended by the Study Commission would clearly allow local governments to bargain away what have heretofore been considered basic management rights. Since those "rights" are based on the peoples' right to govern themselves, it would be unwise and improvident for this Legislature to allow temporary guardians of those rights to concede them at the bargaining table. This amendment would allow public employers to alter the priority of their obligations by substituting expedient labor relations decisions for long-term public interest considerations. This will inevitably accelerate the belief of our citizens that they have no or little control over their government. This is particularly true in the area of public education which has, historically, been viewed as the governmental unit closest to the people.

An idea of the potential loss of management authority can be gained by reviewing recent Public Employment Relations Commissions cases with respect to scope of negotiability. Although there is no category for "permissive" subjects in C. 123, P.L. 1974, the Commission has, nevertheless, determined some subjects to be "permissive." PERC's recent decisions would actually allow a city to negotiate with a union representing police officers on whether an internal anti-corruption unit should be established. If a prohibition against such a unit was negotiated, the current law would guarantee that, even in the most extreme circumstances, the municipality could not establish an anti-corruption unit. Such a delegation of power is unconsionable. Weak, uninformed municipalities, faced with politically powerful employee organizations, will, under this amendment, be forced to bargain away their obligations to protect the public.

In other cases, PERC has determined that budget formulation, reallocation and expansion of physical facilities, school calendar, the number of employee positions, and course curriculum are "permissive" subjects of negotiation. These matters go to the heart of educational management. Their negotiation with an organization that represents a tiny portion of the population is anti-democratic and should be opposed forthrightly by this Legislature. This is not the case of a private employer giving up private prerogatives to a union. It is the case of public employer giving away the public's rights to a union.

This Committee must not consider labor relations legislation devoid of reference to any other governmental obligations. Most particularly, the Legislature, recognizing its constitutional duty under Article 8, Sec. 4, Para. 1 of the New Jersey Constitution, enacted the wide-sweeping Thorough and Efficient legislation encompassed in C. 212, P.L. 1975. C. 212 recognized

the critical relationship of citizen involvement to a thorough and efficient educational system:

> (5) In order to encourage citizen involvement in educational matters, New Jersey should provide for free public schools in a manner which guarantees and encourages local participation consistent with the goal of a thorough and efficient system serving all of the children of the State;
> (6) A thorough and efficient system of education includes local school districts in which decisions pertaining to the hiring and dismissal of personnel, the curriculum of the schools, the establishment of district budgets, and other essentially local questions are made democratically with a maximum of citizen involvement and self-determination and are consistent with Statewide goals, guidelines and standards...

(See C. 212, P.L. 1975, Secs. 2.a.(5) and (6).) It is indisputable that employee organizations are special interest groups and their involvement in a negotiations process must be distinguished from "a maximum of citizen involvement" central to this Legislature's definition of T & E.

It is not good enough to say that under a "permissive" category, public school boards "do not have to" negotiate away their delegated obligations under T & E. In fact, this Legislature cannot allow such a violation of a Constitutional mandate. The obligations imposed by the "thorough and efficient" clause of the State Constitution are directed to the Legislature, not to local school boards. Although the Supreme Court has ruled that a portion of this obligation may be delegated to local governmental units, it expressly recognized that the ultimate obligation remains with the State. In elaboration, the Supreme Court in its January 30, 1976 Robinson v. Cahill decision upholding the constitutionality of C. 212 discussed its belief that money is only one of the numerous elements that are involved in giving definition and content to the constitutional promise of a thorough and efficient education. The Court quoted from one of its earlier decisions in the Robinson series:

> [A] multitude of other [non-fiscal] factors play a vital role in the educational result - to name a few, individual and group disadvantages, use of compensatory techniques for the disadvantaged and handicapped, variation in availability of qualified teachers in different areas, effectiveness in teaching methods and evaluation thereof, professionalism at every level of the system, meaningful curricula, exercise of authority and discipline, and adequacy of overall goals fixed at the policy level. [67 N.J. 333, 341]

The rules adopted by the State Board of Education on January 7, 1976, in order to effectuate C. 212, give further meaning to the goal of citizen involvement. N.J.A.C. 6:8-2.1(c) 9. interprets the legislative mandate as follows:

> The public schools in New Jersey shall provide:
> Diverse forms of constructive cooperation
> with parents and community groups.

The adopted rules go on to require "opportunities for teaching staff members and pupils to make *recommendations* concerning the operation of the schools." (emphasis added) (N.J.A.C. 6:8-2.1(c) 4.) The creation of a "permissive" category at this time would seriously endanger the goal of citizen participation recognized as central to a "thorough and efficient" system by both the Legislature and the Court.

NJSBA Proposal *12* (P-8)

The Association seeks to end the automatic use of mediation and factfinding.

The following provision currently appears in the law:

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

(N.J.S.A. 34:13A-5.4(e)). The Association is not opposed to a timetable to regulate the commencement of negotiations. However, the automatic institution of impasse procedures, whether needed or not, is contrary to the practice of sound collective negotiations. The success of mediation and factfinding both depend upon a willingness of one or both parties to use the techniques. The untimely use of either mediation or factfinding is a waste of public money and removes the burden for true collective bargaining from the parties themselves and transfers it to a neutral. Furthermore, as is evident in this year's round of negotiations, a mandated timetable may not only be unsuccessful but counter-productive, as well.

In response to this section of the law, PERC adopted a timetable, which allowed 30 days for negotiations and then *required* the parties, even if *both* were opposed, to use a mediator. Hundreds of public employment contract disputes automatically went to mediation. In many cases, the parties had not had sufficient time to discuss all the issues before them before a mediator intervened. The mediator was then given a 30 day period to "help" the parties reach a contract. In public education, less than 10% of all mediated disputes resulted in agreement, compared to a mediation settlement rate as high as 65% in recent years. Mediation has been a monumental disaster in New Jersey as a result of the mandated timetable. *We are aware of no state in the nation which has suffered such a serious setback in the success rate of mediation from one year to the next.*

The PERC timetable *requires*, whether or not the parties want it, that factfinding begin automatically after mediation. The factfinder then has a 30 day period to hold a hearing and issue recommendations. While all the data is not in, several facts are clear: 1) factfinders faced many, many more issues in hearings than even before (this is due to the high mediation failure rate and the automatic institution of factfinding); and, 2) factfinding is as great a failure as mediation. This is because factfinding requires that the parties come to the hearing with a few, well-defined issues. This year it has not been uncommon for factfinders to see thirty or forty proposals before them.

If we are truly serious about constructive labor relations, we will recognize the inherent flow in a mandated timetable. Labor relations works best when the parties control the flow of negotiations. The unwarranted and, often, unwanted intrusion of a neutral works to disrupt that flow.

*NJSBA Proposals *13 through 20* (P-9 through 13)*

General Comments

This bill contains an interest arbitration system recommended by the Study Commission. The Association has serious difficulties with many of the amendments dealing with interest arbitration in A-1448.

Most particularly we have grave doubts about the workability of the Study Commission's system because: 1) it forces the parties to arbitration *even if neither party desires arbitration*; 2) the alternative choices do not have an equally positive effect on the goal of mutual collective negotiations; 3) nothing in the bill specifies that the interest arbitrator must hold a hearing if either party requests one; and, 4) there is no provision for the interest arbitrator to remand the negotiations to the parties prior to the issuance of an award.

The goal of any legislation in this area should be to create a system which encourages, rather than discourages, bi-lateral collective negotiations. Every aspect of proposed legislation should be viewed in that light. The failure to do so could well lead to an aggravation rather than a lessening of the problems we now face in public sector labor relations.

We firmly believe that the form of interest arbitration most likely to encourage bi-lateral bargaining is "fair and final offer by package." We urge you to again review our research on fair and final offer. We believe it to be objective and persuasive.

We will now analyze each section of our proposal and this bill as they relate to interest arbitration.

*NJSBA Proposal *13* (P-10, 13, 15, 16)*

A-1448: (1) retains the current factfinding system; (2) allows the parties to take "permissive" subjects to factfinding; and, (3) requires the parties, *whether either desires to do so or not*, to begin the interest arbitration procedure at a specified time of year.

First, the Association proposes the elimination of factfinding under any system adopted. While mediation is primarily a conciliatory function, factfinding requires the identification of disputed issues, the respective parties' positions on those issues and a justification of those positions so that the factfinder may make an intelligent recommendation to the parties for the basis of a settlement. Thus, the procedural aspects of interest arbitration system are similar to those procedures which are presently followed in factfinding.

We believe that it would be an unnecessary repetition of procedures to follow mediation by both factfinding and interest arbitration. Moreover, it seems unlikely that disputants will be able to resolve their difficulties in factfinding if they have been unable to do so in mediation and know full well that a binding procedure will follow. 1/

Second, as pointed out in our discussion of NJSBA Proposal *11*, there should be no legislature creation of a "permissive" category of bargaining.

Third, consistent with our belief that the automatic imposition of impasse procedures is harmful to the negotiations process (see NJSBA Proposal *12*), we are also opposed to an automatic imposition of interest arbitration. We believe that the proper role for state regulation in the negotiations process is to assist the parties voluntarily where they have reached an impasse and request the services of a neutral party. We do not believe that a party should be thrust into impasse procedures where neither of the parties has made such a request. Thus, it is our belief that interest arbitration should not automatically follow the mediation process but should only be invoked when requested by either of the two parties to the negotiations process. This will allow one party to invoke arbitration when it feels a stalemate has been reached, as long as mediation has first been used. It takes no rights away from either party. It merely guarantees that the State will not intervene in the process unless at least one party desires that intervention.

1/ Because we seek to eliminate factfinding, we propose to delete reference to it in two other sections of the bill, as well as throughout the interest arbitration amendments.

*NJSBA Proposal *14* (P-10, 11)*

The bill proposes a number of alternative forms of interest arbitration with one last "forced" choice if the parties are unable to mutually agree on a form. This final choice would consist of arbitration of economic issues on a "fair and final offer by package" basis and of non-economic issues on a "fair and final offer issue-by-issue" basis.

The Association cannot endorse the Study Commission's recommendations in this area. Put simply, fair and final offer by package is the one system which has within it, the potential to provide finality to bargaining and, more importantly, encourage the parties to work out their own problems.

Fair and final offer arbitration by package presents the opportunity to meet both needs short of the strike. The inability of the arbitrator to move to the middle under the procedure, the common criticism of conventional binding arbitration, makes it a " 'strike-like' mechanism by posing potentially severe costs of disagreement in a manner that conventional arbitration does not."[1] The danger of coming into the arbitration hearing with proposals which are not reasonable within the meaning of the legislated criteria leads parties to narrow their differences in an attempt to gain the advantage. Final offer is the "antithesis" of the conventional arbitration strategy where parties seek to maximize differences prior to an arbitration hearing.

The success of a finality system should be judged not on how many awards are issued but on how few are issued. Final offer by package does frighten the parties - it's meant to! Final offer by package does present the possibility that either the employer or employee organization will get "burned" - it's meant to! Any form which is further away from the "strike-like mechanism" will not be as successful at encouraging bi-lateral collective negotiations.

*NJSBA Proposal *15* (P-11, 12)*

The Study Commission recommends that a single arbitrator or a tripartite panel of arbitrators be used in the interest arbitration system.

The Association supports the use of a single arbitrator.

Consistent with our support for an all public PERC, we believe that interest arbitration decisions should be made only by a neutral arbitrator and not by a panel comprised of a neutral and the respective partisans. Clearly, partisan arbitrators have partisan interests to represent and they do not benefit the process by resolving the dispute in a neutral, even-handed manner.

We further believe that it is unwise to have a panel of neutral arbitrators. Not only is such a panel unnecessarily expensive, but it makes the decision-making process more difficult and more time consuming.

NJSBA Proposal "16" (P-12)

The Study Commission recommends that the interest arbitrator be allowed to attempt mediation of the dispute at any time during formal arbitration proceedings.

We believe this recommendation is well-founded. We would go one step further, however, by allowing the interest arbitrator to "remand" negotiations to the parties when he, or they mutually, felt that such bi-lateral negotiations might result in an agreement. This system, employed in Michigan, is apparently responsible for a portion of the "settlement" rate of parties after arbitration proceedings have begun.

NJSBA Proposal *17* (P-12)

The Association proposes two additions to the interest arbitration system. One would require that the arbitrator hold a hearing on the request of either of the parties. The other would give the arbitrator the power to administer oaths and issue subpoenas.

It is not clear whether A-1448 requires the holding of a hearing upon the request of either party. If it does not do so, it should be amended to do so. Hearings frequently assist opposing parties in understanding the position of their adversaries and frequently result in the accommodation of issues which would otherwise have been resolved by the arbitrator. Since it is always preferable to obtain bilateral settlements, we support the use of hearings when requested by the parties in order to promote that goal.

The need for the second addition is obvious.

*NJSBA Proposal *18* (P-12)*

A-1448 would allow the parties to submit "permissive" subjects to interest arbitration.

The Association strongly opposes this provision for reasons set forth earlier. (See NJSBA Proposal *11*).

NJSBA Proposal *19* (P-11, 12)

Neither the Study Commission nor A-1448 places a limitation on the length of an arbitration award. The Association seeks to limit arbitrator's awards to one year unless the parties agree to allow the arbitrator to issue a decision on a two year basis.

This change will not preclude two year awards but will insure that the party who "suffers" under the fair and final offer award will not have to wait an inordinate amount of time to seek relief at the bargaining table. Of course, nothing in this section would prohibit the parties from entering into three year agreements if they did so without resort to arbitration on any issue.

*NJSBA Proposal *20* (P-13)*

The Association recommends that any interest arbitration system enacted contain a guarantee that the Legislature will review the usefulness of the system. In view of the unique scope of finality being considered, we believe this provision to be extremely important. Such an automatic review will be required if legislation in this area expires after a limited period of time.

*NJSBA Proposal *21* (P-14)*

The Association seeks to eliminate the possibility of mixed bargaining units of supervisors and non-supervisors.

Recognizing the lack of a community of interest and the possible conflict of interest between supervisory employees and non-supervisory employees, the legislature prohibited the admixture of these two groups into one unit for the purposes of collective negotiations. However, the Legislature created a waiver of the prohibition of these mixed units existing prior to C. 303, P.L. 1968. The potential or actual clash of loyalties created by this waiver can be eliminated by excluding the tests from the statute allowing for the waiver. Such a clash of loyalties can readily be seen when a supervisory employee charged with administering the grievance procedure for management is in the identical negotiating unit of the grievant lodging the complaint.

Our position with regard to supervisory employees is consistent since there is little logic in providing for separate units of supervisory and non-supervisory employees because of a conflict of interest situation, yet, then allowing or providing the right of the supervisory employees to be represented by the labor organization representing non-supervisory employees. Our proposal would prohibit any mixed units.

NJSBA Proposal *22* (P-15)

The Association seeks amendment of the current law to clearly delineate the area of management rights and scope of negotiability.

Such a clause will assist PERC and the courts in understanding negotiability and will clearly reaffirm the T & E obligations addressed by the Legislature in C. 212.

LEGISLATION AS
PROPOSED

By the

New Jersey School Boards Association

KEY to CHANGES

Language in script are additions proposed by A-1448 not changed by Association proposals.

[Language in regular type and in brackets are deletions proposed by A-1448 not changed by Association proposals.]

~~*Language in script and crossed out are additions proposed by A-1448 now deleted by Association proposals.*~~

~~[Language in regular type, in brackets and crossed out are deletions proposed by A-1448 which would remain in the law under Association proposals.]~~

Language in script and underlined are additions, not addressed by A-1448, which would occur as a result of Association proposals.

[Language in regular type and underlined are deletions, not addressed by A-1448, which would occur as a result of Association proposals.]

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

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

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

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

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 any employer with the employer's knowledge or ratification, but a labor organization, or any officer or agent thereof, shall be considered an employer only with respect to individuals employed by such organization. This term shall include "public employers" and shall mean the State of New Jersey, or the several counties and municipalities thereof, or any other political subdivision of the State, or a school district, or any special district, or any authority, commission, or board, or any branch or agency of the public service *including bistate agencies provided such coverage is permitted by the terms of the compacts establishing such bistate agencies.*

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

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

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

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

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

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

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

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

(a) The Division of Public Employment Relations shall be concerned exclusively with matters of public employment related to determining negotiating units, elections, certifications and settlement of public employee [representative] *representation questions* and public employer-*employee* disputes, [and] grievance procedures, *and unfair practice and scope of negotiation determinations.* For the purpose of complying with the provisions of Article V, Section IV, paragraph 1 of the New Jersey Constitution, the Division of Public Employment Relations is hereby allocated within the Department of Labor and Industry, and located in the city of Trenton, but notwithstanding said allocation, the office shall be independent of any supervision or control by the department or by any board or officer thereof. *Notwithstanding the provisions of P. L. 1944, c.20 (C.52:17A—4,11,12,and 13), the commission shall have the power to appoint and employ a general counsel and such other attorneys or counsel as it may require, for the purpose, among other things, of giving the commission and the personnel of the Division*

3 *of Public Employment Relations legal advice on such matters arising out of their employment as they may from time to time require, of attending to and controlling all litigation, controversies and legal matters in which they may be a party or in which their rights and interests may be involved arising out of their employment, and of representing them in all proceedings or actions of any kind which may be brought for or against them in any court of this state arising out of their employment, and with respect to all of the foregoing shall be independent of any supervision or control by the Attorney General, by the Department of Law and Public Safety, or by any division or officer thereof. This authority shall not be construed to empower any attorney of the commission to prosecute or assist in the prosecution of any unfair practice charge before the commission.*

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

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

4 6. There is hereby established in the Division of Public Employment Relations a commission to be known as the New Jersey Public Employment Relations Commission. This commission, in addition to the powers and duties granted by this act, shall have in the public employment area the same powers and duties granted to the labor mediation board in sections 7 and 10 of P. L. 1941, c. 100, and in sections 2 and 3 of P. L. 1945, c. 32. This commission shall make policy and establish rules and regulations concerning employer-employee relations in public employment relating to dispute settlement, *including procedures providing finality*, grievance procedures and administration including enforcement of statutory provisions concerning representative elections and related matters and to implement fully all the provisions of this act. The commission shall consist of [seven] *three full-time* members to be appointed by the Governor, by and with the advice and consent of the Senate, *with no more than two from the same political party. The Governor shall designate one of the members of the commission as chairman of the commission.* [Of such members, two shall be representative of public employers, two shall be representative of public employee organizations and three shall be representative of the public including the appointee who is designated as chairman.] Of the first appointees, *one* [two] shall be appointed for *a term of* 2 years, [two for a term of 3 years and three, including the chairman,] *one* for a term of 4 years *and the chairman shall be appointed for a fixed term of 6 years corresponding to and concurrent with his appointment as a member of the commission. The chairman shall be its chief executive officer and administrator. The other members of the commission shall be eligible to appointment to fill a vacancy in the office of chairman of the commission. Members of the commission shall be eligible for reappointment.* Their successors shall be appointed for terms of 6 [3] years each, and until their successors are appointed and qualified, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the member whose office has become vacant.

The [members] *chairman* of the commission[, other than the chairman,] shall *receive an annual salary of $2,500.00 more than the other members of the commission* [be compensated at the rate of $100.00 for each 6-hour day spent in attendance at meetings and consultations and shall be reimbursed for necessary expenses in connection with the discharge of their duties except that] *who shall receive an annual salary equal to that of a trial judge of the Superior Court* [no commission member who receives a salary or other form of compensation as a representative of any employer or

4 employee group, organization or association, shall be compensated by the commission for any deliberations directly involving members of said employer or employee group, organization or association. Compensation for more, or less than, 6 hours per day, shall be prorated in proportion to the time involved.

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

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

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

7. *a.* Except as hereinafter provided, public employees shall have, and shall be protected in the exercise of, the right, freely and without fear of penalty or reprisal, to form, join and assist any employee organization or to refrain from any such activity; provided, however, that this right shall not extend to elected officials, members of boards and commissions, managerial executives, or *1* confidential employees [except in a school district the term *6* 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 *5* *supervisory employee* [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 purposes of collective negotiation by the majority of the employees in a unit appropriate for such purposes or by the majority of the employees voting in an election conducted by the commission as authorized by this act shall be the exclusive representatives for collective negotiation concerning the terms and conditions of employment of the employees in such unit. Nothing herein shall be construed to prevent any official from meeting with an employee organization for the purpose of hearing the views and requests of its members in such unit so long as (a) the majority representative is informed of the meeting; (b) any changes or modifications in terms and conditions of employment are made only through negotiation with the majority representative; and (c) a minority organization shall not present or process grievances. Nothing herein shall be construed to deny to any individual employee his

rights under Civil Service laws or regulations. When no majority representative has been selected as the bargaining agent for the unit of which an individual employee is a part, he may present his own grievance either personally or through an appropriate representative or an organization of which he is a member and have such grievance adjusted.

A majority representative of public employees in an appropriate unit shall be entitled to act for and to negotiate agreements covering all employees in the unit and shall be responsible for representing the interest of all such employees without discrimination and without regard to employee organization membership. *A majority representative of employees and a public employer or his designated representative have the mutual obligation to negotiate in good faith. After the effective date of this act* [Proposed] ~~[proposed]~~ new rules or modifications of existing rules [governing] *changing* working conditions *covered by a collectively negotiated agreement* shall be negotiated with the majority representative before they are established. *A collectively negotiated agreement may be in effect for a period not in excess of three years. The effective length of the collective agreement may be negotiated by the parties to the agreement. The collective agreement shall contain the date on which it becomes effective and the date on which it terminates.* [In addition, the majority representative and designated representatives of the public employer shall meet at reasonable times and negotiate in good faith with respect to grievances and terms and conditions of employment.

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

b. (1) Public employers shall negotiate written policies setting forth grievance procedures *for the settlement on grievances arising out of the interpretation or application of the provisions of a negotiated agreement* by means of which their employees or representatives of employees may appeal the interpretation, application or violations of [policies,] *collective negotiation* agreements, [and

administrative decisions affecting them,] provided that such grievance procedures shall be included in any agreement entered into between the public employer and the representative organization. Such grievance procedures ~~[shall]~~ [may] *may* provide for binding arbitration as a means for resolving disputes, *except for those items or provisions in the agreement that the parties themselves, by mutual agreement, specifically exclude from binding arbitration as a final step.* Notwithstanding any procedure for the resolution of disputes, controversies or grievances established by any other statute, grievance procedures established by agreement between the public employer and the representative organization shall be utilized for any dispute covered by the terms of such agreement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

d. The commission shall at all times have the *exclusive* power and duty, upon the request of any public employer or majority representative, to make a determination as to whether a matter in

11 dispute is within the scope of collective negotiations ~~*[and to specify whether or not a subject is a required or permissive subject of collective negotiation]*~~. The commission shall serve the parties with its findings of fact and conclusions of law. Any determination made by the commission pursuant to this 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

12 the time of commencement of negotiations [and of institution of impasse procedures] so that there will be full opportunity for negotiations [and the resolution of impasses] prior to required budget submission dates.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 (4) ~~[(5)]~~ The commission shall take measures to assure the selection of an arbitrator ~~[or arbitrators]~~ from its special panel of arbitrators. Appointment of an arbitrator to the commission's special panel shall be for a 3-year term, with reappointment contingent upon a screening process similar to that used for determining initial appointments.

(5) ~~[(6)]~~ (a) Prior to the arbitration proceedings, the parties shall submit to the arbitrator ~~[or tripartite panel of arbitrators]~~, pursuant to the rules and procedures established by the commission, their final *14* offers in ~~[two separate parts: (1)]~~ a single package containing all the ~~[economic]~~ issues in dispute. ~~[and (2) the individual issues in dispute not included in the economic package, each set forth separately by issue]~~ *19* If the parties mutually agree upon the duration of the award for a period not to exceed two years, then such agreement shall be reduced to writing,signed by the parties' representatives and submitted to the arbitrator for incorporation in the award prior to the arbitration proceedings.

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

15 (b) ~~[(c)]~~ Throughout formal arbitration proceedings the chosen arbitrator ~~[or panel of arbitrators]~~ may mediate or assist the parties in
16 reaching a mutually agreeable settlement. At any time before the rendering of an award, the arbitrator, if he is of the opinion that it would be useful or beneficial to do so or in any case in which the parties mutually request, may remand the dispute to the parties for further collective negotiations for a period not to exceed three weeks. The arbitrator shall notify the commission of the remand.

17 (c) The arbitrator shall call a hearing if requested by either party to begin within 15 days of his appointment and give reasonable notice of the time and place of the hearing. The hearing conducted by the arbitrator may be adjourned from time to time, but, unless otherwise agreed by the parties, shall be concluded within 30 days of the time of its commencement.

(d) The arbitrator may administer oaths, require the attendance of witnesses and the production of such books, papers, contracts, agreements and documents as may be deemed by him material to a just determination of the issues in dispute, and for such purpose may issue subpoenas.

18 (e) ~~[(d)]~~ Arbitration shall be limted to those subjects that are within the required scope of collective negotiations. ~~[, except that the parties may agree to submit to arbitration one or more permissive subjects of negotiation.]~~

15 (f) ~~[(e)]~~ The decision of an arbitrator ~~[or panel of arbitrators]~~
19 shall be in writing and include a statement listing the final offers of the parties on all issues in dispute, an opinion and an award, which shall be final and binding upon the parties and shall be irreversible, except where there is submitted to the court extrinsic evidence upon which the court may vacate, modify or correct such award pursuant to N.J.S. 2A:24-7 et seq. or for failure to apply the factors specified in subsection b. ~~[(7)]~~ (6) below. The award of the arbitrator shall in no event exceed a period of one year from the termination date of the most recent or current collective negotiations agreement, or if there has been no previous collective negotiations agreement, then for a period not to exceed one year from the date of the award of the arbitrator. This shall not however, preclude the parties from mutually agreeing upon the duration of an award for a period not to exceed two years from the termination date of the most recent or current collective negotiations agreement, or if there has been no previous collective negotiations agreement then for a period not to exceed two years from the date of the award of the arbitrator.

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

15 (6) ~~[(7)]~~ The arbitrator ~~[or panel of arbitrators]~~ shall decide the dispute based on a reasonable determination of the issues, giving due weight to those factors listed below that are judged relevant for the resolution of the specific dispute:

(a) The interests and welfare of the public.

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

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

(2) In comparable private employment.

(3) In public and private employment in general.

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

(d) Stipulations of the parties.

(e) The lawful authority of the employer.

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

(g) The cost of living.

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

13 *(7) ~~((8))~~ A mediator, ~~[factfinder,]~~ or arbitrator while functioning in a mediatory capacity shall not be required to disclose any files, records, reports, documents, or other papers classified as confidential received or prepared by him or to tesify with regard to mediation conducted by him under this act on behalf of any party to any cause pending in any type of proceeding under this act. Nothing contained herein shall exempt such an indivual from disclosing information relating to the commission of a crime.*

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

20 *(9) The provisions of this subsection shall expire three years after the effective date of this subsection.*

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

21 provided that, [,except where dictated by established practice, prior agreement, or special circumstances,] no unit shall be

21 appropriate which includes [(1)] both supervisors and nonsupervisors *nor, except where dictated by established practice, prior agreement, or special circumstances, shall any unit be appropriate which includes* [(2)] *(1)* both professional and nonprofessional employees unless a majority of such professional employees vote for inclusion in such unit or [(3)] (2) both craft and noncraft employees unless a majority of such craft employees vote for inclusion in such unit.

All of the powers and duties conferred or imposed upon the division that are necessary for the administration of this subdivision, and not inconsistent with it, are to that extent hereby made applicable. Should formal hearings be required, in the opinion of said division to determine the appropriate unit, it shall have the power to issue subpenas as described below, and shall determine the rules and regulations for the conduct of such hearing or hearings.

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

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

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

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

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

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

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

9. Section 10 of P. L. 1968, c. 303 (C.34:13A—8.1) is amended to read as follows:

Nothing in this Act shall be construed to annul or modify, or to preclude the continuation of any agreement during its current terms heretofore entered into between any public employer and any employee organization nor shall any provision hereof annul of modify any pension

22 statute or statutes of this State. *It is the right of any public employer to determine the standards of services to be offered; determine school and college curricula; determine the standards of selection for employment; direct its employees; take disciplinary action; maintain the efficiency of operations; determine the methods, means and personnel by which operations are to be conducted; determine the content of job classfications; take all necessary actions to carry out its mission in emergencies; and exercise complete control and discretion over its organization and the technology of performing its work. Decisions of any public employer on the aforesaid matters are not with the scope of collective negotiations.*

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

12. The commission in conjunction with the Institute of Management and Labor *Relations* of Rutgers, The State University, shall: develop and maintain a program for the guidance of public employees and public employers in employee-management relations[,to]; *provide for the objective collection, analysis, and publication of data and ap-*

13 *plication thereof; provide for the training of mediators~~[, factfinders]~~ and arbitrators;* provide technical advice to public employees and public employers on employee-management programs[,to]; assist in the development of programs for training employee and management personnel in the principles and procedures of consultation, negotiation and the settlement of disputes in the public service[,]; and *provide* for the training of employee and management officials in the discharge of theitr employee-management relations responsibilities in the public interest.

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

Members of the council shall be eligible for reappointment.

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

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

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

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

12. [11.] (New section) The council shall (a) help to promote the effective functioning of collective negotiations in public employment in the State; (b) assist the commission in its selection of panels for ad **13** hoc mediation, ~~[factfinding,]~~ and arbitration under the jurisdiction of the commission; (c) aid in the settlement of individual disputes; (d) review the administration of the "New Jersey Employer-Employee Relations Act," including the commission's rules and regulations, and advise the commission regarding desirable changes in the administration and enforcement of said act; and (e) recommend to the Governor and Lesiglature any amendments to said act that it deems advisable.

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

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GERALD L. DORF
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REPLY TO RAHWAY

March 26, 1976

TO: State of New Jersey
Assembly Labor, Industry Professions Committee
State House
Trenton, New Jersey 08625

Re: Public Hearings on Proposed Assembly Bill No. 1448

My name is Gerald L. Dorf.

Thank you very much for affording me the opportunity to present this position paper to you. For your information, I have had nineteen (19) years of labor relations experience representing management interests in both the private and public sectors including municipalities and school boards.

I am Labor Relations Counsel to the New Jersey State League of Municipalities and counsel to the League's PERC Committee. I represent the League and its Committee, which is chaired by the Honorable Herbert H. Bennett, Jr., Mayor of the Village of Ridgewood.* In the interest of time and your full agenda, I will comment briefly only upon the major sections of the proposed bill.

*See Schedule of PERC Committee attached.

I. Introduction

The League represents 562 municipalities in the State of New Jersey. All of these municipalities, as public employers, are subject to the provisions of Chapter 123 of the Public Laws of 1974 and their taxpayers must bear the cost of agreements which are negotiated thereunder or which may be imposed under the provisions of Assembly Bill No. 1448.

Since the enactment of Public Employer-Employee Relations Act in 1968, many municipalities have experienced serious problems arising out of various insufficiencies of the Act. The League has been on record for several years requesting a comprehensive revision of the PERC law and suggested a number of specific amendments felt to be necessary to provide a fair and workable mechanism for collective bargaining and for the reconciliation of labor disputes. Many of these recommendations of the League were ultimately incorporated in S-1087 (Chapter 123 of the Public Laws of 1974).

The proposed legislation before your Committee today seeks to make additional changes in the existing law, many of which the League feels are either unwise, unwarranted or both. The balance of this statement will deal with those areas.

II. Impasse Resolution (Interest Arbitration)

A. The 1974 amendments to the PERC Act provide for several changes which add new ingredients to the collective bargaining process and should, in our judgment, have been helpful to make that process work. The Commission was directed to establish a timetable for negotiations so that the negotiations including impasse procedures could reasonable be expected to be concluded prior to "the budget submission date".

The timetable which the Commission established though well intended, proved to be totally unworkable. The parties were given thirty (30) days from the commencement of negotiations in which to reach a settlement prior to the appointment of a mediator.

The parties were allowed no more than two (2) sessions in mediation in which to work out an agreement and such sessions were required to be held in a period not to exceed thirty (30) days from the mediator's appointment. If no agreement was reached through the mediation process, then the parties would automatically proceed to a single fact-finding session.

The PERC Study Commission in its report utilizes statistics, specifically Table No. 1, at page 32 to show that there was a substantial increase in mediation and fact-findings in 1975/76. As a result the parties were often placed in mediation prematurely prior to a clear delineation of the critical issues. Thereafter, the parties once again found themselves forced inexorably to the next step, i.e., fact-finding, with far more issues open than normal. The enforcement of the unrealistic timetable resulted in either a lack of or pro forma negotiations as the parties

raced through the process in order to meet the deadlines. In practice, most professional representatives of both management and labor ignored the tinetables. From my own personal experience in negotiating hundreds of labor agreements over a nineteen (19) year period, I know of no negotiations which have been concluded in a mere thirty (30) days. Most often the issues are barely clarified at that juncture. The present timetable should be expanded and also made permissive so that either party may invoke the impasse procedures of PERC when in the judgment of the party or parties jointly it is desirable to do so.

Another contributing factor to the significant number of impasses in public sector collective negotiations in 1975-76 was the high degree of uncertainty with respect to the financial resources of State and local government, as well as school boards. All forms of government in New Jersey were, therefore, uncertain as to their financial resources to meet governmental functions including possible labor increases. Thus, negotiations for a period of many months throughout the State were at a virtual standstill (and to a degree remain so) while the parties await final determination from the Legislature with respect to funding. This factor, of course, contributed to the significant rise in the number of mediation and fact-finding cases.

In view of the foregoing factors, we strongly disagree with the conclusions of the PERC Study Commission, insofar as those recommendations include drastic changes in the present bargaining system.

B. Mediation

In his statement of March 5, 1975 to the Public Employer-Employee Relations Study Commission, PERC Executive Director Jeffrey B. Tener noted that during fiscal years 1973 and 1974 PERC had received in excess of seven hundred (700) requests for mediators and that approximately seventy-five percent (75%) of these impasses were resolved through mediation. The aforementioned statistic represents a high success factor and should not be lightly dismissed by those who would urge upon this Committee and the Legislature wide ranging changes in the present impasse procedures.

Mediation is inherently a private process although, the results of mediation efforts are, of course, public. When successfully employed mediation remains hidden from the public view. Probably the principal reason that relatively little has been written about mediation may be attributed to its success and to the "privateness" of the process.

A statistical review of the labor agreements in the State indicate that hundreds of contracts are negotiated annually either solely through the negotiations process or in combination with mediation and without the necessity of even resorting to fact-finding. Since public sector collective negotiations is a relatively new process to the State, it is hoped that the maturation of the process in the coming years will result in more astute bargaining by both the public employers and public employee organizations with less attendant conflict than has heretofore occurred. In our view, the proper utilization of experienced and

competent mediators is probably the key to the successful resolution of impasses in the public sector. Certain recommendations in this regard will be enumerated below.

C. Fact-Finding

Those impasse disputes which are not resolved at the mediation level proceed to fact-finding and are most often resolved at this level. Much of the past success of fact-finding has come as a result of the input of sophisticated negotiators on both sides as well as skillful neutrals who have often been able to "mediate" a fact-finding dispute. Thus, many fact-finders seek to reduce the number of open issues by mediating them while others at the request of the parties or upon their own initiative present their fact-finding report both in writing and orally to the parties in an effort to persuade them as to the intrinsic fairness of the reports and recommendations. Finally, some fact-finders write their reports and recommendations and bring such reports and recommendations to a conference with the parties but do not distribute same. Thereafter, they seek to further narrow the differences and indeed gain agreement through mediation efforts prior to presenting the fact-finding report which has already been drafted.

The utilization of fact-finding is limited only by the skill and imagination of the parties, not to mention, of course, the goodwill of both sides. While it is true, that quite often fact-finding reports are not accepted in whole, they also most often become the basis of further negotiations which ulti-

mately leads to a resolution of the differences between the parties. The "name of the game" is still settlement, that is, the pragmatic approach to labor relations. I do not consider it a "failure" of the fact-finding process by virtue of the fact that significant numbers of fact-finding reports are not accepted in whole by the parties. These reports at a minimum leave the parties to re-evaluate their positions in light of an analysis made by an independent third party and, thereafter, ultimately lead to resolution of the disputes.

D. PERC'S Case Load for Disputes Settlement

The dispute settlement activities of the Public Employment Relations Commission during the past six (6) years are noted in Table 1 below which has been extracted from the Study Commission Report at page 32:

Type	1969	1970	1971	1972	1973	1974	1975	July-Oct.1974	July-Oct.1975
Mediation	143	281	337	332	336	387	609	84	123
Fact-finding	27	99	109	105	130	114	232	35	112

The table shows a remarkable degree of stability in case load during the fiscal years 1971, 1972 and 1973 after initial "newness" of the law had worn off.

In 1974 there was approximately fifteen percent (15%) increase in mediation cases but a corresponding ten percent (10%) decrease in the number of fact-finding cases. Thus, for a four (4) year period there was remarkable degree of stability in the case load for disputes settlement handled by PERC.

1975 witnesses a tremendous jump in the case load both as to mediation and fact-finding with mediation nearly doubling and fact-finding more than doubling. As noted above, the increase in case load is attributable to several factors. First, to the unrealistic timetable for bargaining established by the Commission imposed mediation upon willing or unwilling parties to the process by the mere passage of time. Fact-finding was likewise imposed upon the parties by the passage of time in the event that they were unable to settle their differences during the mere two (2) mediation sessions permitted to the parties.

The current year has witnessed a dramatic rise in the number of cases going to fact-finding which I would attribute in great part to the "no cost" nature of the fact-finding process. In addition, more municipal and other public sector employees have organized during recent years and thus the "case load" of the Public Employment Relations Commission has naturally increased. Finally, in conformance with the unrealistic timetable for bargaining established by the Public Employment Relations Commission, parties have been either in mediation, or fact-finding whether or not they wish to be so due to the "mere passage of time".

Table 1, if anything, establishes the overwhelming success of the mediation process. If we look at the years 1969 through 1975, we see that approximately two-thirds (2/3rds) of the negotiations which proceeded to mediation were resolved at that point. The remaining one-third (1/3rd) passed on to the process of fact-finding. It would be interesting to speculate how many negotiations were not resolved after the completion of the fact-

finding process. We believe that although there has been an increase in the number of mediations and fact-findings, the settlement between the two (2) processes has remained consistent. The factors as noted above, will more than account for the vast differences in the number of cases filed between 1974 and 1975.

E. Opposition to Imposed Finality of Bargaining

The League rejects the imposed finality in the bargaining process for the following reasons, in addition to the "lack of need" noted above:

It has been the declared public policy of the State of New Jersey for at least thirty-five (35) years that voluntary mediation, first, in the private sector, and later as a result of the 1968 PERC amendments in the public sector, of employer-employee disputes, will tend to promote permanent, public and private employer-employee peace and the health, welfare, comfort and the safety of the people of the State.

Such imposition discourages rather than encourages the bargaining process by in effect destroying or severly inhibiting the earlier steps in the bargaining process. Parties will have no incentive to enter into good faith negotiations knowing full well that an arbitrator will resolve the entire matter. The vehicles of mediation and fact-finding will become mere atrophied vestiges of the past. We ask the Legislature why it is considering eliminating voluntary settlement of dispute resolution for another involuntary settlement whose results are at best speculative within the context of New Jersey labor relations.

On the same day that Governor Byrne signed into law Senate Bill No. 1087 amending the 1968 PERC law, he also signed a bill creating a Study Commission to determine what changes, if any, should be made in the PERC Statute. It is regrettable that the preconceived conclusion arose that there was a demonstrable need for a change in the bargaining process whereby settlements would be imposed by a third party. A careful review and analysis of the Study Commission report, as well as the experience of professionals in the field, demonstrates no such need. The League remains unconvinced of the need for a change in the present system which has worked so well and resulted in hundreds of contracts being negotiated with little or no labor strife throughout the State of New Jersey.

Peacefully settled labor agreements do not make news and hence are rarely reported in the press. It is those few unfortunate examples of the breakdown of the labor relations process which receive widespread media coverage, and tend to give unsophisticated members of the public the feeling that the exception is the rule. We believe that the evidence clearly states that the process works and works well in the vast majority of the cases. It is doubtful if the New Jersey State Legislature, or any Legislature for that matter, can draft a law governing the practice of public sector labor relations (which is essentially human relations) which will totally eliminate all labor strife.

Further, the League questions not only the effectiveness and desirability of terminal steps in the negotiation process

but their legality as well. By imposing the decision of a neutral upon public employers an employee association of the State of New Jersey the Legislature is entrusting "an outsider" with determining the economic policies of the municipality, school board or other public employer. The neutrals decision will be unchecked by the taxpayers, who will have to pay the bill. The League seriously doubts the constitutionality of the Legislature's proposed terminal step to the negotiations process.

F. Recommendations

1. The League strongly rejects the need or desirability for imposed finality in negotiations which has been recommended by the Study Commission.

As has been shown above, the present system works and I concur with the closing thoughts of Mr. Tener who stated on March 5, 1975 that:

> "On balance, I believe that the law has worked very well in the more than six (6) years that it has been in effect."

2. A strengthening of the mediation segment of the bargaining process would serve the parties well and would hopefully insure a prompter resolution of contract disputes and less reliance upon the fact-finding process. As noted in Table 1 above, the vast majority of disputes which enter the mediation process are resolved and it is only a miniority of such disputes which proceed to fact-finding.

3. The mediation process can be strengthened by extending the number of mediation sessions permitted from two (2)

to three (3) and a fourth (4th) if required by the parties rather than rushing through the mediation process to simply wind up in fact-finding where the fact-finder may very well attempt to mediate anyway. This has been the overwhelming experience during the past year since the parties have rushed through both negotiations and mediation only to find themselves in fact-finding with as many as thirty, forty or even more issues still open.

4. The "best neutrals" should be assigned to the task of mediation since we believe mediation is the heart and key of the settlement of public sector disputes which are not settled by negotiations itself. A veteran or seasoned mediator skilled in the art of this aspect of dispute resolution can often either bring total agreement to the parties or sufficiently narrow the issues between them so as to make an ultimate settlement inevitable.

5. In order to insure that the best available neutrals are interested and willing to serve as mediators, the per diem rate for such mediators should be increased from the present inadequate level to the "going rate" which is in the area of $250 to $300 per diem.

6. A council on Public Employment Relations composed as suggested by the Study Commission of representatives of labor and management could be utilized to identify those neutrals of exceptional ability and talent who could serve as mediators in particularly complex or difficult bargaining situations.

7. It is recommended that strong consideration be given to later budget dates in the school board area to conform more

nearly to those which exist in the municipal area and thereby provide the parties additional time to reach agreement prior to "budget submission or finalization date". In addition, an earlier start in negotiations in August or September would provide the parties with as much as six (6) months to negotiate, mediate and, if necessary, fact-find their dispute in order to reach settlement prior to the finalization of the budget.

8. It is also recommended as noted above that negotiations commence in either August or September to give the parties a five (5) or six (6) month period for the settlement of their differences.

III. Binding Grievance Arbitration

A. The League is strongly opposed to the amendment to the Statute, which provides for mandatory binding arbitration as the final step in a grievance procedure. Traditionally, binding arbitration has been an item which has been bargainable. Too often we have seen in New Jersey that labor organizations (particularly those in the education field) engage in the "end run" to the Legislature, to seek changes in the Law obliging employers to grant certain benefits or concessions beyond those that are achieved at the bargaining table. The public employer is thus forced to "negotiate" on two (2) levels. That is, the one at the bargaining table and the other in the Legislature.

The League does not object to the concept of binding arbitration for grievances, if said procedure is arrived at through the process of collective negotiations. The various public sector collective bargaining agreements in the State of New Jersey reflect a myriad of grievance procedures. Many of these agreements have no provision for binding arbitration, yet they adequately serve the needs of the parties. Others have binding arbitration and said grievance procedure has been a consistent source of conflict at the negotiations table. We ask the Legislature to allow the grievance procedure to develop through the traditional mode of collective negotiations, so that whatever method arrived at through mutual agreement will reflect the needs and temperaments of the public employer and employee organizations involved.

B. Recommendation

Therefore, the League recommends that the

grievance procedure remain a bargainable item without statutory restriction.

IV. Supervisory Employee

A. Assembly Bill A-1448 defines "supervisory employee" as an employee having the power to "hire, evaluate, discipline, discharge or to effectively recommend same." This definition is overly restrictive and inconsistent with the definition of supervisory employee traditionally embodied in the history of private sector labor relations. The League believes that there is no justification to differentiate supervisors in the private sector from those in the public sector.

The private sector supervisor is charged with carrying out the managerial responsibilities of the employer. The supervisors duties so link him with the employer, that it has been deemed appropriate that such employees are excluded from the employee bargaining unit.

The proposed change in definition under Assembly Bill 1448 will only serve to unnecessarily restrict the category of supervisory employees. A sizeable segment of workers formerly labeled as "supervisors", would be removed to general employee status, even though the nature of their job is "supervisory" in the traditional sense. The League believes that it is a severe conflict of interest to place employees who perform supervisory functions in a bargaining situation with the public employee.

B. Recommendations

The League recommends that a more traditional approach to dealing with "supervisory employees" be adopted by the Legislature as follows:

1. The League recommends that the definition of "supervisory employee" be changed to

the more broadly based definition employed by the Taft-Hartley Act, Section 2 (11):

> "The term 'supervisor' means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment."

2. To facilitate the exclusion of supervisory employees presently in bargaining units to conform to the above definition, the League requires that those employees be grandfathered in said units, with all new supervisory employees hired after the effective date of the enactment of said definition being excluded from any bargaining unit.

V. Scope of Negotiations

A. In our judgment, public employers should not be required to negotiate in any manner over the decisions which they make pursuant to statutory authority. The New Jersey Supreme Court case known as the "Dunellen Trilogy" has clearly indicated that certain matters are not to be negotiated, and that if they have been so negotiated, the terms of the agreement with respect thereto shall be null and void. Although these cases were decided prior to the passage of Chapter 123 of the Public Laws of 1974, we believe that the New Jersey State Supreme Court has accurately described the obligations of public employers and that the "Dunellen Trilogy" remains viable law.

The Study Commission has recommended that the Public Employment Relations Commission be given authority to determine whether a matter is a "required or permissive" subject of collective bargaining. The League emphatically opposes the delegation of such authority based on a delineation of either "required or permissive". The above delineation fails to consider those "prohibited" areas of negotiations considered as basic management rights. In fact, the PERC Rules and Regulations provide for prohibited subject of bargaining. The various statutes which charge our public agencies with the responsibility for administering their statutorily designated functions would be faced with a basic errosion of authority to govern if grouped within the general category of "permissive" subjects of bargaining.

The League seeks only to remove managerial prerogatives from the above categories of negotiations. It should be noted

that the removal would include both the management decision and the impact of said decision. The question of impact has so broadened the scope of negotiations as to clearly threaten to undermine the management rights of the public employer. Under the guise of impact, a management decision, formerly a prohibited subject of negotiations, becomes negotiable. For example:

> A municipal employer, for reasons of economy, is required to lay off several employees to meet an economic fiscal crisis. The decision to lay off said employees would probably be held to be a non-negotiable item, but the impact of said layoffs on the remaining employees would most likely be held to be negotiable.

It is conceivable that an arbitrator, PERC, or Court by ruling that impact applies, may very well restrict the authority of the public employer to make said layoffs at all. Or in the alternative, said official may rule that the impact of the layoff is an extra dollar amount to be paid to the remaining employees. Since the initial layoffs were for economic reasons, it would probably require more layoffs to raise sufficient funds to pay the extra compensation, thus requiring negotiations on the secondary impact of the second group of layoffs. The cataclysmic ramifications of the above are clear and need no further elaboration.

The question of impact has so broadened the scope of negotiations as to clearly undermine the managerial responsibilities of the public employer. The League proposes that the statute

clearly delineate those areas most essential to the public employer's exercise of its managerial function and specifically proscribe said topics and their impact from the scope of negotiations. These delineations need not be specific beyond those items which are considered essential to the governmental function.

B. Recommendations

The League recommends that the statute be amended to specify those essential items which are mandatory subjects of negotiations and those subjects which are not within the scope of mandatory bargaining. We believe the Nevada statute provides an excellent example for our Legislature to work with. The text of said applicable section is as follows:

> "2. The scope of mandatory bargaining is limited to: salary or wage rates or other forms of direct monetary compensation; sick leave; vacation leave; holidays; other paid or nonpaid leaves of absence; insurance benefits; total hours of work required of an employee on each work day or work week; total number of days' work required of an employee in a work year; discharge and disciplinary procedures; recognition clause; the method used to classify employees in the negotiating unit; deduction of dues for the recognized employee organization; protection of employees in negotiating unit from discrimination because of participation in recognized employee organizations consistent with the provisions of this chapter; no-strike provisions consistent with the provisions of this chapter; grievance and arbitration procedures for resolution of disputes relating to interpretation or application of collective bargaining agreements; general savings clauses; duration of collective bargaining agreements; safety; teacher preparation time; [and] procedures for reduction in work force.
>
> 3. Those subjects which are not within the scope of mandatory bargaining and which are reserved to the local government employer

without negotiation include: the right to hire, direct, assign, or transfer an employee, but excluding the right to assign or transfer an employee as a form of discipline; the right to reduce in force or layoff any employee because of lack of work or lack of funds, subject to paragraph (t) of subsection 2 [work force reduction procedures]; [and] the right to determine: appropriate staffing levels and work performance standards, except for safety considerations, the content of the workday, including without limitation workload factors, except for safety considerations, the quality and quantity of services to be offered to the public, and the means and methods of offering those services.

4. Notwithstanding the provisions of any collective bargaining agreement negotiated pursuant to this chapter, a local government employer is entitled to take whatever actions may be necessary to carry out its responsibilities in situations of emergency such as a riot, military action, natural disaster, or civil disorder. Such actions may include the suspension of any collective bargaining agreement for the duration of the emergency. Any action taken under the provisions of this subsection shall not be construed as a failure to negotiate in good faith.

5. The provisions of this chapter, including without limitation the provisions of this section, recognize and declare the ultimate right and responsibility of the local government employer to manage its operation in the most efficient manner consistent with the best interest of all its citizens, its taxpayers, and its employees.

6. This section does not preclude, but this chapter does not require the local government employer to negotiate subject matter enumerated in subsection 3 which are outside the scope of mandatory bargaining. The local government employer shall discuss subject matters outside the scope of mandatory bargaining but it is not required to negotiate such matters."

VI. Conclusion

We respectfully urge this Committee to give careful consideration to the position of the League which represents virtually all municipalities in the State.

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

oOo

1976 PERC COMMITTEE

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STATEMENT TO ASSEMBLY LABOR COMMITTEE ON

P.E.R.C. DISPUTES BILL

JEFFREY B. TENER

EXECUTIVE DIRECTOR

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARCH 26, 1976

Mr. Chairman and Members of the Assembly Labor Committee:

My name is Jeffrey B. Tener and I am the Executive Director of the Public Employment Relations Commission. I welcome and appreciate the opportunity to appear before you as you commence deliberations regarding the legislative proposal which emanated from the Public Employer-Employee Relations Study Commission. That report was presented to the Governor and the Legislature on February 2, 1976 after more than a year of preparation. I, too, would like to commend the Study Commission chaired by Dean Lester and which counted two members of this Committee, Assemblymen Jackman and Littell, among its members, for what I regard as an outstanding and comprehensive study of public sector labor relations. This area, of course, is highly complex and inherently controversial and it is my impression that the Study Commission approached its task with an open mind and conducted itself evenhandedly throughout the period of its existence.

The Public Employment Relations Commission was created in 1968 with the enactment of Chapter 303 of the Laws of 1968. The New Jersey Employer-Employee Relations Act gave to public

employees -- State, county, municipal, school district, etc. -- the right to organize and to negotiate collectively concerning grievances and terms and conditions of employment.

The Act established the Public Employment Relations Commission to administer the statute. The Commission is a seven-member, tri-partite body with two representatives of public employers, two representatives of public employee organizations, and three representatives of the public. These members are appointed by the Governor with the advice and consent of the Senate for three year terms.

The Commission is empowered to resolve disputes regarding the scope and composition of negotiating units, to determine whether any employee organization represents a majority of employees in an appropriate unit, to assign mediators to assist the parties in resolving disputes over terms and conditions of employment, to appoint fact-finders who make recommendations for the settlement of disputes which are not resolved in mediation, and to appoint arbitrators for the resolution of grievances when the agreements between the parties provide for arbitration. Additionally, prior to the decision of the Supreme Court in the Cooper case in June, 1970,[1/] the Commission undertook to enforce the rights provided by the statute.

It was not until 1974 that the law was amended by Chapter 123, Laws of 1974 to authorize PERC to prevent specified unfair practices. At the same time, other amendments were adopted

1/ Burlington County Evergreen Park Mental Hospital v. Cooper, 56 N.J. 579 (1970).

including the following: PERC is empowered to determine whether matters in dispute are within the scope of collective negotiations; PERC is to adopt rules to regulate the time of commencement of negotiations and of the institution of impasse procedures to assure full opportunity for negotiations and the resolution of impasses prior to public employers' required budget submission dates; there is to be a full-time Chairman who is to serve as Chief Executive Officer and Administrator of the Commission; the terms "managerial executives" and "confidential employees" are defined and excluded from the coverage of the Act; the cost of fact-finding was shifted from the parties to the Commission; the law now provides that negotiated grievance procedures shall be utilized for any dispute covered by the terms of the agreement; the phrase "...nor shall any provision hereof /of the Act/ annul or modify any statute or statutes of this State" was deleted and replaced with the phrase "...nor shall any provision hereof annul or modify any pension statute or statutes of this State" (emphasis added); and the Commission in conjunction with the Institute of Management and Labor Relations of Rutgers University is to develop and maintain a program for the guidance of both public employers and public employees in employee-management relations.

At the same time that those amendments, which became effective January 20, 1975, were enacted, the Governor signed another bill passed by the Legislature which created the Public Employer-Employee Relations Study Commission.

I would like to address the proposals of the Study Commission. Given the tri-partite structure of the Public Employment Relations Commission, it is not surprising that the Commission is not unanimous on all issues. I shall indicate to you those proposals on which the Commission has taken a position and with which the Commission is in agreement. With respect to several of the proposals, I shall express my personal opinion. I will make it clear whether I am expressing the position of the Commission or my own views in this testimony. Individual members of the Commission or spokesmen from the organizations with which they are associated will present the views of those organizations. I do not presume to speak for any of those organizations.

I shall go through Assembly No. 1448 and discuss each of the proposed amendments. An identical bill, Senate No. 1066, also has been introduced, sponsored by three of the four members of the Senate who served on the Study Commission: Senators Dumont, McDonough, and Orecchio. The fourth Senator who served on the Study Commission, Senator Greenberg, has introduced another bill, Senate No. 1140, which is similar to the proposal of the Study Commission but with two differences. I shall identify those differences as they appear in the bills.

The Study Commission has proposed the insertion of the words "...and procedures providing finality or the resolution of public employer-employee disputes..." in the policy statement

of the Act (Lines 13 and 14 of Section 1 on page 1). This change would conform that statement with the substantive changes proposed by the Study Commission regarding impasse procedures. I shall discuss the Commission's position on impasse procedures in due course.

The Study Commission proposed that the definition of the term "public employers" be amended to include bi-state agencies provided that such coverage is permitted by the terms of the compacts establishing such bi-state agencies (Lines 17 to 19 of Section 2 on page 2). This proposal is one with which the Commission agrees and which the Commission urged the Study Commission to adopt.

The Study Commission recommended that the definition of the term "managerial executives" be amended to include "assistant superintendents" in school districts. The present law excludes the "assistant superintendent" of the district and it is not clear in that definition whether assistant superintendents in those districts where there is more than one assistant superintendent are to be included. If that language is to remain in the statute, I would suggest the use of the term "assistant superintendents" to clarify the status of assistant superintendents in districts with more than one assistant superintendent (Lines 51 and 52 of Section 2 on page 3).

The Study Commission has recommended that all employees of the Commission be considered "confidential employees" (Lines

57 and 58 of Section 2 on page 3). While I believe that employees of the Commission should not be included in negotiating units which include other employees or be represented by employee organizations which represent other employees, I do not believe that employees of the Commission should be denied the protections of the Act. This could perhaps be accomplished by indicating in Section 7(h) on Line 245 of page 16 of this bill, that employees of the Division of Public Employment Relations shall not be represented by an employee organization that represents other employees.

The Study Commission has proposed the insertion in section 3 of the Act of a definition of the term "supervisory employees" and has proposed, in addition to the existing criteria, that the power to "evaluate" be considered in determining whether an employee is a supervisor (Lines 59 to 61 of Section 2 on page 3). While the Commission would not oppose the inclusion in this section of a definition of the term "supervisory employees", the Commission has not taken a final position supporting the addition of the power to evaluate as a factor to be considered.

The Study Commission has proposed the inclusion of a definition of the term "negotiate in good faith" (Lines 62 to 70 of section 2 on page 3). That definition is almost identical to the definition contained in the National Labor Relations Act and seems to me to be consistent with the decisions of the Commission in unfair practice cases issued to date. However, the

Commission has not indicated its support for the inclusion of a definition of this term in the statute.

The changes proposed in lines 9 through 11 of Section 3 on page 3 simply serve to make the statement of the Commission's areas of activity expressed in that section consistent with the powers granted to the Commission in other sections of the law. These changes seem to me to clarify that section and I would endorse them.

The Study Commission has recommended that the Commission be authorized to appoint and employ a general counsel and such other attorneys as it may require (Lines 18 to 34 of Section 3 on page 4). This amendment would conform the law to existing practice. While the Commission at the present time employs its own counsel and has enjoyed complete discretion in selecting counsel, it would enhance the appearance of independence of the Commission if the law specifically provided for the appointment by the Commission of counsel. This appearance of independence is very important for the Commission if it is to continue to enjoy acceptability as a truly neutral agency. Accordingly, I would endorse the Study Commission's proposal in this area.

On Line 12 of Section 4 on page 4 of the bill, the Study Commission has recommended the insertion of the words "including procedures providing finality". Again, this addition conforms to subsequent substantive amendments and will be discussed subsequently.

The remainder of that section relates to proposed changes regarding the composition of the Public Employment Relations Commission. Essentially, the Study Commission has proposed that the present tri-partite commission be replaced by a three-member, full-time commission appointed by the Governor for terms of six years (Lines 15 to 58 of Section 4 on pages 4 to 6). The Commission is not unanimous on this issue. In July 1973, the Commission voted by a 5 to 1 margin to adopt a position calling for the creation of a nine-member commission with five public voting members and four non-voting advisory members of which two would represent the interests of public employers and two would represent the interests of public employee organizations. I do not believe that the Commission would take a similar position today. I would like to point out that, because of the Conflicts of Interest Law, Commissioners Hipp and Hurwitz, for example, are not able to participate or vote on matters relating to education. This situation should not be permitted to continue in my judgment.

The Study Commission has recommended several changes in Section 5, lines 48 to 69, on page 7 of the bill. Essentially these changes would provide that proposed new rules or modifications of existing rules changing working conditions which are covered by a collectively negotiated agreement, are to be negotiated with a majority representative before they are established. Additionally, the bill provides that public employers "shall not

be required to negotiate collectively any term or condition of employment concerning matters of intrinsic managerial policy or function or that contravenes any constitutional or statutory mandate."

At the present time the law provides for the negotiation of proposed new rules or modifications of existing rules governing working conditions before they are established. The amendment would apparently limit this obligation to those working conditions which are covered by a collectively negotiated agreement. Also, the present law does not limit a public employer's obligation to negotiate regarding terms and conditions of employment.

This is one of the two areas in which the bill introduced by Senator Greenberg differs from the Study Commission's proposal. Senator Greenberg has proposed that the present statute be unchanged in this area. The Commission has taken no position regarding these matters.

The Study Commission has proposed that the definition of grievance procedure which appears in the statute be narrowed and that the parties be obligated to include binding arbitration as the last step of all grievance procedures as a means of resolving all grievances except those items or provisions that the parties specifically exclude from this provision (Lines 70 to 87 of Section 5 on pages 7 and 8).

The bill introduced by Senator Greenberg would retain the existing definition of grievance procedure and would simply require that the last step of such procedures must provide for binding arbitration as a means of resolving disputes.

While at one time the Commission did go on record in support of the concept of binding arbitration of grievances, the Commission has not taken a position on these particular proposals.

The other changes contained in this section on lines 88 to 97 are largely procedural and would seem to me to be acceptable.

The Study Commission has recommended clarification of the existing statute by limiting the unfair practice provisions of the Act to public employers and public employee organizations. These changes make clear that it is public employers and public employee organizations which are prohibited from engaging in unfair practices and I am certain that this was the intent of the Legislature. Therefore, these changes should be supported.

The Study Commission has recommended that a party alleging a violation of the Act should file a "complaint" as opposed to a "charge" in unfair practice cases (Lines 39 to 71 of Section 6 on pages 9 and 10). As I indicated in testimony to the Study Commission, it is awkward for an agency such as PERC, which is called upon to assist the parties in achieving voluntary agreements, to issue complaints in unfair practice cases. Particularly in view of the fact that the charging party under the statute prosecutes the complaint, I believe that it would be better for PERC to simply hear and decide the matter without being called upon to issue complaints. This problem can be avoided in several ways. In New York State the charging party simply

prosecutes the charge and it is not converted into a complaint. This is the way PERC operated prior to the Cooper decision in 1970. In Wisconsin and Michigan, the charging parties file complaints so that it is not necessary to convert a charge into a complaint. I believe that the recommendations of the Study Commission in this area should be adopted.

The Study Commission has recommended that PERC be given the exclusive power to make determinations as to whether matters in dispute are within the scope of negotiations. Also, they have recommended that the Commission specify whether or not a subject is a required or permissive subject of collective negotiations (Lines 72 to 80 of Section 6 on page 10). The Commission has taken no position on the question of whether PERC should have exclusive jurisdiction to render scope determinations. However, it is my opinion that this jurisdiction should be exclusive with the Commission to assist in the development of a consistent body of law in this area. All such decisions, of course, are subject to appeal in the Appellate Division of the Superior Court. I might note that the Commission's rules and decisions recognize the existence of permissive and mandatory subjects.

The Study Commission has recommended the addition of provisions in the unfair practices section of the Act giving the Commission the authority to issue subpoenas in unfair practice cases and setting forth a procedure for the enforcement of such

subpoenas (Lines 95 to 109 of Section 6 on page 10). Although I am satisfied that the legislative intent is clear with regard to PERC's unfair practice subpoena power, I believe that it would be helpful for the statute to specifically authorize the issuance of subpoenas in unfair practice proceedings.

Undoubtedly, the most important area addressed by the Study Commission relates to impasse procedures. Although there was only 1 strike of teachers in 1974-75 and only two strikes of teachers in 1973-74, there have been approximately 15 strikes of teachers in this school year. Accordingly, the subject of impasse procedures has received considerable attention of late.

The present impasse procedure provided by the law calls for mediation and, failing agreement through mediation, fact-finding with recommendations for settlement. These processes are to take place within periods of time established by the Commission and related to public employers' required budget submission dates. There is no finality associated with the process. In the absence of a voluntary agreement between the parties, no one is empowered to impose a settlement upon the parties nor are public employees authorized to strike in an effort to persuade the employer to make a more favorable offer.

At least partly because of the frustrations associated with this process, manifested to at least an extent by strikes of public employees, the Study Commission undertook to develop a system which would, as a last resort, provide for finality.

The proposal which they have recommended calls for a form of final offer arbitration. The arbitrator is required to choose between the final offer of each party on economic issues as a package and between the final offer of each party on each non-economic item in dispute on an issue-by-issue basis.

The Public Employment Relations Commission has not taken a position regarding impasse procedures. However, the Commission has indicated an interest in final offer arbitration as a means of resolving disputes although it has not endorsed that mechanism.

The Study Commission has also included within the section relating to impasse procedures several other provisions with which the Commission is in agreement. The Study Commission has recommended and the Commission endorses a provision permitting the Commission to intervene in disputes on its own motion. Also, the Commission supports the concept as recommended by the Study Commission of protecting the confidentiality of information given to individuals who are serving in a mediatory capacity.

I might indicate to you that there has been a tremendous increase in the demand for mediation and fact-finding services. In fiscal year 1974, we received 390 requests for mediators and 110 requests for fact-finders. In fiscal year 1975, there were 610 requests for mediators and 230 requests for fact-finders. This year, we have assigned over 825 mediators and over 425 fact-finders. The proportion of cases which has been resolved

in mediation during that period has declined from approximately three of four in 1974 to one of two in 1975 and to two of five this fiscal year.

The Study Commission has recommended that subpoenas issued by the Commission in representation cases should be enforceable in the Superior Court by Commission application for compliance (Lines 219 to 221 of Section 7 on page 16). This proposal specifies a procedure for enforcing Commission subpoenas in representation cases and I would support it.

In view of the Study Commission's recommendations regarding impasse procedures and their recommendation that a form of arbitration be imposed upon the parties in the event of the parties' failure to agree upon an alternate method of settlement, it seems to me that the Study Commission's recommendation on Line 3 of Section 8 of page 16 of the bill limiting the provisions of that section to private employers would be appropriate.

The Study Commission has also recommended that the research and training function of the Institute of Management and Labor Relations of Rutgers University be expanded to include data collection and analysis and training of mediators, fact-finders and arbitrators. While it seems to me that the Institute has in fact been providing those services, it certainly does not hurt to spell them out and, particularly if the Study Commission's impasse procedure recommendation, or something similar to it, were enacted, there would be a greater need for data and trained arbitrators than there is today (Lines 1 through 16 of Section 9

on page 17).

Section 10, lines 1 to 24 on pages 17 and 18 and Section 11, lines 1 through 11 on page 18 of the bill call for the establishment of a Council on Public Employment Relations and identify certain functions to be performed by that Council. This concept is somewhat similar to the one endorsed by the Commission several years ago although, as I indicated, the Commission has not taken a position recently on the composition and structure of the Commission.

It seems to me that the Study Commission's recommendations regarding the effective date of the provisions of the Act would permit a reasonably smooth transition assuming, of course, the appointment and confirmation of the members of the Commission.

I would like to thank you for giving me the opportunity to discuss these matters with you. The complexity of the subject matter makes your task extremely difficult. If I can assist you by providing information regarding the Commission's experience in the past seven years or in any other way, I will be delighted to do so. I would be happy to try to answer any questions the Committee may have. Thank you.

STATEMENT BY THE AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, COUNCIL NO. 1 TO THE ASSEMBLY LABOR, INDUSTRY AND PROFESSIONS COMMITTEE CONCERNING ASSEMBLY BILL 1448.

Mark Neimeiser, Associate Director, Council 1, AFSCME

When the Legislature unanimously passed the original Public Employee Relations Law in 1968, we believed that it granted broad rights to public employees to negotiate concerning terms and conditions of employment, which had previously been dictated by management. Section 10 of the law (N.J.S.A. 34:13A-8.1) contained a provision stating that it would not annul or modify existing State statutes. All of the labor organizations, including our own, which had fought so hard for this legislation, had viewed that provision as merely preserving tenure and civil service rights for the affected employees and not as an exclusion or a limitation upon the scope of negotiations. Unfortunately, in a series of decisions, the Supreme Court had interpreted that provision to preclude negotiations on terms and conditions of employment where such matters have been considered part of development of management policy. See Board of Education of Englewood vs. Englewood Teachers, 64 N.J. 1 (1973); Burlington County College Faculty Association vs. Board of Trustees, 64 N.J. 10 (1973); and Dunellen Board of Education vs. Dunellen Education Association, 64 N.J. 17 (1973). In those cases, the court urged the Legislature to provide a more definitive definition of negotiable items.

In response to the court's admonition, Senate Bill No. 1087 was introduced and after months and months of debate, provided the clarifi-

cation which the courts sought. In adopting Section 6 of what was to become Chapter 123 of the Laws of 1974, the Legislature changed N.J.S.A. 34:13A-8.1 to provide that only pension statutes may not be annulled or modified. Thus, public employee representatives were now given the authority which they believed they had originally: to negotiate in good faith concerning the basic terms and conditions of employment which had too often been ruled as managerial prerogatives in the past.

At the same time that the Legislature was amending the Public Employment Relations Law, it created the Study Commission, whose majority has now recommended Assembly Bill 1448, for adoption. Section 5 of this bill seeks to completely destroy one of the few protections which public employees have been able to cling to, namely, the prohibition against management unilaterally imposing changes in terms and conditions of employment. That section would eliminate from Section 7 of the present statute the requirement for negotiations prior to any alteration in work rules affecting terms and conditions of employment. In its place, the proposal would proscribe such unilateral changes, only if the altered terms of employment are contained in an existing contract.

Lets face it. Since public employees have not been allowed to strike or delay or withhold their services in any manner, they come to the negotiating table as second class citizens. They do not have anywhere near the strength of management at that table. Too often, state or local governments announce in advance what they will give in increased economic benefits, "if only the union would settle." With inflation racked members, the union is put under

tremendous pressure to settle for contracts which do not cover critical non-economic areas, and in some case, economic areas as well; to obtain these salary increases. Therefore, if this provision is adopted, management will sit back and insist that a contract not include critical matters of importance to employees, and delay as long as they choose, before a truncated contract is finally entered into by the parties. We foresee management then undertaking the most drastic changes on items not covered in such an agreement, such as layoffs, shift changes, cafeteria and housing services and displacing employees with contracted services or with federally funded employees and an endless array of other changes which control an employee's life on and off the job and management now must negotiate.

Further, it is completely unrealistic to expect even the most comprehensive labor contract to cover all eventualities which might occur during the contract period. Who would have anticipated two years ago for example, that Glen Gardner or Menlo Park Diagnostic Center would be shut down, or that entire units of government would be eliminated by several counties under the Optional Charter Law, with its devasting impact upon the hundreds of employees involved. When our Legislature provided in Section 7 of the 1968 law, that work rule changes must be negotiated prior to their implementation, it wisely adopted one of the bedrock concepts of the private labor relations sector. That provision guarantees that mutual problems, which might not have been foreseen, will be resolved at the negotiating table as they arise. The loss of this protection, as proposed in Section 5 of Assenbly Bill 1448, would be a disaster.

Section 5 of the bill also proposes a management rights clause, which would prevent negotiations in areas deemed to be intrinsic management policy. Thus, on the one hand employee organizations are stripped of their legal right to insist upon negotiations concerning work rule changes, unless it is covered in a contract; and on the otherhand, are prevented from negotiating those same contract terms in a wide spectrum of areas now labeled intrinsic managerial policy.

The New Jersey Legislature has rejected repeated efforts in the past to incorporate a management prerogatives section in the Public Employment Relations Law. In 1968, Governor Richard Hughes conditionally vetoed Senate Bill No. 746, and in page 4 of his Veto Message urged the Legislature to include managerial initiatives. Three days after that message was issued, the Legislature unanimously arrode the veto, and enacted Chapter 303, the basic Public Employment Relations Law. In 1971, Governor William Cahill conditionally vetoed Assembly Bill 520, which would amend the statute to provide unfair practice jurisdiction. He urged the inclusion of an expressed management rights provision in the law. The legislature again refused to adopt such a provision, and that bill died. In 1974, further attempts were made to insert the management rights section in Senate Bill 1087, and after extensive debate, that attempt failed and Chapter 123 was adopted in its present form. Now for the fourth time, this Legislature is asked to adopt language which it has steadfastly, and wisely, refused to accept in the past.

We have been living under the terms of Chapter 123 of 1974 for little over a year. The Public Employment Relations Commission has now deter-

mined a number of unfair practice charges and has begun to define the scope of negotiation, in the framework of that new law. With the insertion of the management rights clause and the elimination of the protection against unilateral changes in working conditions, all of the work of that Commission will be mooted. We will again be brought back to the days, even preceding 1974, when public employers could pretty much do what they want in affecting the lives of their employees, providing the minimal protections afforded by civil service and comparable tenure statutes are adhered to.

While Assembly Bill 1448 provides for a substantial curtailment in public employee rights, it fails to provide something which public employee organizations must have in order to adequately serve the people that they represent, namely, the provision for an agency service fee. In Section 7 of the present law, public employee representatives are obliged to represent all members of their units even if they refuse to pay any union dues or join any labor organization whatsoever. Our union has spent literally thousands and thousand of dollars in complying with that provision. But yet our courts have determined that the first sentence of Section 7 of the law, which allows public employees to refrain from joining or assisting employee organizations, prohibits either an agency shop or a service fee. Without an agency shop or a service fee, it is almost financially impossible to carry out the mandates of the present law. And once more it is grossly unfair to both the employee organization and its members, who must not only shoulder their own burden, but thousands of others who reap the same benefits

but refuse to share any of the costs.

We believe that it is absolutely essential that the first sentence of Section 7 of the present law be amended to provide for public employee organizations to assess employees who are not members, a service fee amounting to the costs for negotiations and grievances which the organization handles on their behalf.

In closing, we also wish to note that we find the attempt at impasse resolution in Section 7 of the Bill, to be quite unwieldy and creating more problems than it would ever solve. We would strongly suggest that a provision be considered for traditional binding arbitration on all impasses immediately after mediation has been exhausted by the parties, or rethinking on the question of the right to strike.

ASSEMBLY BILL No. 1448

An Overview

By Francis A. Forst

Assembly Bill No. 1448 is the product of a study made under Chapter 124, P. L. 1974, to provide necessary changes of the Public Employer-Employee Relations Act (c. 100, P. L. 1941 as amended by c. 303, P. L. 1968 and c. 123, P. L. 1974).

For whatever reasons or by whatever means, A-1448 is entirely a pro-employer, anti-employee bill. While it purports to grant to employees and employee organizations certain rights non-existent under present law, it does not grant anything which employers and employee organizations may not already agree upon by mutual consent.

While A-1448 compels binding arbitration in two areas, grievances and negotiation impasses, it permits exclusion from the former all agreed-upon matters and non-contractural matter. In stating that "negotiations in good faith" does not require "either party to agree to a proposal or require the making of a concession," impasse arbitration is questionable. The wording of "weighted issues" restrictions on arbitrators nullifies any practical result.

On the other hand, A-1448 severely limits existing rights of employees and their organizations. Gone is the strong language of enforcement of unfair labor practice charges. Gone is the requirement that "Public employers shall negotiate written policies setting forth grievance procedures..." Gone is the right of employees to "appeal the interpretation, application or violation of policies, agreements, and administrative decisions affecting them..."

Gone is the tri-partite commission which provided input and a listening post for employees before, during, and after decisions are made. Gone is the right to negotiate all terms and conditions of employment. Gone is the protection that "proposed new rules or modification of existing rules governing working conditions shall be negotiated before they are established."

Gone is the hard-won provision that nothing contained herein "shall annul or modify any pension statute or statute of this State," thereby restoring the divine right of kings to employers. Gone is the statutory mandate that when an agreement is reached "it shall be embodied in writing and signed..."

A-1448 provides some minor cosmetic changes in the PERC law as to language and clarity. However, none of these changes are needed under existing procedures and certainly these changes do not require an entire revamping of the law or the employer-employee relationship. These technical amendments could be introduced and adopted with the support and assistance of all parties without the controversial provisions of A-1448.

Because of the substantial language changes and introduction of new provisions, A-1448 cannot serve as the basis for effective improvement of the PERC laws and should be by-passed in favor of some meaningful legislation specifically drawn to problems in New Jersey.

ASSEMBLY BILL No. 1448

An Analysis

By Francis Al Forst

Assembly Bill No 1448 is the product of a study made under Chapter 124, P. L. 1974, of the Public Employer-Employee Relations Act approved April 30, 1941 as amended by Chapter 303, P. L. 1968 and further amended by Chapter 123, P. L. 1974.

This analysis will follow the law in sequential order and will not be according to importance or impact of each proposed change. However, major, significant changes will be emphasized.

1. In Section 3, Page 2, beginning with Line 17, the law extends its coverage to bi-state agences provided such coverage is permitted by the terms of the compacts establishing such bi-state agencies. We know of no such permissible compacts.

2. Section 3, Page 3, Line 57 removes PERC employees from coverage.

3. Section 3, Page 3, Line 59, et seq., redefines "Supervisory Employees" by inserting the power to "evaluate" and then adding to this and other powers already established (hire, discipline, and discharge), the phrase "or to effectively recommend the same."

   Each change would further erode negotiating units and attribute non-supervisory functions to supervisory employees. Many technical and professional employees "evaluate" the work of others without assuming the authority of "supervision" although they may be "in charge" of a project or the "lead" employee assigned to the job. The phrase "or to effectively recommend the same" is argumentive, indefinite, and, in public employment, describes every employee. Those possessing the POWER to hire, discipline and discharge are supervisory; those who do not have such power are not.

4. Section 3, Page 3, beginning with Line 62, the term "negotiate in good faith" is defined and includes the following: "...but such obligation shall not compel either party to agree to a proposal or require the making of a concession."

   The obligation, thus eliminated, removes the entire essence of negotiations in public employment. Negotiation must mean the requirement to agree to a proposal or make concession otherwise employee organizations must have the right of sanction (work stoppage, job action, etc.) In private employment, this right of sanction exists and, therefore, employers are not compelled <u>by law</u> to agree to a proposal or make a concession. This provision would require a quid pro quo of sanctions.

5. Section 5, Pages 3 and 4, has some cosmetic changes including, on Page 4, Line 18 et seq., provision for PERC's engaging General Counsel and other attorneys which it already does.

6. Section 6, Page 4, Line 12 gives the Commission power to establish rules and regulations "including procedures providing finality" whereas no such power presently exists.

7. Section 6, Page 5, throughout, changes the make-up and structure of the Commission reducing the number from seven to three, eliminating the employer and employee representatives, providing for full-time members (present law provides only the Chairman shall be full time), extending the terms of the Commissioners from three years to "one...2years; one...4 years; and the chairman...6 years."

   There is no indication that a full-time commission will serve any interest better than the present, tri-partite commission which has worked well since PERC's inception. The only valid objection to the tri-partite commission is the conflicts-of-interest statute and interpretations which should exclude the PERC commission. On the other hand, the advantages of the tri-partite commission have been overlooked and buried in a management effort to gain total control of the decision-making body overseeing the PERC law. Based on present and past experience in New Jersey, there is no reason for the public or employee organizations to have confidence in an all-public commission. Notwithstanding this, the terms of office are dangerous, providing first for the replacement of one member, then two, and, in six years, all three. This is fraught with all the dangers of a one-sided public commission. Lastly, the cost of a full-time commission of three persons far exceeds the cost of the present structure of seven commissioners and is wasteful.

8. Section 7, Page 7, beginning with Line 52, eliminates the present requirement that "Proposed new rules or modifications of existing rules governing working conditions shall be negotiated with the majority representative before they are established" and substitutes the following: "After the effective date of this act, proposed new rules or modification of existing rules changing working conditions covered by a collectively negotiated agreement shall be negotiated with the majority representative before they are established.

   This proposed change effectively destroys the present intent of the law. Not only does it restrict negotiations to "covered" items but it also fully permits establishment of rules unilaterally on matters non-existent at the time of negotiations. By removing the word "governing" to the word "changing," the new proposal would give carte blanche to management and require the challenge to be put forth by the employee organization.

9. Section 7, Page 7, beginning on Line 66 contains the following new language: "Public employers shall not be required to negotiate collectively any term or condition of employment concerning matters of intrinsic managerial policy or function or that contravenes any constitutional or statutory mandate."

   This paragraph completely annuls the Public Employer-Employee Relations Act and makes all discussion and controversy a mockery.

9. Continued

For the first time, the law would permit the non-negotiation of what are expressly "term(s) or condition(s) of employment" and would introduce two criteria: (1) intrinsic managerial policy or function and (2) constitutional or statutory mandate. These were the specific two objections raised by employers from the beginning of time relative to pre-PERC and post-PERC days and the bases for court injunctions, refusals of arbitration, and a host of anti-employee actions and propaganda. The very purpose of the PERC law is to provide for the negotiability of employees' terms and conditions of employment. All matters of terms and conditions of employment fall within the two categories of exception proposed.

It was for the specific exclusions above that Chapter 123, P. L. 1974 provided for PERC to determine scope of negotiability and the removal of all except pension statutes from exclusitivity.

10. Section 7, Page 7, Line 63 et seq. is eliminated and, apparently substituted for with a sentence beginning on Line 53 and that in Line 66, together with the phrase in Section 3, Page 3, Line 66, "...and the execution of a written contract incorporating any agreement reached IF REQUESTED BY EITHER PARTY..."(emphasis added)

This change merely weakens the law further, removes from specific requirement and puts over to casual requirement the need to write and execute contracts. There can be no justification.

11. Section 7, Page 7, continuing on Page 8 and beginning with Line 70 on Page 7 changes the permissive negotiation of binding arbitration and makes binding arbitration of grievances mandatory while limitting such arbitration to "the interpretation or application of the provisions of a negotiated agreement," modified by excluding further "those items or provisions in the agreement that the parties themselves, by mutual agreement, specifically exclude..."

This change takes away permissive binding arbitration already in existence and stringently limits the areas of arbitrability. It is a cleverly worded section which appears to compel binding arbitration but which, in fact compels nothing; relying on employers to grant which items shall be arbitrable and requiring employee organizations to negotiate into an agreement all matters which could give cause for grievance including the unknown. In the past, some employers challenged their right to grant arbitration even those Chapter 303, P. L. 1968 provided it. However, this challenge has been set aside by removing all but pension statutes from prior domain under Chapter 123, P. L. 1974 and is no longer valid. This provision would be acceptable if it just removed the word, "may" and replaced it with the word, "shall."

12. Section 7, Page 8, beginning with Line 88 through Line 97 provides some clarification of an existing provision concerning the grievance procedure and establishes the effective date for proposed changes in the law.

13. Section 1 of P. L. 1974, Chapter 123 is amended, beginning on Page 9, Line 44 to change the PERC commission's authority and break it into two parts, eliminating its decision-making power on unfair labor practices. By dividing the authority into two, the changes are in opposite directions, each of which weakens the commission's ability to act forcefully.

In changing the word "charge" to "complaint," the proposed law merely infers that PERC has received a "complaint" whereas the present law clearly indicates that an alledged violation of the law is a "charge" which PERC has the authority to determine and make findings and judgment.

14. Section 1, Page 10, Line 95 provides legal procedures for the authority and power of the commission.

15. Section 6 of P. L. 1941, Chapter 100 is amended on Page 11, Line 16 provides the Commission can invoke mediation "upon its own motion."

16. Section 6, Page 11, beginning with Line 24, elaborates on the use of Fact-Finding with one significant change: it limits Fact-Finding to "those issues that are within the required scope of negotiations unless the parties...agree...on 'permissive' subjects." (Provision for "permissive subjects" appears on Page 10, Line 76).

This proposal seems to remove from the table of negotiations all permissive subjects unless otherwise agreed upon rather than have these matters put to the Fact-Finder for informative and solution-finding opinions.

17. Section 6, Page 11, beginning on Line 33 and continuing through Page 15 provides for various forms of final settlement of impasses through arbitration, permitting optional selection by the parties of one form prior to a fixed deadline date and requiring submission to a form of fair-and-final-offer arbitration if no option is made.

Within the framework of these pages may be a better solution to the present system of impasses which leaves the parties to work out their own solution after fact-finding. However, much of what is proposed is fraught with nooks and cranies of deceptive and misleading language and, in some specific instances, especially on Page 14, beginning with Line 131, narrowing the scope of negotiations through fact-finding. Unfortunately, what could well have been the bases for settlement of public employer-employee impasse settlements short of sanctions has been stuffed with much pro-employer language, eliminating any specific advantage which the "methods" of settlement might otherwise have.

18. Section 7, Page 16 and Page 17 has some cosmetic changes and on Page 17, Line 7, provides for extension of Rutgers involvement.

Statement on A 1448

by

Dr. Sandra S. Walther

Executive Director

Rutgers Council of AAUP Chapters

and

Secretary

New Jersey Association of Collective Bargaining Agents

Presented to

Assembly, Labor, Industry
and Professions Committee

March 26, 1976

I am Sandra Walther, Executive Director of the Rutgers Council of AAUP Chapters and Executive Secretary of the New Jersey Association of Collective Bargaining Agents. The Association is comprised of the Rutgers AAUP which represents the faculty, teaching and graduate assistants at the University, the Professional Staff Association, negotiating representative for the faculty and professional staff at the New Jersey Institute of Technology, and the Council of AAUP Chapters of CMDNJ, which represents the faculty at the College of Medicine and Dentistry of New Jersey. Together we represent over 4000 faculty and staff at these three public institutions of higher education.

We have been in negotiations with our respective administrations since November, 1974 and, as of this date, are still unable to conclude an agreement for 1975-76. We have made use of all the mechanisms currently available to us under the law, namely mediation and fact-finding and yet, we have not reached closure and have been largely spinning our wheels for the last five months, with sporadic fits of progress. The lack of procedures or legal options to pursue beyond fact-finding is one of most serious defects in the present law. In the private sector, when a contract has expired and negotiations are dragging, the motivation to reach a settlement is enhanced by the fact that the employees have the legal right to strike. There is a balance of forces and both sides understand how to work within that context to maximize their interests.

Under our current situation, there is a gross imbalance since, after fact-finding, employees have no further legal options available to press a settlement forward. If management is not motivated by "good will", it can prolong negotiations forcing the

union to make major concessions to wrap up the agreement. Employee representatives are at such a clear disadvantage under the current law that it undermines the credibility of the process making the time, effort and financial resources expended on negotiations look like an investment in a charade rather than in a bonafide relationship.

It is our conviction that the public interest as well as the interests of public employees will be best served by providing an environment in which powers are balanced so that the negotiations process can really work. We also believe that unless there are clear and compelling reasons to the contrary, public employees should have the same rights under collective negotiations afforded to their counterparts in the private sector under federal law. We do not think public employees need be second class citizens in this respect. In studying the provisions of A1448, our question is: "To what extent does this bill rectify current deficiencies so as to provide an appropriate balance of powers and bring public sector negotiations into appropriate conformity with private sector negotiations."

In our judgment, the provisions for terminal procedures for contract negotiations and the requirement of binding arbitration as the ultimate step in grievance procedures are much needed steps in the right direction. While there are certain fine points in these provisions that may not be ideal from our standpoint, we believe the mechanisms to be drawn in a way as to allow the parties to use them creatively in their negotiations to reach settlements that suit their situations. Being pragmatic and realistic we could

live with steps in the right direction provided that there are not at the same time, steps that introduce retrograde motion. Therefore, we must point out that we have serious reservations about several areas in the bill which, from our standpoint, introduce new imbalances in the negotiations environment and thereby undermine the progressive factors. I would like to speak to two issues in more detail.

Section 5 of this bill amending Section 7a, lines 53 through 57 represent a severe erosion to employee representative rights. Under the present law, terms and conditions of employment are protected from unilateral managerial alteration whether or not they are specifically addressed in a contract. The amendment A1448 proposes would protect only work conditions covered in a contract. We see this as a very distructive change for the following reasons.

1) It is very difficult to anticipate all possible issues that could legitimately arise during the life of a contract. While 'past practices' clauses attempt to freeze all working conditions without specifically listing them, management is normally reluctant to accept such catch all clauses without detailed "laundry listing". A "zipper clause" in the law itself will force employees to bring every possible issue to each round of negotiations and will make negotiations more complex and extended. This would give a different flavor to the negotiations process. Rather than seeing the contract as a clear adjustment of specific known issues, which operates in a larger context of employee protections, the contract would become the sole instrument for

protecting employees against contingencies which might legitimately arise during the life of the contract. It would encourage employers to seek to exclude areas from the agreement since in excluding them, they retain sole rights to change them. Thus, when genuine problems occur which were not anticipated, the employees would have no right to demand negotiations to meet the problems. And let me stress, when a problem is real, both sides must cooperate to solve it constructively. It cannot be solved in a workable way unless there is that cooperation. We believe that such "cooperation" must be legally enforceable and cannot be left to the discretion of management good will.

2) While in general, we would support the view that contracts should be as full and specific as the situation permits, we would point out that there are certain areas where employer-employee relations operate successfully without formal language. This is especially true in higher education where the faculty and the administration are professionals with the same background and training and function as colleagues rather than as adversaries. Lines between educational policy decisions and the impact on working conditions are frequently difficult to draw and such impact cannot be clearly foreseen, especially when budget decisions affecting educational policy and impacting on work conditions usually occur in a time frame that does not necessarily conform to the negotiations time table.

For example, at our institutions, we are faced with threats of massive cuts for fiscal 76-77, cuts that would lead to layoffs of staff and increased workloads. If we must conclude our

negotiations before the budget is finalized, we would have to cover all contingencies. But we do not know as yet just how those contingencies will materialize or even if they will materialize. In such a situation, it is essential to both sides that the ability to meet these situations as they crystallize be preserved. The law must recognize such situations and provide for negotiations under those circumstances. It benefits no one if management has to force the resolution of such problems unilaterally. We would therefore urge that the present language of this section of the law remain unchanged.

Our second key concern is in the same section, lines 66 through 69. We see the inclusion of 'management rights' language in the law as inviting far more problems than it could possibly resolve. In the first place, implying that there are matters of "intrinsic managerial policy or function" without giving operational definitions, could encourage management to rely on this phrase to limit the scope of negotiations. Such claims, challenged by the employee organization, would lead to prolonged scope of negotiations proceedings where the clarification of this vague phrase would have to be undertaken. The phrase in the law would not contibute to that clarification. It causes problems and solves none. But it would have the serious defect of appearing to have some meaning and provoke endless, unconstructive philosophizing. (Having taught philosophy for ten years, I feel obliged to make that observation.) It is a dangerous piece of window dressing and invites a rigid and adversarial approach to negotiability adjudication.

We believe that the scope of negotiability is necessarily a fluid area and must be resolved on a case by case basis. The concept of "managerial policy" and the concept of a "term and condition of employment" continually develop and evolve. As different kinds of employees, professionals and non professionals achieve representation rights, the concepts become richer, more well defined, yet not rigid. This is again especially true in our experience in higher education where our traditional collegial structures and practices and our recently acquired rights under collective bargaining are evolving into a new relationship which preserves both elements. We do not believe that collective negotiations should straight jacket employers and employees by defining their relations in such gross terms that the historical realities of different professions are submerged. We would therefore urge that lines 66 through 69 be deleted from the bill. The same arguments would apply to the alteration of lines 75 and 76 of this section and we would again urge that the current language remain unchanged.

The terminal procedure for final offer arbitration is one we would be willing to try as long as its mechanisms which seek to provide a balance of interests can be made to work equitably. The major danger we see here is that the appeal of an arbitration award based on "extrinsic evidence" could be abused by the employer constantly charging that the award was contrary to the "interests and welfare of the public". It is far less likely that employee organizations would be able to afford making such appeals based on the factors critical to our perspective.

Furthermore, by differentiating the economic and non economic issues in terms of their operational consequences, namely, the single package on the former, the problem of adjudicating disagreements on definitions is exacerbated. If both areas are on an issue by issue basis, there would be no critical need to dispute what is an economic and what is a non economic area. But if economic issues must be bunched in a single package, it would be very important to classify each item and disputes as to classifications would prolong the process. We would therefore urge that the single package approach to economic issues be optional rather than required.

Finally, in keeping with our conviction that, wherever possible, public employees should have the same bargaining capability as employees in the private sector we would urge that A1448 be amended to provide the legal right to bargain for agency service fee provisions. It is again inappropriate and unnecessarily restrictive for the law to decide that such provisions are against the public or an employee's interest. To make such an area a legal and mandatory subject of negotiations allows the parties to discuss the substance of the issue at their respective tables. The merits of including such a provision in a contract can only be discussed intelligently by the parties concerned. Union security is critical to the viability of the negotiations environment and the right to negotiate on such a critical issue is a fair and balanced approach for the law to take. We would urge that the bill include a provision along the lines of A524 which was introduced in the last legislative session.

In summary, we would view legislation that incorporates the above elements as an improvement that would move public sector bargaining in New Jersey forward in a progressive direction. But we cannot support an approach that would take one step forward and two steps backward at the same time. We do not believe it is in the best interests of anyone concerned to engage in such a dance.

STATEMENT POSITION ON A-1448

BEFORE THE COMMITTEE ON LABOR, INDUSTRY

AND PROFESSIONS

Submitted by the City of Jersey City
Martin R. Pachman
Special Labor Counsel

Ladies and Gentlemen:

My name is Martin R. Pachman. I serve as Special Labor Counsel to the City of Jersey City and come before you this day to express our view with regard to the legislation under consideration.

First, I think you should be aware that the concept of interest arbitration, that is, final and binding arbitration to set new contract terms, is not foreign to us in Jersey City. We have, by contractual agreement, entered into just such an arrangement with some of our public safety units, and are, in fact, at this moment, awaiting an interest arbitration award with our police rank and file bargaining unit.

Yet, despite our acceptance of interest arbitration conceptually, we feel that we must urge rejection of the legislation currently before you.

We have reached this conclusion because when interest arbitration is superimposed upon a recent line of decisions from the Public Employment Relations Commission, not only terms and conditions of employment, but also the ability to implement basic policy decisions regarding levels of service and allocation of resources would be in the hands of a third-party, neither electedly, selected by, or responsible to the public.

This delegation of authority to a third party to make decisions regarding not only the economic aspects of a labor agreement, which typically amounts to seventy-five per cent of a public employer's operating budget, but also to make decisions regarding other contract terms which may severely impinge upon a public employer's ability to implement policy decisions should in my view be severely resisted at this time.

"Management prerogatives" may be simply defined as those powers which management has the right to exercise unilaterally, without the obligation to negotiate, in order to carry out statutory mandates, constitutional requirements, or to effect basic policy decisions concerning levels of service and allocation of resources. Under what has come to be called the Dunellen trilogy of cases, the Supreme Court of New Jersey established a number of concepts in this regard. First the court established that there were such things as management prerogatives. Secondly, the court stated that there were terms and conditions of employment with regard to which there was an obligation which to negotiate. Finally, the court recognized that in many cases the two (2) concepts would be very closely related and that a weighing process would have to be undertaken in examining specific issues to determine whether they were or were not subject to the obligation to negotiate. In this weighing process, the court said, if a matter was clearly a term and condition of employment in that it had an intimate and direct affect on the work and welfare of employees the matter would generally be negotiable, but that if a managerial responsibility were involved, there would be an obligation to negotiate affected terms and conditions only to the extent that it could be accomplished without significant interference with management's responsibilities. Were that the continuing state of the law, the objection to interest arbitration would be severely ameliorated. However, beginning with it's decision in Fairlawn Board of Education, (PERC No.76-7) and continuing through its decision in Rutgers, (PERC No. 76-13) and its most recent decision in North Plainfield, (Docket No. SN 76-21) drafted February 26, 1976, the Public Employment Relations Commission has turned the Dunellen concept of management preroga-

tives around 180 degrees.

These three (3) cases, set forth the theory that while there are still certain areas of management prerogative, and while management is free to make decisions regarding them, if they have an "Impact" on terms and conditions of employment, then that "Impact" is negotiable. While it is easy to adopt this seemingly logical distinction, upon examination, it becomes apparent that what is really presented is a distinction without a difference. For example, in the Rutgers decision noted above, PERC determined that a Union proposal which called for the maintenance of staff at a particular level was a managerial prerogative and therefore non-negotiable. They went on to indicate that the "Impact" of a decision to change staffing levels would be negotiable in so far as it affected terms and conditions of employment. By way of example PERC itself indicated that a negotiable "Impact" would be the change in work-load on the individuals remaining. Clearly if the Union seeks to impede the employer from making a staffing change, while it cannot attack the staffing change directly, under this theory enunciated by PERC, they may simply demand that the increased work-load mandates a commensurate increase in salaries; thereby in fact negotiating whether or not that managerial decision, which PERC concedes is sacrosanct, may be implemented in order to achieve the goal established by the employing authority. It is apparent then, that this impact theory, while perhaps paying lip service to the concept of managerial prerogatives, in fact would mandate that an employer negotiate the implementation of that decision in virtually all cases in which the decision affects employees. I do not believe, that public employers in the State of New Jersey, should be satisfied with a right to unilaterally make policy decisions,

which they then cannot implement absent negotiations.

In the light of this theory set forth by PERC, it is apparent that imposing arbitration as a terminal step in the negotiations process would only further remove from public employers within the state the ability to implement these decisions. For all that has been said above, if one recognizes the "Impact" theory as in fact mandating negotiations over the implementation of managerial decisions, at least currently, a public employer still has the ability, while in negotiations to insist that the policy be implemented, at an acceptable level of cost.

Imagine the very example used by PERC in the Rutgers case, noted above, if interest arbitration were available to the employee organization. Assume for purposes of example, a ten per cent in reduction in force for reasons of economy. Under PERC's theory, the decision to reduce would not be negotiable as a managerial prerogative, but the effect on terms and conditions of employment would be negotiable. Therefore, the Union comes forward and indicates that due to the ten per cent reduction in work-force, a ten per cent increase in work-load has resulted. The demand clearly then, is for a ten per cent increase in salary to the remaining employees. Under the current framework the employer could in negotiations refuse to make a concession in this regard. Under final and binding arbitration regarding new contract terms, however, the matter would be submitted to an arbitrator and, I submit, the employer would be hard pressed to argue but that a ten per cent reduction in force resulted in a significant increase in work-load.

Another example more close to home for us in the City of Jersey City involves our own Police Department. Some months ago it was determined to restructure that Police Department which had not been re-organized for some fifteen (15) years. This recent re-organization resulted in a consolidation of a number of precincts into four (4) districts. This was done not primarily out of economic considerations, but to insure greater centralization of police protection to the citizens of the City of Jersey City in consideration of population changes and, the evolution of crime patterns that are currently being faced. One of the Police organizations with which we negotiate is demanding arbitration over the "Impact" of this organizational restructuring. In addition to demanding additional pay for alleged increases in work-load of certain desk officers, and in addition to demanding additional manpower for certain operations, the basic demand in arbitration is for the restructuring to be reversed and the department to resume its decade old method of operations.

While we intend to enjoin this arbitration before PERC we cannot help but feel that PERC's "Impact" theory the Commission will refuse to enjoin,and in order to meet our obligations to provide modern and efficient public safety services to our citizenry, we are being forced once again to look to the Courts for relief. We think it is imperative for the legislature to recognize the effect that the current Bill will have on management's ability to make these kinds of decisions. In the face of this "Impact" theory virtually every management decision must be bargained over with a special interest group whose very purpose in being is to serve the interests of their employee-members rather than the interest of the public at large. Certainly, no

one denies a labor organization the right to represent their point of view. The objection does exist, however, to their right to remove from the hands of elected officials the power to make and implement policies affecting the levels of service and methods of providing services to the citizenry as a whole. And this is the effect of the current legislation under the "Impact" theory.

The second major objection to this legislation is that it both legitimatizes and imposes interest arbitration upon the PERC theory that unless a matter is specifically banned by the PERC legislation itself, it is a "permissive" subject of bargaining.

Under the Dunellen trilogy of cases referred to above, the Supreme Court of New Jersey indicated that "terms and conditions of employment" were mandatory subjects of bargaining. They went on to find that if a management prerogative which by definition is not a term and condition of employment had been negotiated, any resulting contractual limit on management rights would be unenforceable through arbitration and should not have been negotiated in the first instance. While the Court used the term "non-mandatory" to describe such subjects, clearly the finding was that they were illegal and void ab initio. Once again PERC has turned the Supreme Court ruling upside down and, however, taken the position that all managerial prerogatives are permissively negotiable. That means that such a subject may be insisted upon for inclusion over the objection of the public employer and if the relative strength of the parties results in its inclusion in an agreement such a provision is enforceable in arbitration.

Under the proposed legislation before you such a subject could go to interest arbitration if the parties agree to submit it. Once again the relative strength of the parties to the bargaining table will, as a practical matter determine whether or not basic policy decisions will be made by the officials responsible to the public for making them or by an arbitrator, whose own view of the merits of the case will be the final touchstone for policy making. Let me provide you with an example of the kind of matter which the Commission has determined to be "permissably" negotiable. In a decision made only this week the Public Employment Relations Commission has stated that the right of a Board of Education to provide for the safety of the students was a "permissive" subject of negotiations in that while the Board could retain that right as a management prerogative if they agreed to limit that right contractually, that such limitation would be valid. That decision was made in a case involving the Board of Education of the Borough of Tenafly, Docket number SN7. In the Rutgers decision manpower levels university opening and closing dates and even the composition of committees used to select administrators were found to be "permissive" subjects of negotiations.

Again the imposition of interest arbitration into these areas results in removing from the elected officials the right to make policy decisions if their position at the bargaining table is not strong enough to overcome Union demands.

While there are other aspects of this legislation that can be commented upon, we feel that the concept of interest arbitration given the current state of law in the State of New Jersey is not in the best interest of the public. When a decision

regarding the safety of students in our public schools is held to be "permissely" negotiable with an interest group whose prime motive is to secure economic and non-economic benefits to their members, and the implementation of the decision is held to be negotiable with that same interest group, it is our position that this is not the time to submit such decisions to an interest arbitrator. At least the right of a public employer to say "no" to a demand which would make impossible the providing of a safe environment for our children must be maintained.

Thank you for your time.

STATEMENT

of the

NEW JERSEY MANUFACTURERS ASSOCIATION

to the

NEW JERSEY LABOR INDUSTRY AND PROFESSIONS COMMITTEE

on

ASSEMBLY BILL 1448

"An Act Amending the New Jersey Employer-Employee Relations Act"

April 1976

The New Jersey Manufacturers Association representing 13,000 employers in all twenty-one counties of the state who, as major taxpayers, are concerned about the impact collective bargaining is having in the public sector. We take this opportunity to submit our views on Assembly Bill 1448 which seeks to implement the recommendations of the Public Employment Relations Study Commission Report.

The New Jersey Manufacturers Association would like to go on record supporting many of the provisions and thrust of Assembly Bill 1448. Notwithstanding our overall support for the bill, as private employers with indepth experience in the resolution of employee grievances, collective bargaining procedure and based on a long history of experience, we would like to submit our recommendations for the improvement of A-1448 which would improve the overall collective bargaining process in the private sector.

1. CLARIFICATION OF STATUTE REQUIRED

We believe that public employees whose job duties fit the functional definition of "managerial executives", "confidential employees" or "supervisory employees" should be treated accordingly for all other purposes of the act. By strict adherence to these functional definitions, a consistent criteria would be available in the event of a dispute over the issue of an employee's status. A definition based on a job title is not a realistic approach to labor relations, because there is often a significant difference between title and duties.

We strongly recommend that the above definitions should encompass all positions whose functional responsibilities conform to the statute definitions.

2. RECOGNITION OF THE APPROPRIATE BARGAINING UNIT

The PERC Study Commission Report recommended that the statute should provide a clear definition of "supervisory employees", distinguishing them from rank and file employees. We strongly support this recommendation, and believe that it would improve collective bargaining in the private sector. Clarifying this distinction would eliminate a substantial legal question in determining the appropriate bargaining unit for "rank and file employees" and which would serve the best interests of employee groups. This would allow for a more equitable employee representation.

While we support the exclusion of supervisory employees from the rank and file bargaining unit, we believe that such employees should have a right to form their own organizational structure. Supervisors do not always have interests in common with the rank and file employees and should be excluded from such a bargaining unit. Under federal law, their inclusion would result in an inappropriate unit for bargaining. While federal law does not require employers to recognize separate units of supervisory employees, it makes recognition of such units voluntary.

3. MANAGEMENT POLICY MATTERS NEED PROTECTION

The New Jersey Manufacturers Association strongly supports the Study Commission's recommendation that provides for the strengthening of a "management rights" clause. The clarifying language contained in Section 7(a) is appropriate in achieving this objective. We commend the Study Commission for its recognition of the need to exclude matters of intrinsic managerial policy or function from those items that would be negotiable at the bargaining table. We agree with the "need for public employers to be legally free to perform their constitutional and statutory mandates and responsibilities" and the "need for public employers to maintain initiative of action with respect to intrinsic managerial functions and duties." The inclusion of this language is consistent with what we view to be a primary objective of public sector collective negotiations, namely organizational and operational stability.

4. GRIEVANCE AND DISPUTE RESOLUTIONS

Historically, the resolution of employee grievances through binding arbitration has been a negotiable issue in the private sector. Similarly, the procedure for the processing of grievance is an item resolved at the bargaining table. In order for free collective bargaining to be successful in the public sector, terms and conditions of employment should not be imposed or mandated by the legislature.

We are opposed to the legislative requirement that, in public sector labor agreements, the grievance procedure contain a provision for binding arbitration. Continued study of this issue has convinced us that bilaterally negotiated grievance settlements ultimately contribute to a healthier labor relations climate. Imposing legislative mandates such as binding grievance arbitration upon the parties to a labor agreement can ultimately result in an unhealthy imbalance in the negotiation process.

Therefore, we urge that the provisions of Section 7b(1) of the law remain permissive, as at present, and that the parties be left to their own means for the resolution of grievances.

5. IMPASSE RESOLUTION

We believe that fact finding should be an impasse settlement mechanism made available to the parties but not statutorily mandated. Further, there should be costs imposed upon the parties. Thus, the decision to employ or not employ factfinding would itself be a bilateral determination and, where exercised, employed responsibly.

We agree with the Commission's conclusion that factfinding should not cause delay or interference with the initiation of the terminal arbitration procedure.

We wish to lend our support to the commission's proposal to make available to the parties the six varied alternative methods

for lending finality to the resolutions of unresolved items in dispute. We believe that such alternative routes enable the parties fair and maximum opportunity to agree to a terminal procedure before the State must move to safeguard the interests of the public.

The New Jersey Manufacturers Association strongly believes that the enclosed recommendations supplementing A-1448 would result in a vastly improved collective bargaining atmosphere in the public sector in New Jersey. We urge that you review and seriously consider our recommendations contained herein.

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NEW YORK
OFFICE OF COLLECTIVE BARGAINING
250 Broadway
New York, N. Y. 10007
(212) 566-3932

April 19, 1976

Mr. Richard A. Lester, Chairman
Public Employer Employee Relations
Study Commission
Room 318F State House
Trenton, New Jersey 08625

Dear Dick:

I want to extend my congratulations to you and to Bill Weinberg for the excellent job which the New Jersey Study Commission under your leadership did in preparing a report for the Governor and Legislature. I thought that the selection of issues analyzed and the subsequent recommendations were exceptionally well done. It is my hope that the Legislature will see the wisdom of enacting a measure to implement your recommendations and that they will provide the necessary professional staffing.

I thoroughly understand the skepticism and political reactions that some employer or union groups may have to the final offer impasse proposals. But if they seek for certainty, for a single right solution to a dynamic and changing problems of public sector bargaining, they wait in vain. Possibly hesitancy to try the final offer proposal can be overcome in New Jersey as it was in Michigan and New York State by providing for a three year trial period. Such trial period would give all parties a good opportunity to evaluate performance and to correct procedural deficiencies.

I want to thank the Legislative staff for inviting me to attend the hearing at Trenton last month; but I regret that compelling circumstances in New York prevented my attendance.

Good Luck!

Arvid Anderson
Chairman

cc: Dr. William Weinberg

AMERICAN ARBITRATION ASSOCIATION 140 WEST 51 STREET, NEW YORK, N.Y. 10020

(212) 977-2000

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March 18, 1976

Mr. Daniel L. Ben-Asher
Staff to the Committee
State of New Jersey Assembly Labor,
Industry and Professions Committee
Room 318-B
State House
Trenton, New Jersey 08625

Dear Mr. Ben-Asher:

Thank you for your letter of March 9th and your invitation to testify at a public hearing of your Committee. We appreciate your invitation, but do not feel that it would be appropriate to testify.

For your interest, I am enclosing a copy of my book, Labor Arbitration - What You Need to Know.

Very best regards,

Robert Coulson
President

RC:dh
enc.

WILLIAM G. MILLIKEN, Governor
KEITH MOLIN, Director

STATE OF MICHIGAN
DEPARTMENT OF LABOR
EMPLOYMENT RELATIONS COMMISSION
400 TRUST BUILDING, GRAND RAPIDS, MICHIGAN 49502 — Phone 459-3531

MAR 25 19

March 23, 1976

The Honorable Christopher Jackman
c/o Labor, Industry & Professions Committee
State House
Trenton, New Jersey 08625

Dear Mr. Jackman:

This letter will bring to you some of the Michigan experience with the Police-Firefighter Arbitration Act which became effective October 1, 1969.

I enclose the following:

A paper entitled "New Contract Arbitration in the Public Sector" which will be a chapter in a book on bargaining in higher education which is being published by the University of Michigan.

"Current Trends in Public Sector Labor Relations Legislation: Michigan" a paper I delivered at the Twelfth Annual Labor-Management Conference on Collective Bargaining and Labor Law at the University of Arizona in January.

The foregoing papers will give you some information concerning our Michigan experience, as well as information concerning other states.

The Michigan Police-Firefighter Arbitration Act was enacted following a recommendation of a Study Committee appointed by Governor Romney, chaired by Professor Russell A. Smith of the University of Michigan Law School, to make recommendations concerning the Public Employment Relations Act and its administration. The Public Employment Relations Act was enacted in July, 1965. One recommendation of the Smith Committee was to try legislated arbitration for police and firefighter collective bargaining disputes. The Legislature, following this recommendation, enacted the law for a three-year period expiring June 30, 1972.

When the law came up for renewal, there was sentiment in the Senate for an amendment which would provide for "last offer" arbitration. We found that the political situation was

such that unless there were "last offer" arbitration, the proposed extension would not be reported out by the Senate Labor Committee. We worked out an amendment which provided for "last offer" arbitration for economic disputes, each of which is submitted to the tripartite arbitration panel separately. Non-economic issues are handled under the traditional arbitration concept. The arbitration panel has the power to determine whether an issue is, or is not, economic.

Another 1972 amendment was a provision that the chairman of the arbitration panel may return the parties to the bargaining table for a period of not exceeding three weeks. This has proved very effective in resolving a number of impasses.

The law has worked very well! When it came up for renewal in 1972, there was virtually no legislative opposition except for the interest in the Senate Labor Committee for "last offer" arbitration. The statute was renewed for a three-year period, expiring June 30, 1975. When PFAA came up for renewal again, the termination date was deleted, with almost unanimous votes in both Houses. The law is now an ongoing statute without termination date.

The Michigan Municipal League and city officials opposed the enactment of the law, but were not particularly vigorous about it. The police and firefighter labor organizations lobbied for it. Following the enactment of the law (I believe many city officials believed the Legislature would not adopt it) the Michigan Municipal League mounted a vigorous campaign against the law. (They opposed its renewal in 1972.) They contended the law damaged collective bargaining and that it did not prevent strikes. Actually, we had minimal labor dislocation during the early months of the law. Since the first year of the law, we have had none. I am not sanguine enough to believe we will never have a strike, but the arbitration procedure has been, over the years, accepted well by both public employers and the unions. While the Michigan Municipal League is still opposed to the law, their opposition has been muted.

In the 1974-75 school year, we had a number of school strikes, including two very bitter ones. There was considerable pressure for legislation "which would do something" about the school situation. It resulted in a bill applicable only to public school employers and employees, which included a provision for arbitration following a period when the teachers could go on strike. I was the first witness before the House of Representatives' Committee considering the law. The newspapers reported

me correctly when they stated that I gave "mild endorsement" to the arbitration proposal. Why "mild endorsement" when I had been a vigorous supporter of the Police-Firefighter Arbitration Act? In the case of PFAA, the employee organizations wanted the law; the Michigan Municipal League, while opposed, was not adamant in its position. Thus, we had a situation where the people affected by the law were willing to accept it. I was by no means sure (and I am by no means sure) that the teachers will be as willing to accept arbitrators' awards as the police and firefighters and the public employers they work for have done. I would dislike to see the arbitration process damaged by the "school marms" hitting the bricks against a disliked award. They might do just that! The bill went down the drain because the Legislature provided for a longer period of a "free strike" than the Governor was willing to accept.

We had a peaceful September at the start of the 1975-76 school year, so the pressure to "do something" about the teachers has gone away. Bills to amend PERA to provide especially for teachers have been introduced in this session, but no legislative effort has been made to consider them.

You will note the figures on page 8 of "New Contract Arbitration in the Public Sector," particularly the increase in the number of settlements after January 1, 1973, when "last offer" went into effect. This is evidence that "last offer" is doing that which the Legislature hope it would do, i.e., pushing the parties closer together. One thing--surprising to us--that "last offer" has not done is to cut down on the number of cases going to arbitration. We have about the same number now that we did prior to "last offer."

The large number of pending cases is due to the fact that we have many cases filed in December to get ahead of the beginning of the fiscal year; and a good many cases are resolved without our knowing it. My law clerk has not had time recently to make a telephone poll of the old cases to find out which of them have been settled.

Between 25% and 30% of our police and firefighter cases go to arbitration. While this is high, it does show that collective bargaining under an arbitration act has not broken down completely as some persons contended would be the case.

In the case of fact finding, we have had about 800 petitions since July, 1965. Approximately one-half go to report and recommendation. There are over 4,000 public sector collective bargaining contracts in Michigan, so you can see that fact finding is not over used.

You will be interested in a study made of the arbitration experience in Wisconsin, Michigan and Pennsylvania by Professors Stern (Wisconsin), Rehmus (Michigan), and Loewenberg (Pennsylvania). The book is entitled Final Offer Arbitration, and was published by Lexington Books in 1975.

I enclose a copy of PFAA and also our private and public sector statutes. If you have any other questions, I will be glad to answer them either in writing or by telephone.

Sincerely,

Robert G. Howlett
Chairman

RGH:rml
Encls.

The Shield 3/27/76

(New Jersey Civil Service Association)

ın Fair and Final Arbitration

Another edition of The Leader shows that in New York the ivil Service employes regard binding arbitration as the nswer to a public employe's prayer, in contrast to the New ersey Education Association (Teachers) Government Rela- ions Director, who in last week's SHIELD, regarded N.J. ssembly Bill 1448 as unsatisfactory partly because its binding rbitration clause would, he felt, interfere in some way with 'due process of law," i.e., a resort to the courts.

The Leader points out that "last year . . . the Legislature oted no raise for 150,000 state workers represented by CSEA, even though a fact-finding team had found that a six percent raise would be equitable . . . Since then CSEA has been lob- bying for passage of a 'last-offer-binding arbitration' bill, which would substitute a binding arbitration procedure for the hearing after the last step after an impasse has been reached."

Which sounds like the "fair and final arbitration" proced admired in the New Jersey Civil Service Association's H terdon Council No. 15.

Paul Yager
8 Lexington Drive
Metuchen, New Jersey 08840

March 25, 1976

Daniel L. Ben-Asher
Staff to the Committee
Committee on Labor, Industry and Professions
State of New Jersey
Room #318-B - State House
Trenton, New Jersey 08625

Dear Mr. Ben-Asher:

Thank you for your invitation to testify at the public hearing on Assembly Bill No. 1448. I regret that I will not be able to attend the hearings. However, it may be appropriate for me to offer herewith some of my thoughts on the Study Commission Report and the proposed legislation. I do so, not as a spokesman for the Federal Mediation and Conciliation Service, but as an individual citizen of New Jersey who has spent his working life as an advocate of collective bargaining.

The Commission Report is notable for the cogent manner in which the entire range of public sector collective bargaining is reviewed and for the thoughtful manner in which the proposals are made. It is obvious that the Commission Members and Staff succeeded in preparing a report which transcends the controversy which surrounds this complex problem in order to make proposals which provide solutions that, if not universally cheered, can meet New Jersey's needs to replace the present less than adequate legislation with a more effective program.

I recognize that the realities of public opinion and the dynamics of the legislative process do not permit public employees and employers to enjoy the full benefits of genuine collective bargaining as it is practiced in the private sector. The decision-making process in that sector is enhanced by the possibility of work stoppages as the ultimate impasse resolution procedure.

Since, in the public sector, reality denies the availability of the ultimate process, we who advocate collective bargaining support impasse resolution procedures which are as close as possible to a full fledged collective bargaining decision-making procedure, while respecting the limitations on such procedures. Therefore, I dddress myself to the problem of the highly artificial progression from mediation to fact finding, to arbitration which pervades so much of the impasse procedures in public sector bargaining.

Mediation should be the preferred means of impasse resolution. The efficacy of this procedure, which requires the employer and union to act responsibly; to accept the burden of their decisions; to devise solutions which are viable because they relate directly to the employer's and the employees' particular

problems, commends it as the prime impasse procedure. Therefore, careful consideration should be given to devising a method which will encourage the use of mediation without eliminating the other procedures, fact finding and arbitration. I suggest that the mediator (or the chief of the designated mediation agency) be empowered to refer the dispute immediately to fact finding or arbitration in the event that he determines that the parties are not committed to negotiating a settlement through the mediation step. In effect, the time-consuming heirarchal procedures can be short circuited to the benefit of all involved. The unknown result which may emerge from fact finding and arbitration may worry the parties enough so that they would meet their responsibilities more seriously at the mediation stage and achieve settlement, thus obviating the need to resort to further procedures. Should they act irresponsibly, the mediator's recommendation to dispense with further negotiations and to invoke either of the subsequent procedures would at least reduce the time spent in fruitless mediation efforts. More significantly, however, I believe that the disciplin e implicit in the danger of the unknown will bring about more effective use of mediation and thus, minimize costs of time and money to all involved while furthering the objectives of the Commission's report.

Sincerely yours,

Paul Yager

PY/ls

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STATEMENT CONCERNING ASSEMBLY BILL 1448

Fire Fighters Association of New Jersey

John Mansmann	Jack Martin	William Voorhis	Jack Lisa
President	Vice-President	Treasurer	Secretary
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/est

My name is Peter Smith, I am the legislative committee vice-chairman of the Fire Fighters Association of New Jersey.

Assembly Bill No. 1448 is the result of a study made under Chapter 124, P.L. 1974, to provide if needed, the necessary changes of the Public Employer-Employee Relations Act (c 100, P.L. 1941 as amended by c 303, P.L. 1968 and c 123, P.L. 1974).

For whatever reasons and under whatever circumstances, A-1448 is completely a pro-employer and anti-employee piece of legislation. While it suggests to grant employees and employee organizations certain rights non-existent under present law, it does not grant anything which employers and employee organizations may [redacted] agree upon by mutual consent.

A-1448 has a new word inserted into the section concerning supervisors and supervisory employees. The word is evaluate and this word could cause confusion in the fire service.

While A-1448 compels binding arbitration in two areas, grievances and negotiation impasses, it permits exclusion from the former all agreed-upon matters and non-contractural matter. In stating that "negotiations in good faith" does not require "either party to agree to a proposal or require the making of a concession", impasse arbitration is very questionable. The wording of "weighted issues" restrictions on arbitrators will nullify any reasonable result.

A-1448 will severly limit the existing rights of public employees and their organizations. Gone is the strong language of enforcement of unfair labor practice charges. Missing is the requirement that "Public Employers shall negotiate written policies setting forth grievance procedures". Absent is the right of employees to "appeal the interpretation, application or violation of policies, agreements, and administrative decisions affecting them".

Eliminated is the tri-partite commission which provided an equal means of input and a sounding board for all concerned while administrative decisions were being considered. Gone is the right to negotiate "all terms and conditions of employment". Gone is the language stating that "proposed new rules or modification of existing rules governing working conditions shall be negotiated before they are established".

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Eliminated is the provision that "nothing contained herein shall annul or modify any pension statute or statutes of this State", thereby returning public employees to the status of pawns. Gone is the statuatory mandate that when an agreement is reached "it shall be embodied in writing and signed".

A-1448 provides some minor technical changes in the P.E.R.C. law concerning clarity and language. However, none of these changes are needed under existing procedures and certainly these minor changes do not require the major surgery involved in A-1448. These technical amendments could possibly be introduced and enjoy our support without the controversial provisions of A-1448.

In view of the massive language changes and the introduction of many new vague provisions, A-1448, in our opinion will-not serve as the basis for effectively improving employer-employee relations in the State of New Jersey, therefore, the Fire Fighters Association of New Jersey strongly oppose this legislation.

Respectfully submitted,

Peter F. Smith

Peter F.Smith
Legislative Committee
Vice-Chairman

THE TOWNSHIP OF MILLBURN
COUNTY OF ESSEX
MILLBURN, NEW JERSEY 07041
Established March 20, 1857

OFFICE OF THE MAYOR

March 31, 1976

Assemblyman Christopher J. Jackman
Chairman, Assembly Labor, Industry and
Professions Committee
Room 318-B
State House
Trenton, New Jersey 08625

Assembly 1448 - PERC Act Amendment

Dear Chairman Jackman:

Unfortunately, time did not permit conveyance of our reaction to this bill for the hearing date of March 26. However, we trust that communications received later will receive consideration by our legislators.

The Township Committee of the Township of Millburn strongly objects to revisions of the PERC Law that would provide any form of binding, mandatory arbitration. We feel such a step would be a violent usurpation of local government power, placing responsibility for decision-making affecting local taxpayers upon persons other than the proper elected officials.

Very truly yours,

Alexander B. Lyon, Jr.
Mayor

CC: Essex Legislators